

## “Caylee’s Law” Effect on Child Trafficking

The acquittal of Casey Anthony in the murder trial over daughter Caylee led to public outrage and demand for legislative change. The real catalyst of the outrage and public damnation was Casey’s failure to report two-year old Caylee missing for 31 days. This high profile case resulted in new state legislation, spurred by constituent demands and online petitions, which has taken the name of “Caylee’s Law.” The various state legislation consists of some combination of three parts: criminalization of a failure to report a missing child, criminalization of a failure to report a dead child, and increased penalties for providing false reports to police regarding a missing child. While this new legislation is controversial to some, it may prove beneficial in states’ efforts to combat the commercial sexual exploitation of children.

New Jersey, Kansas, and Connecticut have enacted legislation criminalizing the failure to report a missing child within a specified time frame. New Jersey, the first state to pass such legislation in early 2012, makes it a fourth-degree felony for a person with legal custody of a child 13 years old or younger to fail to report the disappearance of a that child within 24 hours. Kansas passed a similar law criminalizing the failure to report a missing or dead child and the giving of false information to police. Likewise, Connecticut enacted a law criminalizing the failure to report a missing child who is under age 12. The 24 hour toll generally begins when the person with legal custody becomes aware of the child’s disappearance. Penalties range from 8-18 months imprisonment and/or a fine up to \$10,000.<sup>1</sup>

Illinois and Louisiana have passed legislation criminalizing the failure of a parent or guardian to report a child under age 13 as missing within 24 hours, and the bills are on the way to the respective governors’ desks.<sup>2</sup> The Illinois bill also requires the reporting of a missing child under age 2 within 1 hour. The Oklahoma Senate recently passed a bill criminalizing the failure of a person exercising custody or control over a child age 15 or younger to report the child missing within 48 hours of having reasonable belief that the child is missing.<sup>3</sup> The bill is now in the House for consideration.

Dozens of other states have filed bills related to an obligatory time frame of reporting a missing child or child who is found dead. Because these three bills were passed so recently, there has not yet been enough time to observe their effectiveness in increasing missing child reports, nor is there any indication on what prosecutions under the laws will look like or whether the laws will actually be enforced.

The criminalization of a failure to report a missing child is really the center issue of “Caylee’s Law.” It is difficult to imagine that the existence of this law would result in any more missing child reports when the person who has responsibility to notify police had any involvement with the incident surrounding a missing child. In fact, the purpose behind “Caylee’s Law” legislation appears to be the formation of a punishment tool for parents who cannot be prosecuted on other child crimes, rather than

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<sup>1</sup> See New Jersey Assembly Bill 4297 (2011); Kansas HB 2534 (2012); Connecticut HB 5512 (2012).

<sup>2</sup> See Illinois General Assembly SB 2537 (2012); Louisiana Act No. 454.

<sup>3</sup> Oklahoma SB 1721.

a deterrent tool. There are, however, certain other benefits that the existence of “Caylee’s Law” could bring to a state.

The existence of “Caylee’s Law” legislation could have a positive effect in helping combat the commercial sexual exploitation of children. The U.S. Department of Justice estimates that 1.7 million children run away from home each year. 68 percent of runaway children are not reported to the police as missing.<sup>4</sup> It is estimated that a runaway child will likely be contacted by a pimp or someone in the sex trade within 48 hours of leaving home; therefore, it is vital that law enforcement become aware of a missing child as soon as possible.<sup>5</sup> The penalties imposed in “Caylee’s Law” legislation may increase the number of missing child reports. It is difficult to imagine a parent not reporting a child as missing, but runaway children frequently come from broken or abusive homes and parents often fail to report these children as missing.

There will have to be actual incentives for parents that would normally not report a child as missing to do so if “Caylee’s Law” will have much of an effect on increasing the reports of missing children. To some parents, the mere threat of imprisonment and/or a fine would likely be sufficient. For others, the reality of actual enforcement of the punishment will be needed. For others still, a lengthier sentence and/or heftier fine may be needed. Legislatures also need to take into consideration whether imprisonment for parents is in society’s best interest. With crowded cells and the possibility of alienating parents from children that remain in their household, other penalties may be preferred.

If mandatory reporting of a missing child were law, law enforcement officials might have more data available as to what children in a given community have runaway, and that information could be useful in dealing with child commercial sexual exploitation. However, the current and proposed laws generally have a cutoff age around 12-14, thus parents of runaway children who are older than the statutory age would not be required to make a report. Also, the enacted and proposed laws require parents to report a “missing” child, meaning the parent does not know where the child is or has not had contact with the child. It is perhaps likely that some parents of trafficked children are either aware of where their child is or have had some contact with the child; therefore, these parents would not have a responsibility to report the child as missing.

“Caylee’s Law” does have its critics. The most vehement opponents, some of whom have signed their own petitions rallying against implementation of “Caylee’s Law”, view the laws as a potential violation of the 5<sup>th</sup> Amendments’ right against self-incrimination. Although it is important not to rush to action in cases of tragedy and to think about any potential constitutional violations, it is difficult to understand how requiring someone with legal custody of a child to make a missing child report violates the 5<sup>th</sup> Amendment. “Caylee’s Law” does not require the reporting person to “be a witness against himself”. A missing child report made does not imply that the guardian is the cause of the child’s

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<sup>4</sup> U.S. Department of Justice, *Runaway/Throwaway Children: National Estimates and Characteristics*, National Incidence Studies of Missing, Abducted, Runaway, and Throwaway Children, page 9 (2002).

<sup>5</sup> U.S. Department of Health and Human Services, *Human Trafficking Into and Within the United States: A Review of the Literature*, page 10.

disappearance. Therefore any criminal causation discovered as a result of this mandatory reporting is separate from the reporting itself and is not a constitutional violation.

Some critics are supportive or indifferent of state legislation but are opposed to any federal legislation, as it is, in their opinion, a violation of state sovereignty. Other opponents simply view the laws as too broad or unnecessary. States do already have laws against child neglect and mistreatment. Still more critics view the time frame of reporting a missing child as an added trauma to parents who are grieving their missing child or who are in such an emotional state as to be beyond the capability of reporting a child within the time frame.

It is the Renewal Forum's position that state implementation of "Caylee's Law" can be an asset in combating child commercial sexual exploitation. One of the foremost reasons law enforcement have a difficult time rescuing commercially sexually exploited children is that they simply do not know who the victims are. Data on runaway children is an asset for law enforcement in determining who may be at risk of commercial sexual exploitation. A law that requires those responsible for a child's welfare to report their child as missing reflects a state commitment of child protection. Furthermore, it sends a signal that those responsible for a child's welfare need to take that responsibility seriously.

In practice, the law needs to create actionable incentives. The threat and actuality of imprisonment and/or fines should be options for parents who truly neglect their child and fail to make a missing child report. The current laws' penalties of imprisonment for up to around a year and a fine of a few thousand dollars seem sufficient. Parents who simply fail to make a report within the designated time frame but who nonetheless make a report, outside some other egregious event or unfounded delay, should rarely be punished. Another caveat is how law enforcement will become aware of a parent's failure to report a missing child. It may be difficult to gain such information in reality but difficulty in enforcing "Caylee's Law" should not deter legislative intent in protecting children and punishing those who indirectly harm children.

The majority of the current "Caylee's Law" legislation has a cutoff age around 12-14, even though parents are still responsible for children until the age of adulthood. The age is likely cut off where it is because adolescent children often "run away" from home for periods longer than 24 hours without notifying or contacting parents and without being in any real danger. It could become burdensome for parents to have to make a missing child report every time a child does such a thing. However, capping the age of the mandatory reporting of a child between ages 12-14 leaves out a large quantity of children who actually run away and are in danger of being trafficked. To rectify this conflict, the laws should be expanded to make missing child reports mandatory for children above the age of the 24 hour cap whenever the parent or guardian knows or has reason to know that the child will not be coming home within a reasonable time or is in danger of physical or emotional harm. This vague expansion would be on a case-by-case basis but would assuredly cover the majority of children who run away and are in danger of being trafficked.

It is too early to tell whether "Caylee's Law", when in effect, will actually increase the reports of missing children. The policy implied in the law is to make the protection of children an essential priority

of law enforcement. If one child that would not be reported as missing is reported as such and police are able to find the child then it is difficult to argue that implementation of the law was ill advised.