

# Virginia State Crime Commission

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## Reporting of Missing Children

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2011

# Reporting of Missing Children

## Executive Summary

After Casey Anthony was acquitted of murdering her child, there was public concern that existing laws did not address parents or guardians failing to report missing children. An online movement, which included the “change.org” website and a Facebook page, called for federal and state governments to enact “Caylee’s Law,” a new law that would penalize parents and guardians for failing to report a missing child, deceased child, or a child in danger.

Provisions under Virginia law already punish the hiding or concealing of a dead body as a Class 6 felony. Likewise, parents or guardians who fail to provide the necessary care for their child may be punished with a Class 4 felony. And finally, failure to report a death to the Virginia medical examiner’s office carries the penalty of a Class 1 misdemeanor. Currently, there is no law that punishes parents or guardians for failing to report their child as missing.

As of the end of 2011, there were as many as 20 states considering adopting versions of “Caylee’s Law,” with pre-filed bills in Florida, Kentucky, Ohio, and Tennessee. Each state that considers a version of “Caylee’s Law” will have to consider the proper time limit before a parent must report a missing child, the age of the child missing, at what age a child would no longer fall within the requirements of mandatory reporting, and which agencies would receive the report. Another important concern about enacting “Caylee’s Law” is the possibility that parents will feel compelled to report a child missing, to avoid prosecution, which could lead to over-reporting, straining already limited law enforcement resources.

As a result of this study, no formal recommendations were made by the Crime Commission.

## Background

Since the acquittal of Casey Anthony in a Florida state court for the death of her daughter, Caylee, there has been widespread public interest, notably on [www.change.org](http://www.change.org) and Facebook, to enact a federal or state law to penalize parents who fail to report a missing child within 24 hours of his or her disappearance.<sup>1</sup> Specifically, the public’s concern focused on the fact that Ms. Anthony allegedly could not be prosecuted for failing to report her daughter’s disappearance to law enforcement under Florida law.<sup>2</sup> The petition requests the President of the United States, representatives of the U.S. Congress, and legislators from the 50 states to adopt the following statute:

*Make it a felony for a parent, caretaker or guardian that does not notify law enforcement with knowledge of a missing, deceased, [child] or child in a life threatening situation in a timely manner.<sup>3</sup>*

## Virginia Law

In Virginia, there are three relevant statutes that address the core requirements of the change.org petition: Va. Code §§ 18.2-323.02, 18.2-371.1(A), and 32.1-283.

- Va. Code § 18.2-323.02 prohibits the concealment of a dead body, specifically: Any person who transports, secretes, conceals or alters a dead body, as defined in § 32.1-249, with malicious intent and to prevent detection of an unlawful act or to prevent the detection of the death or the manner or cause of death is guilty of a Class 6 felony.
- Va. Code § 18.2-371.1(A) penalizes parents, guardians, or persons responsible for care of a child for willful acts or omissions “or refusal to provide any necessary care for the child's health [and thereby] causes or permits serious injury to the life or health of such child.” A violation of this section is a Class 4 felony.
- Va. Code § 32.1-283 requires notification to the medical examiner of deaths by “trauma, injury, violence, poisoning, accident, suicide or homicide, or suddenly when in apparent good health, or when unattended by a physician.” Failing to comply with this section is a Class 1 misdemeanor.

Additionally, the Virginia State Police (VSP) are required by statute to maintain the Missing Children Information Clearinghouse.<sup>4</sup> Based on the requirement in Va. Code §15.2-1718, the VSP must enter reports of missing children in the clearinghouse.<sup>5</sup> In general, the VSP have three relevant categories in which missing children cases can be classified:

1. Endangered Child: missing under circumstances indicating his/her physical safety is in danger.
2. Involuntary Child: missing under circumstances indicating the disappearance was not voluntary.
3. Juveniles: Child under 18 years of age who is missing but not considered endangered or involuntary. This category should not include children under 12 years of age.

On July 21, 2011, there were a total of 383 open cases of missing children.<sup>6</sup> Of the 383 open cases: 6 cases were categorized as endangered; 11 cases were involuntary; and, 366 cases were juvenile.

## Other State Review

Perhaps due to the publicity of the change.org petition, to date, up to 20 states are considering legislation.<sup>7</sup> Overall, the current pre-filed legislation varies in a few of the states in some respects:

- Time requirements of reporting: 12hrs,<sup>8</sup> 24 hrs,<sup>9</sup> or 48 hrs;<sup>10</sup>
- Extent of reporting requirements: missing,<sup>11</sup> death,<sup>12</sup> or location of corpse;<sup>13</sup>
- Age of the child: 12 years old or younger,<sup>14</sup> 16 or younger,<sup>15</sup> under age 18;<sup>16</sup> and,
- Penalties: misdemeanor,<sup>17</sup> or felony.<sup>18</sup>

## Policy Considerations

With the consideration of a “Caylee’s Law,” state legislatures will have to carefully consider some of the following issues:

- Timeframe of reporting – The time frames of 12, 24, or 48 hours which have been proposed as the cutoff time for when the crime would be committed, could be problematic for parents (guardians) if is not clearly specified how it would be applied. For example, would the time period commence from the time the parents know the child is missing or from when the parents know the child is dead? Careful drafting could prevent any problems with these potential situations.
- Definition of “life threatening situation” or “imminent danger”- First, the term “life threatening situation” needs to be clearly defined, or parents who have allowed their children permission to do certain activities that result in death could be later prosecuted for not alerting law enforcement, because the activity could be deemed a “life threatening situation.” This portion of the proposed statute has the potential to be used to second guess parental decisions. Second, the term could be construed in an over- inclusive manner, resulting in the prosecution of well meaning parents who were more concerned with rescuing or aiding their child, than with reporting the situation to law enforcement.
- Reporting authority - Missing reports go to law enforcement or 911 call centers, but deaths are often reported to EMT/hospitals, medical examiners, or funeral homes. Any requirement to report a death should involve clearly defined authorities.
- Misuse in custody situations - As with any law affecting the welfare of child, such a law has the potential to be abused in custody situations. Consideration should be made to honest mistakes with parental custody and visitation situations, and other problems associated with the exchange of custodial duties or physical custody.

- Overuse of reporting - And finally, there are concerns that parents will feel forced to report a potentially missing child to avoid prosecution, and that law enforcement resources could be stretched thin by numerous reports. There is anecdotal evidence this situation has occurred in other states with over-frequent use of Amber Alert systems. If the police become inundated with reports, there is the possibility of law enforcement developing an attitude that missing children are simply a routine procedure, to be handled in the course of other everyday activities.

## Conclusion

Under Virginia Code, the failure to report a death and hiding a dead body are already penalized. However, there is no current law that punishes parents or guardians for failing to report a missing child. The Crime Commission considered legislation that would penalize a parent, guardian, legal custodian, or person standing in loco parentis who fails to report a missing child, age 9 or under, to law enforcement within 24 hours. After deliberation, no formal recommendations were made by the Crime Commission.

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<sup>1</sup> <http://www.change.org/petitions/create-caylees-law>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> VA. CODE ANN. §§ 52-31 – 52-34 (West 2011).

<sup>5</sup> VA. CODE ANN. §15.2-1718 (West 2011). Specifically the VSP are required, “Upon receipt of a missing child report by any police or sheriff’s department, the department shall immediately, but in all cases within two hours of receiving the report, enter identifying and descriptive data about the child into the Virginia Criminal Information Network and the National Crime Information Center Systems, forward the report to the Missing Children Information Clearinghouse within the Department of State Police, notify all other law-enforcement agencies in the area, and initiate an investigation of the case.”

<sup>6</sup> According to the VSP, these figures represent a snapshot of missing children on July 21, 2011, rather than a cumulative total since cases open and close each day. At this time, data cannot be obtained for total missing children per year.

<sup>7</sup> Joshua Wolfson, *Wyoming Legislators Grant More Time to Study Caylee’s Law*, Casper Star-Tribune (August 31, 2011), available at [http://billingsgazette.com/news/state-and-regional/wyoming/article\\_23fb1eeb-5407-5013-8f9e-d368f66c21fc.html](http://billingsgazette.com/news/state-and-regional/wyoming/article_23fb1eeb-5407-5013-8f9e-d368f66c21fc.html)

<sup>8</sup> H.B. 1993, 2011 Gen. Assemb., Reg. Sess. (KY 2012).

<sup>9</sup> H.B., 129<sup>th</sup> Gen. Assemb., Reg. Sess. (OH 2011-2012).

<sup>10</sup> H.B. 14, 2012 Florida Leg., General Session (FL 2012).

<sup>11</sup> H.B. 1993, 2011 Gen. Assemb., Reg. Sess. (KY 2012); H.B., 129<sup>th</sup> Gen. Assemb., Reg. Sess. (OH 2011-2012); H.B. 14, 2012 Florida Leg., General Session (FL 2012).

<sup>12</sup> H.B., 129<sup>th</sup> Gen. Assemb., Reg. Sess. (OH 2011-2012) and H.B. 14, 2012 Florida Leg., General Session (FL 2012).

<sup>13</sup> H.B., 129<sup>th</sup> Gen. Assemb., Reg. Sess. (OH 2011-2012).

<sup>14</sup> H.B. 1993, 2011 Gen. Assemb., Reg. Sess. (KY 2012).

<sup>15</sup> H.B., 129<sup>th</sup> Gen. Assemb., Reg. Sess. (OH 2011-2012).

<sup>16</sup> S.B. 2124, Gen. Assemb., Reg. Sess. (TN 2011).

<sup>17</sup> S.B. 2124, Gen. Assemb., Reg. Sess. (TN 2011).

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<sup>18</sup> H.B. 14, 2012 Florida Leg., General Session (FL 2012); H.B., 129<sup>th</sup> Gen. Assemb., Reg. Sess. (OH 2011-2012); H.B. 1993, 2011 Gen. Assemb., Reg. Sess. (KY 2012).