

WORDS CAN KILL: THE NECESSARY SHIFT IN INDIANA LAW TO RECOGNIZE THE POTENTIAL FOR PHYSICAL HARM CAUSED BY ENCOURAGING LANGUAGE

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INTRODUCTION

In 2015, the idea that someone could be held criminally responsible for another's suicide because of their words swept through the media.¹ At the time, Massachusetts did not have a law criminalizing the verbal encouragement of suicide. But it became the first state to find a way to incorporate this conduct into an involuntary manslaughter analysis, finding that words alone can suffice for wanton and reckless conduct in *Commonwealth v. Carter*.² After *Carter*, Massachusetts and many other states enacted laws against suicide encouragement to avoid grappling with how to convict someone for this crime without an explicit law addressing it.³

In 2019, the Supreme Judicial Court of Massachusetts affirmed Michelle Carter's conviction of involuntary manslaughter and sentenced her to fifteen months in prison.⁴ The court classified her texts to Roy as wanton and reckless conduct by incorporating a theory of "virtual presence."⁵ The court considered this theory, Carter's relationship with the victim, Carter's persistent communication with Roy, and Carter's knowledge of the victim's fragile mental state.⁶ Additionally, it was noted that an ordinary person would have known the grave risk of texting "just do it" to a person suffering from mental illness and actively attempting to commit suicide.⁷ Ultimately, Carter's text instructing Roy to "get back in" the truck after he had removed himself turned her words into enough to constitute "wanton and reckless" conduct needed for the involuntary manslaughter conviction, regardless of the fact that Carter was not physically present at the scene.⁸

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1. See generally, Michael E. Miller, *Michelle Carter Can Face Manslaughter Charge for Allegedly Encouraging Boyfriend's Suicide, Judge Rules*, WASH. POST, Sept. 24, 2015, <https://www.washingtonpost.com/news/morning-mix/wp/2015/09/24/michelle-carter-can-face-manslaughter-charge-for-allegedly-encouraging-boyfriends-suicide-judge-rules/> [<https://perma.cc/3G54-CJWN>].

2. *Commonwealth v. Carter*, 115 N.E.3d 559, 570 (Mass. 2019).

3. Mass. S.B. 2382, 191st Gen. Ct., Reg. Sess. (Mass. 2019); CAL. PENAL CODE § 401 (2019) (criminalizing any person who "deliberately aids, advises, or encourages another to commit suicide is guilty of a felony").

4. *Carter*, 115 N.E.3d at 570.

5. *Id.* at 569.

6. *Id.*

7. *Id.* at 570.

8. *Id.*

After Carter's conviction, Massachusetts proposed "Conrad's Law", which criminalizes the act of encouraging another to commit suicide.⁹ Other states, including Illinois, have enacted similar laws making the encouragement of suicide criminal to avoid having to face the same dilemma Massachusetts faced in their conviction efforts.¹⁰ Although not as strong of a stance as Illinois, Wisconsin has a broad law prohibiting all intentional assistance of suicide.¹¹ Compared to these other states within the Seventh Circuit, Indiana has the most restrictive laws for the punishment of encouraging suicide.¹²

Carter has sparked an intense discussion of the decision's effectiveness, implications, limitations, and challenges. Although the tragedy occurred in 2014, discussion of the case is still present, as the unique analysis of the court's decision is being highlighted in popular media. Streaming services have recently released a documentary series about *Carter*, which focuses on Roy's story and the lengths the court went to find Carter guilty.¹³ Despite the amount of discussion on this issue, many states have failed to criminalize this conduct.

The persistent interest in Carter's case may come from the rise in concern around mental health and suicide among the United States population. Suicide is a problem in our society, especially among young adults.¹⁴ Suicide is the second leading cause of death of adults aged twenty-five to thirty-four years old and was among the ten leading causes of death in the United States in 2020 with a total of 45,979 deaths.¹⁵ According to a recent survey conducted by the Centers for Disease Control and Prevention (CDC), people aged eighteen to twenty-four reported a significantly higher suicidal ideation rate of 25.5% compared to the general population rate of 10.7%.¹⁶

In Indiana, calls to the Indiana Suicide Hotline increased the most for the age group of thirteen to twenty-four from 2019-2020.¹⁷ Furthermore, Indiana has seen

9. Mass. S.B. 2382, 191st Gen. Ct., Reg. Sess. (Mass. 2019).

10. 720 Ill. Comp. Stat. 5/12-34.5 (2011).

11. WIS. STAT. ANN. § 940.12 (2022).

12. *See generally*, IND. CODE §§ 35-42-1-2, -2.5 (2023).

13. *I Love You Now Die: The Commonwealth v. Michelle Carter* (HBO 2022); *The Girl from Plainville* (HuLu 2022).

14. Marie-Laure Charpignon, Johnattan Ontiveros & Saahil Sundaresan, *Evaluation of Suicides Among US Adolescents During the COVID-19 Pandemic*, 176 JAMA PEDIATRICS 7, 1 (2022), https://jamanetwork.com/journals/jamapediatrics/articlepdf/2791544/jamapediatrics_charpignon_2022_id_220010_1656448114.10938.pdf [<https://perma.cc/68JD-5V8K>].

15. Daniel C. Ehlman et al., *Changes in Suicide Rates—United States, 2019 and 2020*, CTRS. FOR DISEASE CONTROL & PREVENTION (Feb. 25, 2022), <https://www.cdc.gov/mmwr/volumes/71/wr/pdfs/mm7108a5-H.pdf> [<https://perma.cc/6KDG-4CHQ>].

16. Mark É. Czeisler et al., *Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic—United States, June 24-30, 2020*, 69 CTRS. FOR DISEASE CONTROL & PREVENTION 32 MMWR (2020), <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6932a1-H.pdf> [<https://perma.cc/F8N4-PRC5>].

17. Harold Kooreman et al., *The Impact of the COVID-19 Pandemic on Behavioral Health in Indiana*, THE CTR. FOR HEALTH POL'Y 1, 31 (2021), <https://scholarworks.iupui.edu/>

a 41% increase from 2001 to 2019 in suicide among Indiana's working-age population.¹⁸ During the COVID-19 pandemic, Indiana had an increase in the absolute count of suicides among people aged ten to nineteen.¹⁹ These statistics identify a clear problem within Indiana of suicide among young adults, especially since the beginning of the pandemic.

With the increase in technology use by young adults since the pandemic, it is plausible that individuals were more prone to suicidal thoughts during this time. Over the course of the COVID-19 pandemic, social media use increased.²⁰ Furthermore, social media users were seen to have a decline in sentiment, calling for concern as user sentiment is associated with mental well-being.²¹ Young adults are suffering from mental illness, and access to faceless communication via technology is at peak use. With this combination, a situation like that in *Carter* may be more likely now than ever. Although most conversations about decreasing suicide rates tend to put the responsibility on healthcare providers, the law has a role to play in this continuing problem.

This Note proposes that Indiana needs to enact a criminal provision that explicitly prohibits the encouragement of suicide with specific statutory language and definitions. This Note argues that leaving these situations to be solved with tort, other criminal, or bullying laws is not an adequate remedy for the victims of this conduct. Part I of this Note analyzes the *Commonwealth v. Carter* case by explaining the facts, the rationale of the court, the holding, and the resolution of Carter's argument on appeal. Part II discusses potential approaches to address this issue and how current Indiana law relates to each approach. Such approaches include stalking and harassment law, criminal infliction of emotional distress, making bullying a crime, using tort law instead of criminal law, following the rationale in *Carter* by using involuntary manslaughter, or using laws that prohibit assisting and causing suicide for this issue. This Part emphasizes that current Indiana law does not provide an approach with adequate justice.

Part III argues for amending the Indiana Criminal Code to include a section on encouraging suicide independent of the homicide section with strict requirements for application. The requirements include: (1) resulting physical harm, (2) a specific definition of "encouraging," (3) knowledge of pre-existing mental health concerns of the victim, and (4) factors to consider when

bitstream/handle/1805/26607/COVID%20report.pdf. [https://perma.cc/YC2T-K9B7].

18. Matt Kinghorn, *Indiana's Life Expectancy Falling Further Behind US*, 96 IND. BUS. REV. 2 (2021), <https://www.proquest.com/docview/2556885286/fulltextPDF/2D67CD87EB194D86PQ/1?accountid=7398> [https://perma.cc/8YEP-X3GL].

19. Sarah Bui & Beau D. Meyer, *Evaluation of Suicides Among US Adolescents During the COVID-19 Pandemic*, 126 JAMA PEDIATRICS 724 (2022), https://jamanetwork.com/journals/peds/articlepdf/2791544/jamapediatrics_charpignon_2022_ld_220010_1656448114.10938.pdf [https://perma.cc/TC4A-NFL3].

20. Danny Valdez, *Social Media Insights into US Mental Health During the COVID-19 Pandemic: Longitudinal Analysis of Twitter Data*, 22 J. MED. INTERNET RSCH. 5 (2020), <https://www.jmir.org/2020/12/e21418/PDF> [https://perma.cc/EC5F-TCX9].

21. *Id.*

determining causation. This Part also identifies counterarguments to this proposal and addresses why the need for justice outweighs the risk of harm.

I. ANALYSIS OF *COMMONWEALTH V. CARTER*

A. Facts of the Case

Michelle Carter and Conrad Roy were in a long-distance relationship maintained through texting.²² Roy had serious mental health concerns and had attempted suicide multiple times between 2012-2014, but he abandoned each attempt and sought rescue.²³ Many of the conversations between Carter and Roy focused on Roy's suicidal thoughts.²⁴ Carter first urged Roy to get professional help alongside her so they could mutually support each other.²⁵ However, her suggestion to seek help soon turned into downplaying Roy's fears and the consequences of suicide, thus encouraging Roy to commit suicide.²⁶ Carter made Roy promise to go through with the suicide and chastised him for his past failed attempts.²⁷

Roy secured a gasoline-powered water pump to generate carbon monoxide, drove his truck to a local parking lot, and started the pump inside his truck.²⁸ Cellular telephone records indicate that, while the truck was filling with carbon monoxide, Roy called Carter and talked to her for approximately forty minutes; Carter then called Roy, and they talked for another forty minutes.²⁹ Although there is no record of what was said during these calls, Carter sent a text to her friend shortly after the last phone call.³⁰ Carter stated in this text that she heard "a loud noise like a motor running and . . . moaning like someone was in pain."³¹ Carter also stated in this text that Roy would not respond when she said his name.³² About twenty minutes after this text message, Carter sent another text to the same friend and indicated that she thought Roy had killed himself.³³ An hour later, Carter texted another friend, explaining the noises she heard and her belief that Roy had killed himself.³⁴ She texted the same friend again a few weeks later, stating:

I failed [Roy] I wasn't supposed to let that happen and now I'm realizing

22. *Commonwealth v. Carter*, 115 N.E.3d 559, 562 (Mass. 2019).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.* at 563.

27. *Id.*

28. *Id.* at 564-65.

29. *Id.*

30. *Id.* at 565.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

I failed him. [Roy's] death is my fault like honestly I could have stopped him I was on the phone with him and he got out of the car because it was working and he got scared and I fucking told him to get back in . . . because I knew he would do it all over again the next day and I couldn't have him live the way he was living anymore I couldn't do it I wouldn't let him.³⁵

Conrad Roy died on July 12, 2014, by inhaling carbon monoxide from the gasoline-powered pump inside his truck.³⁶

B. Rationale of the Conviction

The trial court held that “verbal conduct in appropriate circumstances could overcome a person’s willpower to live, and therefore . . . be the cause of a suicide.”³⁷ The court rejected Carter’s claim that her words to Roy, absent physical presence at the scene of the suicide, “could not constitute wanton or reckless conduct sufficient” to support involuntary manslaughter.³⁸ The court admitted that, up until Carter’s text instructing Roy to get back into the truck, Roy’s actions were his own.³⁹ However, once Roy exited the vehicle and removed himself from the danger, he broke the self-causation chain, just as he had done in previous suicide attempts.⁴⁰ Carter then “overpowered [Roy’s] will and thus caused his death.”⁴¹ The court explained that Carter’s “verbal communications with [Roy] in the last minutes of his life . . . carr[ied] more weight than mere words, overcoming any independent will to live he might have had.”⁴² The lower court stated that there was ample evidence for probable cause that Carter’s conduct was “wanton or reckless under either a subjective or objective standard.”⁴³ Carter and Roy’s relationship and the gravity of the circumstances were central to the trial court’s rationale.⁴⁴ The court reasoned that, objectively, an ordinary person in these circumstances would have understood the significant danger in telling Roy “who was mentally fragile, predisposed to suicidal inclinations, and in the process of killing himself, to get back in a truck filling with carbon monoxide” to “just do it.”⁴⁵ Subjectively, the court explains that a jury could find that Carter, “the victim’s girlfriend, with whom he was in constant and perpetual contact . . . knew that she had some control over his actions.”⁴⁶

35. *Id.*

36. *Id.* at 562.

37. *Id.* at 565 (quoting *Commonwealth v. Carter*, 52 N.E.3d 1054, 1063 (Mass. 2016)).

38. *Id.*

39. *Id.* at 567.

40. *Id.*

41. *Id.* at 568.

42. *Commonwealth v. Carter*, 552 N.E.3d 1054, 1063 (Mass. 2016).

43. *Commonwealth v. Carter*, 115 N.E.3d 559, 566 (Mass. 2019).

44. *Id.*

45. *Id.* at 563 n.4, 566.

46. *Id.* at 566.

C. Resolution of Carter's Arguments on Appeal

On appeal to the Massachusetts Supreme Court, Carter first argued that her right to due process was violated because she lacked fair notice of a potential involuntary manslaughter conviction, as the law was unconstitutionally vague.⁴⁷ The court went on to cite similar cases from Massachusetts that addressed instances of assisting suicide and indicated that similar conduct was unlawful.⁴⁸ The court pointed out that Massachusetts common law provides a principle that “procuring a suicide by ‘advice or otherwise’ may constitute a homicide . . .”⁴⁹ The court then explained that this principle provides sufficient notice that an individual may face an involuntary manslaughter charge for “reckless or wanton conduct, including verbal conduct, causing a victim to commit suicide,” and thus the law is not unconstitutionally vague when applied to Carter’s conduct.⁵⁰ The court ultimately discarded Carter’s argument by explaining that there is no doubt that she “wantonly or recklessly instructed the victim to kill himself and that her instructions caused his death.”⁵¹

Carter next argued that her conviction of involuntary manslaughter violated her free speech rights.⁵² The court disagreed, finding that no violation resulted from the conviction for “reckless and wanton, [sic] pressuring text messages and phone calls, preying upon well-known weaknesses, fears, anxieties, and promises, that finally overcame the [will] to live of a mentally ill . . . young person, thereby coercing him to commit suicide.”⁵³ The crime of involuntary manslaughter is aimed “at a course of conduct, rather than speech . . .”⁵⁴ The court noted that Carter cannot avoid liability because she carried out an illegal act with words.⁵⁵ Additionally, the court pointed out multiple other crimes that do not raise First Amendment concerns because the speech is integral to the criminal conduct.⁵⁶ Here, the court said that the same is true when the punishment is not of words alone but of “reckless or wanton words causing death.”⁵⁷ Further, the court stated that even if it applied a strict scrutiny analysis, it would find that this speech restriction was narrowly tailored to serve the “Commonwealth’s compelling interest in preserving life.”⁵⁸

47. *Id.* at 568-69.

48. *Id.* at 569-70.

49. *Id.* at 570.

50. *Id.*

51. *Id.* at 569.

52. *Id.* at 570.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.* at 570-71.

57. *Id.* at 572.

58. *Id.* at 572-73.

II. POTENTIAL APPROACHES AND PROBLEMS CURRENT INDIANA LAW POSES

A. Traditional Aiding and Abetting Principles

With most crimes, if an individual influences or encourages someone to commit the crime, they may be found guilty of aiding and abetting. “Aid and abet” is defined as “assist[ing] or facilitat[ing] the commission of a crime, or to promote its accomplishment.”⁵⁹ In Indiana, the statute on this basis of liability states that an individual “who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person: (1) has not been prosecuted for the offense; (2) has not been convicted of the offense; or (3) has been acquitted of the offense.”⁶⁰

However, this traditional approach is problematic with the conduct seen in fact patterns like *Carter*. As Indiana’s statute states, this principle applies when the aiding is to accomplish a crime. Currently, no jurisdiction in the United States includes suicide as a criminal act.⁶¹ Additionally, no state criminalizes the suicide attempts.⁶² The Model Penal Code reflects this situation with the following comment:

[T]here is no form of criminal punishment that is acceptable for a completed suicide and that criminal punishment is singularly inefficacious to deter attempts to commit suicide . . . argu[ing] that the visitation of criminal sanctions upon one who fails in the effort is likely to inhibit persons from undertaking a serious attempt to take their own lives [is absurd] There is certain moral extravagance in imposing criminal punishment on a person who has sought his own self-destruction, who has not attempted direct injury to anyone else, and who more properly requires medical or psychiatric attention.⁶³

Because suicide or attempting it is not a criminal offense—for good reason—there is no ability to apply the theory of “aid and abet” to instances of “encouraging suicide” when the underlying act is suicide or attempted suicide.

B. Using Harassment Laws

The use of harassment law can be applied to most instances of suicide encouragement. Indiana’s crime of harassment is within the intimidation chapter of the criminal code.⁶⁴ Harassment requires a person to have the intent to harass, annoy, or alarm another person but does not require intent of legitimate

59. *Aid and Abet*, BLACK’S LAW DICTIONARY (11th ed. 2019).

60. IND. CODE § 35-41-2-4 (2023).

61. Catherine Shaffer, *Criminal Liability for Assisting Suicide*, 86 COLUM. L. REV. 348, 351 (1986).

62. *Id.*

63. *In re Joseph G.*, 667 P.2d 1176, 1178 (Cal. 1983).

64. § 35-45-2-2.

communication.⁶⁵ Examples of harassment include making a phone call, communicating with a person by phone, mail, or other written communication, transmitting an obscene message on the radio, or using electronic communication to communicate or transmit an obscene message.⁶⁶ This crime is a Class B misdemeanor.⁶⁷ This section also defines what is considered an “obscene message.”⁶⁸ A message is obscene if the average person finds the main theme of the message appealing to a prurient interest in sex, patently refers to sexual conduct in an offensive way, or as a whole, the message “lacks serious artistic, literary, political, or scientific value.”⁶⁹

The harassment provision may allow for a perpetrator’s prosecution, but encouraging suicide is much more severe than what the harassment statute is intended to cover. Harassment must result only in emotional harm, whereas encouragement of suicide may result in serious physical harm from attempted suicide or death.⁷⁰ Harassment should not be used to cover this egregious behavior. Furthermore, the harassment provision requires the “intent to harass, annoy, or alarm.”⁷¹ In these situations, this intent very well may not exist, like in *Carter*, making it difficult to prove. Rather than resorting to the harassment provision, Indiana should adopt a statute that reflects the severity of harm to the victim in these cases.

C. Using Stalking Laws

Stalking laws may be applicable in suicide-encouragement cases when there is unwanted contact with the victim. In Indiana, stalking is a Level 6 felony.⁷² This chapter defines to “stalk” as “a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.”⁷³ This chapter defines “harassment” as “conduct directed toward a victim that includes but is not limited to repeated or continuing impermissible contact that would cause a reasonable person to suffer emotional distress and that actually causes the victim to suffer emotional distress.”⁷⁴ “Impermissible conduct” is defined as following the victim, communicating, or making social media posts directed at or referring to the victim.⁷⁵

65. *See id.* § 35-45-2-2(a).

66. *Id.*

67. *Id.* § 35-45-2-2.

68. *Id.* § 35-45-2-2(b).

69. *Id.* § 35-45-2-2(b)(1) to (3).

70. *Id.* § 35-45-10-2.

71. *Id.* § 35-45-2-2(a).

72. *Id.* § 35-45-10-5(a).

73. *Id.* § 35-45-10-1.

74. *See id.* § 35-45-10-2.

75. *Id.* § 35-45-10-3.

The stalking law in Indiana would rarely cover the behavior in *Carter* or behavior similar to it. The stalking section requires impermissible contact, which it defines as following, communicating, or posting about the victim.⁷⁶ In scenarios like *Carter*, the perpetrator is rarely stalking the victim as defined by the statute. The perpetrator often has a personal relationship with the victim that is not unwanted. As with *Carter*, Roy and Carter were in a relationship and the contact was wanted by both parties. A case with similar facts involving a desired relationship between the victim and perpetrator would not fall under the Indiana stalking law.

D. Criminal Infliction of Emotional Distress

One way to address the emotional harm caused by suicide encouragement is by criminalizing the tort of Intentional Infliction of Emotional Distress. However, many states already use this language more broadly for harassment laws, including Indiana. In Indiana's stalking chapter, harassment is defined using the term "emotional distress," accounting for and recognizing this kind of emotional harm.⁷⁷ Although this language is not seen in the homicide chapter of the Indiana Code, using purely emotional harm as the required harm in criminal law can be problematic with the recent trend in disfavoring statutes with prophylactic purposes.⁷⁸ Pure emotional harm also raises issues in criminal statutes because individual emotional responses vary among different people, thus making a requirement of solely emotional harm a "particularly unreliable heuristic."⁷⁹

A Criminal Infliction of Emotional Distress (CIED) statute would allow criminalizing behavior that did not necessarily cause any physical harm but rather just emotional harm.⁸⁰ An example of a CIED statute reads as: "A person is guilty . . . when the person knowingly engages in a course of conduct directed at a specific person, and that conduct would cause a reasonable person to . . . suffer other significant mental anguish or distress."⁸¹ Regarding encouraging suicide, this type of statute could cover instances where the victim did not attempt to commit or commit suicide but rather experienced emotional harm from the suicide encouragement. There is an ongoing stigma of mental illness and not taking emotional harm seriously, given that many believe physical harm is "more 'real' and more deserving of compensation."⁸² Although emotional harm should

76. *Id.* § 35-45-10-1.

77. *Id.* § 35-45-10-2.

78. Dan T. Coenen, *Freedom of Speech and the Criminal Law*, 97 B.U. L. REV. 1533, 1591 (2017).

79. Janice Nadler & Mary R. Rose, *Victim Impact Testimony and the Psychology of Punishment*, 88 CORNELL L. REV. 419, 442 (2003).

80. Avlana K. Eisenberg, *Criminal Infliction of Emotional Distress*, 113 MICH. L. REV. 607, 627 (2015).

81. *Id.* (citing DEL. CODE ANN. tit. 11 § 1312 (2007 & Supp. 2012)).

82. Francis X. Shen, *Sentencing Enhancement and the Crime Victim's Brain*, 46 LOYOLA U. CHI. L.J. 405, 426 (2014).

be an important consideration, this criticism must be accounted for when creating a legal solution to a problem ultimately about mental health. Instances of solely emotional harm are best left to often applicable harassment and stalking laws. Without requiring any physical harm to be shown, this proposal will be the subject of extreme criticism for not being narrowly tailored enough to meet constitutional standards.

Furthermore, CIED statutes have a prophylactic rationale.⁸³ One problem with this lack of physical harm requirement in CIED statutes is the rise of a focus on physical harm and not just the risk of physical harm, disfavoring a prophylactic purpose.⁸⁴ This new doctrinal theme will make the creation and enforcement of a CIED statute difficult, and more likely to be struck down if challenged.⁸⁵

E. Bullying as a Crime

Another potential solution is making bullying a criminal offense to encompass the behavior seen in *Carter* and other less severe instances.⁸⁶ However, Indiana currently has laws in place that allow schools to handle instances of bullying instead of the criminal system.⁸⁷ Indiana has provisions for bullying within the Education Code.⁸⁸ The law requires schools to adopt disciplinary rules prohibiting bullying with detailed procedures for investigating its occurrence.⁸⁹ These procedures include anonymous reporting, reporting to parents of those involved, reporting to counselors and the superintendent, discipline for school officials who do not conduct an investigation or fail to report, and follow-up services for those involved.⁹⁰ Additionally, this section is applicable regardless of where the incident occurred and applies to electronic uses.⁹¹ Instead of having criminal sanctions for instances of bullying in school, the discipline can include expulsion or suspension from the school.⁹²

The current laws in Indiana give schools a lot of power to help control and reduce bullying that occurs on school grounds or at the homes of children within the school system. As most cases of bullying include children, it seems best to leave these issues to the institutions in which they occur—schools—and not a juvenile justice system. Only a small fraction of bullied students are suicidal.⁹³ In

83. Eisenberg, *supra* note 80, at 638.

84. *See generally* Coenen, *supra* note 78, at 1591.

85. *Id.*

86. Alicia K. Albertson, *Criminalizing Bullying: Why Indiana Should Hold the Bully Responsible*, 48 IND. L. REV. 243 (2014).

87. IND. CODE § 20-33-8-13.5 (2023).

88. *Id.*

89. *Id.* § 20-33-8-13.5(a).

90. *Id.*

91. *Id.* § 20-33-8-13.5(b) to (c).

92. *Id.* § 20-33-8-14.

93. Albertson, *supra* note 86, at 248.

most cases, the impact of bullying does not end in death or attempted suicide,⁹⁴ further showing that schools should deal with these concerns to punish the bully and provide services to both the bully and the victim of the bullying. Where most instances of bullying do not take this dark turn, there is a total lack of need to turn a child into a criminal over these behaviors.

With situations like *Carter*, other criminal laws focusing on the suicidal impact of the behavior need to be used to address this behavior. This level of interaction removes itself from being handled by a school. Furthermore, in *Carter*, Roy and Carter attended different schools, and so a school's bullying policies could not be used.⁹⁵ When the individuals involved attend different schools, criminal statutes like harassment and stalking exist to punish their egregious behavior, just as in cases involving students in the same school where the behavior reaches beyond what the school could handle. But in cases such as *Carter*, where suicide is the outcome, harassment and stalking statutes are not adequate to address the resulting harm.

Additionally, there is a worry of over-criminalization with making bullying a criminal offense, as laws like harassment and stalking exist to address when this behavior among students is particularly egregious.⁹⁶ These laws also exist for those who are not in a public school or who have recently graduated and do not have access to the resources available from Indiana schools to address bullying.⁹⁷ Making bullying a crime would only lead to the potential of charging children with multiple applicable crimes and increasing the use of the juvenile justice system. A main goal of anti-bullying provisions is to prevent the harm resulting from the bullying, including potentially fatal outcomes like suicide.⁹⁸ However, by resorting to the juvenile justice system, this goal is completely undermined. Prisoner suicide rates are nine times as high as the general population, with 63% of suicide victims aged thirteen to twenty-one having past encounters with the juvenile system.⁹⁹ Furthermore, 25% of young adult suicide victims had a history

94. *Id.*

95. Britanni Ready, *Words as Weapons: Electronic Communications That Result in Suicide and the Uncomfortable Truth with Criminal Culpability Based on Words Alone*, 36 ST. LOUIS U. PUB. L. REV. 113, 121 (2017).

96. *Id.* at 124.

97. *Id.*

98. See generally, *Importance of Anti-Bullying Laws*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Sept. 9, 2021), <https://www.stopbullying.gov/resources/research-resources/importance-of-anti-bullying-laws> [<https://perma.cc/BH75-RDMG>] (explaining the goal of anti-bullying policies as preventing future bullying and its consequences from occurring); *Consequences of Bullying*, U.S. DEP'T OF HEALTH & HUM. SERVS. (July 30, 2018), <https://www.stopbullying.gov/resources/research-resources/consequences-of-bullying> [<https://perma.cc/GY6K-U5LU>] (identifying different consequences of bullying, including suicide).

99. X. Shen et al., *Characteristics of Suicide from 1998-2001 in a Metropolitan Area*, DEATH STUDIES, 859, 868 (Nov. 22, 2006), <https://www.tandfonline.com/doi/full/10.1080/07481180600853074> [<https://perma.cc/KMQ3-AGUX>].

of crime or legal issues.¹⁰⁰ Turning bullying into a crime and forcing bullies into the juvenile system only increases the chance of that child becoming a victim of suicide, which is counterproductive.

F. Leaving It to Tort Law

It is possible that in a situation where encouragement leads to suicide or attempted suicide, various tort laws are available to the victim or the victim's family. Such laws may include negligent infliction of emotional distress,¹⁰¹ intentional infliction of emotional distress,¹⁰² or wrongful death claims.¹⁰³ However, with these remedies, the only damages available are monetary.¹⁰⁴ Money may not be an adequate remedy to give justice to a victim of an attempted suicide or to the victim's family in cases of a completed suicide. But the road to a legal tort victory is treacherous for plaintiffs.¹⁰⁵ Furthermore, the compensatory award given in our tort system is often a poor measure of the actual wrongfulness of the defendant's action.¹⁰⁶ Although pain and suffering damage calculations may be used, this practice is often unpredictable for victims.¹⁰⁷

Aside from compensatory damages in tort claims, punitive damages may be sought, which are additional monetary damages determined by a jury after finding a flagrant violation of the plaintiff's rights by the defendant.¹⁰⁸ This typically occurs where "a defendant has acted intentionally, maliciously or with a conscious, reckless, willful or wanton disregard for a plaintiff's interest."¹⁰⁹ As Judge Posner noted, punitive damages are used as a civil alternative to prosecution of minor crimes.¹¹⁰ Although punitive damages may be adequate to address minor criminal activity, what about when there is a resulting death or attempted suicide? Posner provides an example of assault by spitting on one's face as adequate to address with punitive damages.¹¹¹ Yet there is a clear difference between a degrading assault and being driven to commit suicide.

Furthermore, and more importantly, the use of punitive damages to provide more compensation to victims in a wrongful death case is not possible in Indiana. Indiana's Wrongful Death Act allows damages for "reasonable medical, hospital, funeral, and burial expenses, and lost earnings of such deceased person resulting

100. *Id.*

101. K.G. *ex rel.* Ruch v. Smith, 178 N.E.3d 300 (Ind. 2021).

102. State v. Alvarez *ex rel.* Alvarez, 150 N.E.3d 206 (Ind. Ct. App. 2020).

103. IND. CODE § 34-23-1-1 (2023).

104. *See generally*, Stephen Sugarman, *Doing Away with Tort Law*, 73 CALIF. 555 (1985).

105. *Id.* at 611.

106. *Id.* at 610.

107. *Id.*

108. Troy Cady, *Disadvantaging the Disadvantaged: The Discriminatory Effects of Punitive Damage Caps*, 25 HOFSTRA L. REV. 1005, 1008 (1997).

109. *Id.* at 1008-09.

110. Mathias v. Accor Econ. Lodging, Inc., 347 F.3d 672, 676 (7th Cir. 2003).

111. *Id.*

from said wrongful [conduct].”¹¹² Damages for the loss of the decedent’s love and companionship are also permitted, but the aggregate damages under this allowance are capped at \$300,000.¹¹³ This Act does not include damages for grief or sorrow as a result of the decedent’s death.¹¹⁴ Importantly, Indiana prohibits a court from awarding punitive damages in a wrongful death action.¹¹⁵ Therefore, in Indiana, victims of a death resulting from encouraging suicide cannot even resort to punitive damages as a quasi-criminal resource for justice. Because of this lack of remedy in Indiana, additional criminal punishment in these situations is needed to ensure justice and deterrence is provided.

G. Using Involuntary Manslaughter Following the Carter Rationale

In Massachusetts, the common law defined involuntary manslaughter as a homicide unintentionally caused by “wanton or reckless conduct” that disregarded probable harm to another.¹¹⁶ “Wanton or reckless” conduct has been determined to mean either commission or omission when there is a duty to act where there is a probability of substantial harm to another.¹¹⁷ The court explained that Carter’s conduct amounted to wanton and reckless conduct due to her overt acts of texting Roy to “get back in” and her failure to act.¹¹⁸

However, in Indiana, involuntary manslaughter does not include the terms “wanton or reckless conduct.”¹¹⁹ The involuntary manslaughter statute in Indiana states that:

A person who kills another human being while committing or attempting to commit:

- (1) a Level 5 or Level 6 felony that inherently poses a risk of serious bodily injury;
- (2) a Class A misdemeanor that inherently poses a risk of serious bodily injury; or
- (3) battery;

commits involuntary manslaughter, a Level 5 felony.¹²⁰

In Indiana, an involuntary manslaughter charge with the *Carter* facts is unlikely to succeed, as there is no allowance for “wanton or reckless conduct” in

112. IND. CODE § 34-23-1-1 (2023).

113. *See id.* § 34-23-1-2(c)(3), (e).

114. *Woosley v. C.R. England, Inc.*, 890 F. Supp. 2d 1068 (S.D. Ind. 2012); IND. CODE § 34-23-1-2(c)(2).

115. § 34-23-1-2(c)(2); *see also Huff v. White Motor Corp.*, 609 F.2d 286 (7th Cir. 1979).

116. *Commonwealth v. Pease*, 731 N.E.2d 92, 94 (Mass. App. Ct. 2000).

117. *Commonwealth v. Welansky*, 55 N.E.2d 902, 910 (Mass. 1994).

118. Kaitlin M. Phillips, *Sticks and Stones May Break Your Bones, but Words Can Also Kill: Limiting Criminal Liability for Words*, 2019 U. ILL. L. REV. 1741, 1760-61.

119. § 35-42-1-4.

120. *See id.* § 35-42-1-4(b).

Indiana's definition of involuntary manslaughter.¹²¹ In Indiana, the underlying conduct would need to be a Level 5 or 6 felony or a Class A misdemeanor with a risk of serious bodily injury.¹²² Examples of possible underlying crimes include kidnapping,¹²³ criminal conversion,¹²⁴ sexual battery,¹²⁵ or intimidation.¹²⁶ However, any underlying crime that could be argued in a situation similar to *Carter* (e.g. harassment or stalking) would not qualify as a Class A misdemeanor that inherently poses a risk of serious bodily injury and would thus still fall outside involuntary manslaughter. Furthermore, having an underlying Level 5 or 6 felony in a similar situation would be rare. Most instances of encouraging suicide, usually dealing with communications, would not rise to the level of a felony, like kidnapping, but rather would remain linked with lower-level crimes, like harassment. Additionally, the statute provides that involuntary manslaughter applies to a person who "kills" another. Thus, death must result from the defendant's actions. This definition would never allow a situation like *Carter* to result in an involuntary manslaughter conviction in Indiana.

H. Using Assisting and Causing Suicide Provisions in Indiana's Homicide Chapter

In the current Indiana Criminal Code, there is a section within the homicide chapter titled "Assisting Suicide."¹²⁷ The statute provides that:

A person who has knowledge that another person intends to commit or attempt to commit suicide and who intentionally does either of the following commits assisting suicide, a Level 5 felony:

- (1) Provides the physical means by which the other person attempts or commits suicide.
- (2) Participates in a physical act by which the other person attempts or commits suicide.¹²⁸

For a conviction to occur with the *Carter* facts in Indiana, *Carter* would have had to purchase the gasoline-powered water pump for Roy to use or would have had to physically help Roy set up the pump in his truck.

Indiana has another section within the homicide chapter titled "Causing Suicide."¹²⁹ This statute states that "[a] person who intentionally causes another human being, by force, duress, or deception, to commit suicide commits causing

121. *Id.* § 35-42-1-4.

122. *See id.* § 35-42-1-4(b).

123. *Id.* § 35-42-3-2(a) to (b)(1).

124. *Id.* § 35-43-4-3(a) to (d).

125. *Id.* § 35-45-4-8(a).

126. *Id.* § 35-45-2-1(a).

127. *Id.* § 35-42-1-2.5.

128. *Id.* § 35-42-1-2.5(b).

129. *Id.* § 35-42-1-2.

suicide, a Level 3 felony.”¹³⁰ Force is compelling “by physical means or by legal requirement.”¹³¹ The Indiana Criminal Code defines duress as being “compelled . . . by [force or] threat of imminent serious bodily injury to himself or another person . . . such as would render a [reasonable person] incapable of resisting the pressure.”¹³² Deception is defined as a deliberate act “causing someone to believe that something is true when the actor knows it to be false” or a “trick intended to make a person believe something untrue.”¹³³

Here, for a conviction in Indiana to occur with the *Carter* facts, more facts would have to exist. For “force” to exist within the *Carter* context, Carter would have had to put Roy into the truck by physical means with the pump on and attached. For “duress” to exist, Carter would have had to make a threat that Roy reasonably could not have resisted. This may include directly threatening Roy’s loved ones or even threatening herself. For “deception”, Carter would have needed to convince Roy that using the pump would not have killed him or that the actions were somehow reversible. None of these facts existed in *Carter*, and therefore, in Indiana, this fact pattern would not fall under the “causing suicide” statute.

III. PROPOSED SOLUTION

A. Overall Proposal

The best solution for ensuring that those who encourage others to commit suicide are held accountable is reflected by amending the Indiana Criminal Code with an “encouraging suicide” provision. However, adding this provision into the homicide chapter is inappropriate because this conduct is distinct from homicide. Instead, adding this into the intimidation chapter with other statutes that criminalize types of speech is more appropriate because it better aligns with the underlying conduct. Requirements should include (1) physical harm, (2) intent to encourage, (3) a definition of “encourage,” (4) knowledge of the victim’s fragile mental state, and (5) causation.

B. Requirement of Physical Harm

With the recent trend of courts disfavoring statutes focused on pure emotional harm, adding a physical harm requirement would decrease pushback and accomplish the desired goal of punishment and accountability.¹³⁴ In cases of encouraged suicide, the emotional harm is clearly present, but there is also a clear physical harm—death by suicide or physical harm from an attempted suicide that can be the basis for liability.

130. *Id.*

131. *Force*, BLACK’S LAW DICTIONARY (11th ed. 2019).

132. § 35-41-3-8(a).

133. *Deception*, BLACK’S LAW DICTIONARY (11th ed. 2019).

134. *See* Coenen, *supra* note 78, at 1591-93 (discussing multiple recent cases showing a trend disfavoring statutes with a prophylactic purpose).

Yet one could argue that it overlooks the seriousness of emotional harm caused by this conduct when there is no resulting suicide or attempted suicide. However, the issues surrounding proof of an emotional harm can be difficult and vary greatly on the circumstance. Requiring physical harm as an element clearly identifies a harm without raising any questions as to the severity of the harm caused. The physical harm of suicide or an attempted suicide is clearly present, whereas emotional harm is harder to quantify on a severity scale. Questioning the severity or presence of emotional harm is offensive to the victim's family and the victim themselves. What's more, proving severe emotional harm would likely require experts, such as therapists or psychiatrists, to prove the level of harm. With this comes expenses and further invasion of the victim and the victim's family. Avoiding this dilemma of having to analyze the extent of emotional harm someone faced is possible by simply requiring physical harm as an element of the crime.

Furthermore, this would help ease worries of those opposed in whole to criminalizing this conduct, as the only "encouragement" that would be prohibited is that which results in physical injury or death. Opponents to this proposal would not have reason to object based on a risk of excessive prosecutions that may be brought, because there would be fewer cases where encouragement results in physical harm than cases resulting in solely emotional harm. Moreover, physical harm is much simpler to prove compared to purely emotional harm. Additionally, there would be less concern of overcriminalization as this requirement addresses the severe result needed to pursue prosecution for this conduct.

C. Definition of "Encouraging"

The statute on encouraging suicide should include a definition that outlines what type of language should be considered "encouraging." To start, the legal definition of "encourage" should be given as "to instigate; to incite to action."¹³⁵ Inciting toward an action demonstrates that this crime requires more than a mere "cheering on"; rather language causing an action must exist. Furthermore, this definition should include the concept of psychological pressure, in recognition that the persuasive power of the language in question has the effect of convincing another to perform the specific action. Other factors, such as the frequency of these communications, may also determine the amount of pressure exerted by such encouraging language; the more the language is used, the greater the pressure that results. As noted in *Carter*, the court found that there was extensive communication between Carter and Roy over time.¹³⁶ Under this proposal, this amount of communication could show high levels of psychological pressure, indicating that there was encouragement.

Additionally, this definition should encompass multiple types of communication used to encourage, explicitly allowing for electronic communication. The actual words communicated could be phrases similar, but

135. *Encourage*, BLACK'S LAW DICTIONARY (11th ed. 2019).

136. *Commonwealth v. Carter*, 115 N.E.3d 559, 562 (Mass. 2019).

not limited to, “you should,” “you would feel better,” “do it,” or “get it over with.” However, there are more phrases that may show encouragement, and these phrases alone may not be enough. But the definition should provide some guidance for what could be considered language that is “encouraging.”

On the contrary, “encouraging” language might not be narrow enough of a requirement and thus restricts speech. In Minnesota, a section within a statute that prohibited encouraging suicide did not pass constitutional muster.¹³⁷ The court analyzed the statute based on a strict scrutiny analysis, requiring the statute to be “justified by a compelling government interest and . . . narrowly drawn to serve that interest.”¹³⁸ The state met the first prong of this because a state had a compelling interest in preserving life.¹³⁹ However, the court found that the state had not drawn the statute narrowly enough because the ordinary definitions of “advise” or “encourage,” as used in the statute, do not require a causal connection to suicide.¹⁴⁰ Providing a concrete definition for “encouraging” language in the statute, with a much greater emphasis on pressure and instigation may alleviate similar concerns that such statutes would unjustly restrict free speech. Other factors, such as those later covered in this Note, may be taken into account as well, all of which would contribute to a more definitive set of guidelines for the behavior that this statute seeks to criminalize. Implementing these necessary alterations and emphasizing causation would ensure that such a statute would likely pass a strict scrutiny test if challenged.

D. Knowledge of Pre-Existing Mental Health Concerns of the Victim

The knowledge component of this statute must show that the defendant knew or should have known of the victim’s fragile mental state. In *Carter*, the court specifically mentioned that Carter was well aware of Roy’s existing depression and prior suicide attempts while she encouraged him to commit suicide.¹⁴¹ Additionally, the Model Penal Code explains that:

[in] most instances, the instinct of self-preservation constitutes an effective guard against inducements to suicide . . . [however,] some persons will be susceptible to persuasion to commit suicide or will be unusually likely to attempt suicide if offered assistance. Aid or encouragement to those individuals is highly dangerous and certainly blameworthy, and a greater sanction is clearly called for.¹⁴²

This requirement ensures that the defendant knew or should have known of potential devastating outcomes or the effect that such encouragement would have on the victim. This requirement also prevents misguided prosecution of

137. *State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014).

138. *Id.* at 21.

139. *Id.* at 22.

140. *Id.* at 24.

141. *Carter*, 115 N.E.3d at 562.

142. MODEL PENAL CODE § 210.5 cmt.5, at 103 (AM. LAW. INST. 1980).

individuals who did not know of the victim's mental health and thus would not have known of their word's likely effect. This limitation helps prevent overuse of such a statute in circumstances where there was not this level of blameworthiness.

E. Causation

To establish causation, various factors should be considered to determine if the encouraging language led to the suicide or attempted suicide. One important factor is the relationship of the parties involved. For example, in *Carter*, the court focused on the romantic relationship between Carter and Roy as well as Carter's strong influence over Roy.¹⁴³ A closer relationship may indicate more of an influence on the victim's decision making, thus showing an increased likelihood of causation by their communications. Research has shown that supportive relationships assist in alleviating anxiety about uncertain situations.¹⁴⁴ This leads to people feeling more secure and calm when in the presence of a supportive relationship.¹⁴⁵ This suggests that individuals are more able to make decisive choices when someone they are in a supportive relationship with is present to quell anxiety about the choice. Therefore, in situations like *Carter*, the fact that the victim and perpetrator are in a type of relationship is a significant factor in the victim's decision and the ability of the perpetrator to influence this decision.

Additionally, the court looked at the extent of the encouragement. The court noted the many text messages over a long period of time.¹⁴⁶ Although not explicitly stated by the court, the amount of encouragement may be relevant in indicating that this was not a one-time statement made by Carter. More communication may indicate a heavier weight on the victim, showing a higher chance of the communication causing the action. Another factor that was relevant in the court's decision was the proximity in time of the encouraging language and the suicide. The last call made to Roy was during his suicide, thus making this indicative of causation.¹⁴⁷ Looking to the timing of the encouragement is important to causation because the closer the communication is to the action, the more likely the communication caused the action. Therefore, when looking to causation, the relationship of those involved, the amount of encouragement, and the proximity of the encouraging language and the physical harm should be considered.

F. Sentencing Level

The criminalization of encouraging suicide should not only reflect the

143. *Carter*, 115 N.E.3d at 566.

144. Oscar Ybarra, *Supportive Social Relationships Attenuate the Appeal of Choice*, ASS'N FOR PSYCH. SCIENCE, 1186, 1187 (2012), <https://journals.sagepub.com/doi/pdf> [<https://perma.cc/5C77-G4JQ>].

145. *Id.* at 1191.

146. *Carter*, 115 N.E.3d at 562.

147. *Id.* at 567.

seriousness of this crime but also consider the defendant's lack of physically involvement in the death. Additionally, other sections of Indiana law should be considered and compared in drafting the statute. For example, harassment and stalking are in the intimidation chapter of the Indiana code,¹⁴⁸ whereas assisting suicide, causing suicide, and involuntary manslaughter are all within the homicide chapter.¹⁴⁹ As the conduct involved with encouraging suicide is verbal conduct and not physical conduct by the perpetrator, this crime should fall in the intimidation chapter with other verbal conduct. For sentencing level, harassment is a Class B misdemeanor¹⁵⁰ and stalking is a Level 6 felony.¹⁵¹ In Indiana, a Class B misdemeanor carries a potential penalty of no more than 180 days imprisoned and a fine of no more than \$1,000.¹⁵² A Level 6 felony carries a penalty of imprisonment of six months to 2.5 years and a fine of no more than \$10,000.¹⁵³ In the homicide chapter, assisting suicide and involuntary manslaughter are Level 5 felonies¹⁵⁴ while causing suicide is a Level 3 felony.¹⁵⁵ A Level 5 felony carries a penalty of imprisonment between one to six years and a fine of no more than \$10,000.¹⁵⁶ A Level 3 felony has a penalty of imprisonment between three and sixteen years and a fine of no more than \$10,000.¹⁵⁷ Encouraging suicide should fall among the penalties seen for the suicide crimes within the homicide section to reflect the seriousness of the crime; therefore, an appropriate classification of encouraging suicide is a Level 5 or Level 6 felony, depending on one crucial factor. The result of the crime should be considered when making the penalty to ensure it is reflective of the outcome. If encouraging suicide results in an attempted suicide that results in the death of the victim, this will be a Level 5 felony, which has a possible penalty of one to six years imprisonment and a maximum fine of \$10,000.¹⁵⁸ If encouraging suicide results in an attempted suicide without the death of the victim, this will be a Level 6 felony, which has a possible penalty of six months to 2.5 years imprisonment and a maximum fine of \$10,000.¹⁵⁹

Some may argue against this recommended sentencing level for this crime, but for the following reasons a Level 5 or 6 felony balances the interests of all parties fairly. First, this is a crime based solely around verbal conduct, thus making the categorization into the intimidation chapter fitting. Second, this crime is like other crimes revolving suicide, both of which face felony penalties. Lastly,

148. IND. CODE §§ 35-45-2-2, -20-5(a) (2023).

149. *Id.* §§ 35-42-1-2.5, -1-2, -1-4.

150. *Id.* § 35-45-2-2.

151. *Id.* § 35-45-10-5(a).

152. *Id.* § 35-50-3-3.

153. *Id.* § 35-50-2-7(b).

154. *Id.* §§ 35-42-1-2.5(b), -1-4.

155. *Id.* § 35-42-1-2.

156. *Id.* § 35-42-2-6(b).

157. *Id.* § 35-42-2-5(b).

158. *Id.* § 35-42-2-6(b).

159. *Id.* § 35-50-2-7(b).

this crime may have extremely different outcomes, indicating a need for differing levels of severity in punishment. As stated, resulting death is the most serious outcome possible, needing reflection of a higher-level penalty than when no death results. A lower-level felony for attempted suicide when no death result still provides justice for the victim and adequate deterrence, but also acknowledges the lower level of severity.

G. Example Statutory Text

An example of a statute criminalizing encouraging suicide and encompassing these factors may read:

1. As used in this section, “encourage” means language that is persuasive and communicated to another that gives advice to accomplish or attempt suicide or helps suicide develop.
2. As used in this section, “attempt to commit suicide” means any physical action done by a person with the intent to commit suicide.
3. A person(s) commits encouraging suicide when they do the following:
 - a. Knowingly encourages another to commit or attempt to commit suicide with knowledge of the other’s fragile mental state;
 - b. Exerts influence on the other’s decision through (i) the nature of the relationship, (ii) the extent of the communication, or (iii) psychological pressure; and
 - c. The encouraging communication is given proximate in time to the suicide or attempted suicide such that it substantially influenced the victim’s decision.
4. The offense described in subsection (3) is:
 - a. a Level 5 felony if death by suicide results; or
 - b. a Level 6 felony if attempted suicide without death results.

CONCLUSION

This Note argued for an addition to the Indiana Criminal Code for “encouraging suicide” by proposing that Indiana needs to explicitly make encouraging suicide a crime with specific statutory language and definitions. This proposal was justified by showing that leaving situations similar to *Carter* in the hands of tort law, existing harassment and stalking laws, or assisting and causing suicide laws are inadequate remedies for the victims of this conduct. Part I of this Note analyzed the *Commonwealth v. Carter* case. Part II outlined potential approaches to address this issue and how current Indiana law relates to each approach. Such approaches include using stalking and harassment law, criminal infliction of emotional distress, criminalizing bullying, leaving the issue to tort law, following the rationale in *Carter* by using involuntary manslaughter, or using current assisting or causing suicide laws. This section explained why Indiana’s current laws are not adequate to address the issues posed by *Carter*. The use of stalking and harassment laws do not provide effective punishment for the severity of situations like that in *Carter* and often do not align with the facts underlying these scenarios. Criminal infliction of emotional distress statutes focus solely on

emotional harm, without any requirement of physical harm, leaving this solution wide open to being struck down due to the current trend against statutes with prophylactic purposes. Criminalizing bullying was seen to be inadequate, as often cases of bullying do not lead to suicide, children should not be unnecessarily criminalized, and school systems are best to handle most instances of peer bullying. The *Carter* rationale also fails in Indiana to hold the perpetrator responsible for this behavior, as Indiana's involuntary manslaughter statute does not allow for "wanton or reckless conduct" or crimes such as harassment or stalking to be the basis of the underlying conduct. Furthermore, Indiana's assisting or causing suicide statutes do not provide remedy, as the behavior seen in *Carter* would fall outside the grasp of these statutes due to the lack of physical assistance or use of force, duress, or deception. Lastly, tort law fails to assist in an adequate remedy, as monetary damages do not provide sufficient justice to the victims of these acts.

Part III proposed amending the Indiana Criminal Code to include a section on encouraging suicide outside of the homicide section with strict requirements for application. This proposal included the following requirements: (1) a requirement of physical harm, (2) a specific definition of "encouraging," (3) knowledge of pre-existing mental health concerns of the victim, and (4) factors to consider when determining causation.

Carter has made the issues of technology and suicide known to the world by showing how someone's words can influence an individual to take their own life without being physically at the scene. The world has become fascinated with this new dilemma, indicated through the common discussion on this issue and popular media's depiction of it. Alarming, Indiana has a public health emergency with mental health and suicide, indicating that a situation like *Carter* may eventually, and likely will, face Indiana courts. To avoid the inability to adequately hold someone criminally responsible for this behavior, Indiana's legislature needs to act. By promulgating a criminal law discouraging the reprehensible behavior seen in *Carter*, Indiana will prevent criminal behavior from going unpunished in a state where mental health issues are pervasive and in desperate need of attention.

Although many proposals have been made to address the *Carter* dilemma, enacting a criminal sanction for "encouraging suicide" is the best response to avoid challenges based on free speech and vagueness while also providing justice to the victims of this conduct. This proposed law would provide clear notice to individuals on what language constitutes "encouraging" and what factors will be used to determine causation. Additionally, this crime would be taken out of the homicide section of the Indiana Code and punished less severely to indicate that this conduct does not rise to the criminal level of homicide but is still deserving of punishment to provide justice and deterrence. Although such a statute may receive some pushback, deterrence and protection to victims would be given where it is unable to be provided through other legal sources. With the increased use of technology and continual mental health crisis in Indiana, the chance of encountering a fact pattern like *Carter* is ever increasing. Indiana has the chance to act and protect future victims from a lack of adequate remedies for justice.