

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 122
Judiciary

(Delegate Aumann, *et al.*)

Crimes - Death or Disappearance of Minor - Required Reporting and Prohibited Acts ("Caylee's Law")

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

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, 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 years is required to notify the appropriate law enforcement agency that the minor is missing within 24 hours of becoming aware that the minor is missing. Violators are guilty of a felony and subject to imprisonment for up to 10 years and/or a maximum fine of \$10,000.

A parent or other person who has permanent care or custody or responsibility for the supervision of a minor who is over the age of 12 years must notify the appropriate law enforcement agency that the minor is missing within 48 hours of becoming aware that the

minor is missing if (1) the minor suffers from a mental or physical handicap or illness; (2) the disappearance of the minor is of a suspicious or dangerous nature; (3) the parent or other person has reason to believe that the minor has been abducted; or (4) the minor previously has been the subject of a child abuse report filed with a State or local department of social services or law enforcement agency. Violators are guilty of a misdemeanor and are subject to imprisonment for up to five years and/or a maximum fine of \$5,000.

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 one hour of becoming aware of the death unless the death was attended by a physician. A parent or other person who has permanent care or custody or responsibility for the supervision of a minor who has died may not knowingly (1) make false or misleading statements about the death to law enforcement personnel; (2) refuse to make medical or other information that is pertinent to an investigation of the death available to law enforcement personnel; or (3) engage in any conduct with the intent to impede an investigation of the death by altering evidence, including disturbing the body or the area surrounding the body. Violators are guilty of a felony and subject to imprisonment for up to 10 years and/or a maximum fine of \$10,000.

Current Law:

Child Neglect

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.

False Statements

A person may not make, or cause to be made, a statement, report, or complaint that the person knows to be false as a whole or in material part, to a law enforcement officer with the intent to deceive and to cause an investigation or other action to be taken as a result of the statement, report, or complaint. Violators are guilty of a misdemeanor and subject to imprisonment for up to six months and/or a fine of up to \$500.

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.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,900 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new

DOC inmate (including variable medical care and variable operating costs) is about \$385 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 139 (Senator Jacobs, *et al.*) - Judicial Proceedings.

Information Source(s): Baltimore, Carroll, Harford, and Montgomery counties; Department of State Police; Commission on Criminal Sentencing Policy; Department of Public Safety and Correctional Services; Office of the Public Defender; National Conference of State Legislatures; Department of Legislative Services

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