

GERMANY'S DUTY-TO-RESCUE LAW

without significant personal risk and without violating other important

SHOULD BE ADOPTED IN EVERY STATE

peril with aid, or (3) notify rescuers.²³ However, the duty to rescue is limited by the reasonableness of each of these three actions under the circumstances of the situation—weighing the interests of the witness and the interests of the person in need of rescue.²⁴ In determining the reasonableness of a rescue, German courts consider the following factors: (1) the witness's own capabilities, (2) the person's distance from the scene of the accident, (3) the availability of aids, (4) the degree of danger faced by the person in peril, (5) the potential danger that the rescuer might face, (6) the extent of the potential damage, (7) the chances of a successful rescue, and (8) whether the parties in need of rescue are themselves responsible for the accident's occurrence.²⁵

For example, if the witness is physically incapable of assisting, liability from failure to rescue will not be imposed.²⁶

ATM,³² for the next twenty minutes, four people stepped over and around the stricken man to access the ATM machine behind him.³³ None of the four passersby offered any assistance or summoned emergency services.³⁴ Despite the fifth passerby alerting emergency services, the man passed away one week later from head injuries sustained in the fall.³⁵ The medical examiner noted that the man would have succumbed to his injuries even if he had received medical assistance sooner.³⁶

2022]

2022]

-TO-RESCUE LAW

265

SHOULD BE ADOPTED IN EVERY STATE

oTnu HOULD BE ADOPTED rwiTEDse op scu>nOPTED r, iTEDsk xposing mTEDselv>PTEDo riTEDffi

SHOULD BE ADOPTED IN EVERY STATE

society—and capitalism.⁷⁶ Under an individualistic view of society, individuals should look towards themselves, rather than to the state, to address their needs.⁷⁷ This view asserts that charity should only be encouraged, not mandated, by the state.⁷⁸ A rescue of another person is a form of charity to the victim, so any duty-to-

approximately seventy million surveillance cameras across the United States in 2019—more than one for every five people.⁸⁶

Given the scope of video surveillanc

The German duty-to-rescue law also addresses the argument that the law would deter people who initially fail to rescue a person in peril, but later change their minds for the fear of liability.¹⁰⁴ As discussed above, the German duty-to-rescue law does not require a witness to an emergency to act immediately.¹⁰⁵ Rather, the law allows time to gather one's thoughts before acting. Such a "grace period" leaves more than enough time for a passerby witnessing an emergency to reconsider an initial decision not to seek or render assistance. This person could return to the scene of the emergency to either personally assist or merely notify emergency services, without the fear of liability for not acting immediately.

Although it may be true that bystanders are less inclined to rescue once someone else has begun rescue efforts, there is no evidence to support the assertion that a non-rescuer's rescue efforts would be of any lower quality than any other rescuer. Such assumptions cannot be the basis for a rationale that suggests that a law with the potential to save lives should not be enacted. Further, this argument would only apply to situations where bystanders are present. In the absence of any bystanders, the only chance a person in peril has of rescue would be the one administered by the person present, regardless of whether that person acted out of obligation to the law or voluntarily.

D. The Societal Impact of Duty-To-Rescue Law

While a rescuer is bound by the doctrine of reasonableness under the German duty-to-rescue law, and while a rescuer could risk liability, despite being obligated to rescue a person in need of rescue, the German law does not necessarily require a person to personally rescue a person in peril.¹⁰⁶ Mere notification of emergency services, as the fifth person in the 2016 Essen case did, is sufficient to satisfy the duty created by law.¹⁰⁷ Indeed, a rescuer would risk no potential liability in merely dialing 911 on his cell phone and notifying emergency services of the situation. State laws in Hawaii, Minnesota, and Wisconsin already explicitly articulate a "notification" requirement in their respective statutes.¹⁰⁸ There remains no reason why a similar provision fails to be adopted across all fifty states.

Although some may argue that a duty-to-rescue law is incompatible with American values, five states in the United States, Vermont, Minnesota, Wisconsin, Rhode Island, and Hawaii, have, nonetheless, already adopted

104. Scordato, *supra* note 45, at 1479.

105. *Wissenschaftliche Dienste Report*, *supra* note 23.

106. *Wissenschaftliche Dienste Report*, *supra* note 23; SÜDDEUTSCHE ZEITUNG, *supra* note 31.

107. SÜDDEUTSCHE ZEITUNG, *supra* note 31; BBC NEWS, *supra* note 16.

108. Schiff, *supra* note 7, at 92-95.

duty-to-rescue laws very similar to that in Germany.¹⁰⁹ The German law penalizes a person “who does not provide help in the event of an accident, common danger or an emergency, when the person is able to do so, without significant personal risk.”¹¹⁰ Similarly, Hawaii’s statute requires a person to “obtain or attempt to obtain aid . . . if the person can do so without danger or peril to any person.”¹¹¹ Minnesota’s statute also requires “a person at the scene of an emergency . . . to give reasonable assistance to the exposed person” and only “to the extent that the person can do so without danger or peril to self or others.”¹¹²

These U.S. state statutes are substantially similar to their German equivalent and have been enacted by democratically elected state legislators whose actions reflect the will of their constituents. These statutes have also been recognized in their respective state courts and have not been ruled to encroach on American freedoms.¹¹³ Such examples indicate the compatibility of a duty-to-rescue law with the American values and set at least an aspirational ethical standard for the society—one where people do not look the other way when a fellow human being is in peril.

Further, the argument that social recognition of heroic rescue efforts would be diminished by a legal obligation to rescue, effectively places a higher importance on voluntary rescuers’ self-esteem and social recognition than the lives that could potentially be saved. There should be no question that the potentially life-saving outcomes of a duty-to-rescue law should take precedence over boost`