

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 20
Judiciary

(Delegate K. Kelly, *et al.*)

Judicial Proceedings

Crimes - Requirement to Report Death or Disappearance of Minor - Penalties

This bill creates several reporting requirements regarding the disappearance or death of a minor; and imposes criminal penalties for failure to report the disappearance or death of a minor.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. Revenues are not affected.

Local Effect: Potential minimal increase in local government expenditures due to the bill's penalty provisions. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill prohibits a parent or other person who has permanent care or custody or responsibility for the supervision of a minor who is under the age of 13 from recklessly or willfully failing to notify the appropriate law enforcement agency that the minor is a "missing child" within 24 hours of the time at which the parent or other person knew or should have known that the minor is a missing child, unless the disappearance of the minor has already been reported to the appropriate law enforcement agency. "Missing child" is defined as a minor whose whereabouts are unknown to a parent or other person who has permanent care and custody or responsibility for the supervision of the minor. Violators are guilty of a misdemeanor and subject to imprisonment for up to three years.

A parent or other person who has permanent care or custody or responsibility for the supervision of a minor must report the death of a minor to the appropriate law enforcement agency or medical authority within five hours of becoming aware of the death unless the death has already been reported to the appropriate law agency or medical authority. Violators are guilty of a misdemeanor and subject to imprisonment for up to three years.

Current Law: A parent, family member, household member, or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not neglect a minor. A violator is guilty of the misdemeanor of child neglect and on conviction is subject to maximum penalties of five years imprisonment and/or a \$5,000 fine. A sentence imposed for the crime of child neglect is in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

“Neglect” is defined as the intentional failure to provide necessary assistance and resources for the physical needs or mental health of a minor that creates a substantial risk of harm to the minor’s physical health or a substantial risk of mental injury. “Neglect” does not include the failure to provide necessary assistance and resources for the physical needs or mental health of a minor when the failure is due solely to a lack of financial resources or homelessness. “Mental injury” is defined as the substantial impairment of a minor’s mental or psychological ability to function. “Family member” is defined as a relative of a minor by blood, adoption, or marriage. “Household member” means a person who lives with or is a regular presence in a home of a minor at the time of the alleged neglect.

Background: In 2008, Casey Anthony was charged in Florida with the murder of her two-year-old daughter, Caylee, after she waited a month to tell police that the girl was missing and lied to investigators about Caylee’s whereabouts. By the time Caylee’s remains were found, her body was so decomposed that a cause of death could not be determined. During the closely watched trial, which lasted six weeks from May to July 2011, the prosecution argued that Casey murdered her daughter because she wanted her freedom and presented evidence suggesting that Casey had been unbothered by the disappearance of the girl. The lack of physical evidence, however, hindered the prosecution’s case. On July 5, the jury found Casey Anthony not guilty of murder, aggravated child abuse, and aggravated manslaughter of a child, but guilty of four misdemeanor counts of providing false information to a law enforcement officer.

The acquittal of Casey Anthony on the murder, manslaughter, and child abuse charges led to a public outcry over the perceived miscarriage of justice in the case. Fueled by the extensive media coverage of the high-profile trial, and legal commentators who suggested that the verdict was incorrect, an online petition calling for federal and state laws to

respond to the outcome of the trial gained momentum within hours after the verdict was read. Dubbed “Caylee’s Law,” the legislation proposed in the petition makes it a felony for a parent to fail to report the death of a child within an hour, or fail to report that a child has gone missing within a day.

Proposed Legislation

According to the National Conference of State Legislatures (NCSL), as of November 28, 2011, legislators in 13 states had filed bills that are versions of Caylee’s Law (Alabama, Arizona, California, Florida, Illinois, Kentucky, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Tennessee). The major areas of variation in the bills are the qualifying age of the child who has died or gone missing, the types of individuals to which the reporting requirements apply, and the period of time during which an incident must be reported. Most of the initiatives create new felonies. Many of the bills apply only to children under the age of 12 or 13, others to children under the age of 16, and still others apply to all minors. A majority of the bills criminalize the failure to report a death or disappearance only by persons who have some sort of custodial relationship with a child. Some apply to parents and legal guardians only, and others apply to all caretakers or caregivers, or to individuals who have physical or legal custody of a child. Many of the proposals require the reporting of a death within an hour and a disappearance within a day, as the original “Caylee’s Law” described in the online petition provides. With regard to the death of a child, some of the bills require that it be reported immediately, while others allow up to 24 or 48 hours. With regard to the disappearance of a child, the bills generally require reporting within 24 or 48 hours of the child going missing.

Some proposals also include increased penalties for false statements made to law enforcement. A Florida bill includes a provision that makes it a felony for a caretaker to give false information to a law enforcement officer conducting an investigation involving a minor with the intent to mislead the officer or impede the investigation. Additionally, an Ohio initiative increases the penalty for “falsification to mislead a public official” as part of its “Caylee’s Law” legislation.

On January 9, 2012, New Jersey became the first state to enact Caylee’s Law. Under the law, a person with legal custody of a child 13 years of age or younger who fails to report the disappearance of the child to police more than 24 hours after becoming aware of the disappearance is guilty of a fourth degree crime, punishable by up to 18 months imprisonment and a fine of up to \$10,000. The law went into effect immediately.

Current Laws

Other than New Jersey's law, there are no laws in any state that impose criminal penalties for the failure to report a missing child. However, some states criminalize the filing of a false missing child report and the failure to report abuse or neglect of a child. Statutes in Arizona, Indiana, Massachusetts, and North Carolina make it a crime to fail to report the death of a person (not necessarily a child). These laws vary with regard to who is required to report the death and whether the death is required to be reported only under certain circumstances, such as the death of a seemingly healthy person or a death by violence.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, and Montgomery counties; Commission on Criminal Sentencing Policy; Maryland State Department of Education; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Department of Public Safety and Correctional Services; National Conference of State Legislatures; Department of Legislative Services

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