

2013 SENATE JUDICIARY

SB 2125

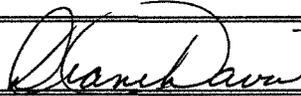
2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2125
1/16/13
Job #17282

Conference Committee

Committee Clerk Signature



Minutes:

Attached testimony

Relating to the duty to report a missing child or the death of a child

Senator David Hogue - Chairman

Senator Tyler Axness - District 16, Fargo & West Fargo - See written testimony.

Senator Hogue - Asks him if caregiver is defined in our code.

Senator Axness - Offers an amendment in regards of the term caregiver. He said in this amendment it means a caregiver is a parent, guardian, or adult household member or an individual that is responsible for a child's care during a given time.

Senator Armstrong - Asks if child is also defined.

Senator Axness - Replies that is usually referred to children under 18. He says this bill is to get the ball rolling to protect the kids. He said he has spoken to law enforcement and they brought up the issues of older run away children.

Senator Armstrong - Believes it is not only run-aways but older independent children.

Senator Axness - Agrees but said parents still need to have accountability for their children and this bill is a step in the right direction. He said he hopes this bill never has to be used but we need the tools prepared if this does occur.

Senator Hogue - Asks if there is any rational why this is a Class C felony.

Senator Axness - Responds that the Class C felony was set to deter such negligence. He said there are other states that have enacted this penalty. He said there is at least 11 states that have enacted similar legislation. Eight other states are looking at such legislation.

Senator Berry - Asks if there have been instances in the state that necessitated this bill.

Senator Axness - Said he has witnessed some concerns across the state, not specifically a missing child over 24 hours. He cites issues of child abuse.

Senator Nelson - Recites from the code that a minor is defined as persons less than 18 years of age and unless otherwise specified the term child means minor.

Senator Axness - Submits testimony from Prevent Child Abuse ND.

Representative Hogan - District 21, Central Fargo - In support of this bill. She said she received many contacts during the interim on this issue and to have this bill introduced. She said there is significant concern about the fact that parents would not report. She hands out data from the NCSL. She says she believes it is the parent's responsibility to report their children missing.

Annette Bendish - Legal Counsel for the ND School Boards Association - See written testimony. She proposes an amendment.

Senator Hogue - Asks if they would support the bill with the amendments she proposed to which she replied they would. There is continued discussion as to the roll schools play in this responsibility.

Aaron Birst - Association of Counties - Says they do support this bill and offers their assistance in working on this bill.

Janelle Moos - Executive Director for the ND Council on Abused Women Services - She says they stand in support but would like the committee to consider some amendments. She has concerns of domestic abused women who choose to go missing with their children, there are specific reasons why a mother may want to escape a violent situation. She would like to other amendments to address these types of situations. She mentions she would be happy to work with the committee.

Mike Reiten - Assistant Police Chief, West Fargo - He says state law enforcement met yesterday and this bill was one of the topics discussed. They do support the bill but are concerned about some of the language and would be willing to work with counsel to address the issues.

Senator Armstrong - Asks him if he has an age that would be appropriate for this.

Reiten - Replies that each situation is unique and thinks it would probably be best left at 17 and under.

Senator Sitte - Asks if this bill will un-necessarily spark amber alerts all over the state.

Reiten - Responds that amber alerts have very strict criteria and he thinks very few of these cases would result in that.

Jack McDonald - Appearing on behalf of the YMCA's of ND - In support of the bill but concerned about what the obligations would be on their day care operations. He said they would be willing to work on this to tighten up the guidelines.

Senate Judiciary Committee

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1/16/13

Page 3

Senator Berry - Suggests using the word guardian to stop the confusion on who is responsible to report.

Opposition - none

Neutral - none

Close the hearing on 2125

2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2125
2/18/2013
Job #19094

Conference Committee

Committee Clerk Signature



Minutes:

Attachment

Senator David Hogue - Chairman

Committee work

Senator Lyson proposes an amendment and explains that they have changed the ages that you must report a missing child and that it makes it a Class B misdemeanor. He says they do not want to put people in jail, they want people to report.

Senator Lyson moves the amendment 13.0007.01003
Senator Armstrong seconded

Discussion

Senator Sitte doesn't think there is the evidence that we need this law. Senator Lyson said we do need this bill. He believes it will help in investigations. Senator Grabinger says this may be a work in progress but it is a good start and could possibly help a lot.

Vote - 7 yes, 0 no
Motion passes

Senator Armstrong moves a do pass as amended
Senator Berry seconded

Discussion

Committee discusses the age limits. Senator Armstrong says being gone for 48 hours when you are 17 is a lot different than when you are 13. He says there are some that want to be out of the home and some that drop out of school or go to work in the oil fields.

Vote - 6 yes, 1 no
Motion passes

Senator Lyson will carry

February 18, 2013



Handwritten signature and date: 2-18-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 1, after line 7 insert:

"1. For purposes of this section and section 2 of this Act, "caretaker" means the individual who is responsible for the physical control of a child and who is the child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request.

2. "

Page 1, line 8, replace "caregiver" with "caretaker"

Page 1, line 8, after "responsible" insert "at that time"

Page 1, line 8, after "child" insert "under the age of thirteen years"

Page 1, line 10, replace "caregiver" with "caretaker"

Page 1, line 11, remove "For"

Page 1, replace lines 12 and 13 with "3. A caretaker who is responsible at that time for the care of a child at least thirteen years of age but under the age of seventeen years and who is unable to make contact with or otherwise verify the whereabouts and safety of that child for a period of forty-eight hours is guilty of a class B misdemeanor if the caretaker willfully or negligently fails to report the child as missing to law enforcement immediately after the forty-eight-hour period expires."

Page 1, line 17, replace "caregiver" with "caretaker"

Page 1, line 17, replace "caregiver's" with "caretaker's"

Page 1, line 17, replace "caregiver" with "caretaker"

Renumber accordingly

Date: 2/18/13
 Roll Call Vote #: 1

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2125**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 13,0007,01003 - Lyson

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Lyson Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 5 No 0
 Absent _____
 Floor Assignment _____

Amendment Pass

If the vote is on an amendment, briefly indicate intent:

Date: 2/18
 Roll Call Vote #: 2

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2125**

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S Armstrong Seconded By S Berry

Senators	Yes	No	Senator	Yes	No
Chariman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte		X	Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 6 No 1

Absent _____

Floor Assignment S Lyson

If the vote is on an amendment, briefly indicate intent:

pass

REPORT OF STANDING COMMITTEE

SB 2125: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2125 was placed on the Sixth order on the calendar.

Page 1, after line 7 insert:

"1. For purposes of this section and section 2 of this Act, "caretaker" means the individual who is responsible for the physical control of a child and who is the child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request.

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Page 1, line 17, replace "caregiver" with "caretaker"

Re-number accordingly

2013 HOUSE JUDICIARY

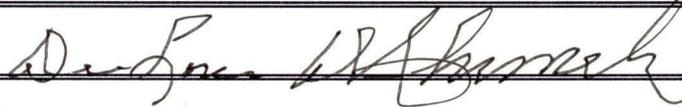
SB 2125

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2125
Job #20750
Date: April 2, 2013

Conference Committee,



Explanation or reason for introduction of bill/resolution:

Relating to the duty to report a missing child or the death of a child; and to provide a penalty.

Minutes:

Testimony 1, Handout #2

Chairman Kim Koppelman: Opened the hearing on SB 2125.

Senator Axness: (See testimony #1) 00:27 - 5:41.

Vice Chairman Larry Klemin: I wonder about the two hour time limit in the death of a child. If you have grieving parents and two hours later they are both guilty of a Class C Felony; it seems harsh to me.

Senator Axness: The intention of this bill is if you willfully or negligently do not report. The co-sponsor of this bill went through that in his personal life and he shared that with the Senate and he felt this was absolutely acceptable language. The way this would be enforced in instances where it is grieving no one would be held as a felon because they needed some time to grieve.

Vice Chairman Larry Klemin: There is nothing in section 2 that states willfully or neglectfully. This only applies to a caretaker under the jurisdiction of ND state law.

Senator Axness: I see that is not in there.

Rep. Bill Kretschmar: Did you think of putting something in the bill where a caretaker would deliberately not report an injured or ill child?

Senator Axness: That never did come up on the Senate side that would be reported. For the most part parents in the State of North Dakota do a fabulous job in taking care of their kids and reporting injuries etc.

Rep. Gary Paur: Is this what's referred to as Caylee's Law?

Senator Axness: The instance you referred to raise the issue and the loop hole across the nation that we need to look at to make for sure parents are being held accountable for children that have gone missing so they are reported to law enforcement and allowing them to do their job to bring a child back safely in the most timely fashion.

Vice Chairman Larry Klemin: On section 2 it doesn't give them a defense if somebody else reports it, but the parents or caretaker? Nobody is ever going to prosecute them for failing to report as required by this statute if somebody else does it, but it doesn't say that.

Senator Axness: That never came up on the Senate side that we need to have protections for somebody else reporting. The overall purpose is to be sure the death of a child is being reported in a timely fashion so the professionals can get to the deceased body and make a determination of what the cause was and go from there.

Rep. Diane Larson: This also doesn't say anything if a child is in a hospital and die.

Senator Axness: Subsection 2 says that this section does not apply if a death of a child occurs in a hospital.

Chairman Kim Koppelman: Wouldn't you want those reported as well?

Senator Axness: if they are under the care of a healthcare professional or emergency medical personnel that would be there and reported.

Chairman Kim Koppelman: If thought you were trying to get the report to the law enforcement agency.

Senator Axness: This bill is intended of people that have acted negligence or willfully chose not to inform law enforcement.

Chairman Kim Koppelman: If you point is any death under any circumstance needs to be reported to law enforcement and you are excluding someone. Is it possible that there would be a negligence that should be reported if they are under the care of medical personnel?

Senator Axness: Most hospitals have the process which they go through to determine malpractice on behalf of that institution so if that is deemed to be negligence on behalf of the healthcare professional I imagine that law enforcement would be informed on that instance.

Chairman Kim Koppelman: the idea of professional protocols being there to take care of questionable situations whether it is reporting circumstances in the death of a child as the case might be in this bill or whether it is surrounding potential abuse of a vulnerable adult. On the one bill we are saying we need a bill to force or require healthcare professionals to report these things to law enforcement. This bill excludes them and it seems like a double standard.

Vice Chairman Larry Klemin: Page one under subsection two and three on lines 17 and 22 it uses the words immediately after. You are guilty of a crime then if you don't report immediately after the time period expires. We have a consideration when we look at pineal

statue says they have to be fairly precise and not unconstitutionally vague or they might be declared void for vagueness. The term immediately after troubles me. What does that mean?

Senator Axness: It would be 24 hours and 1 minute if we want to be specific on the immediacy of it.

Vice Chairman Larry Klemin: What is immediately after the 24 hour period?

Senator Axness: It would be one minute.

Vice Chairman Larry Klemin: If a parent doesn't know they are required to report the child missing one minute after the 24 hour period expires are they guilty of a Class C felony?

Senator Axness: This bill is to get after people who know their child is missing and don't report. We had to set a timeframe and stick to it.

Vice Chairman Larry Klemin: What if they don't know we have a statue and they don't make that report within one minute after 24 hours expires you are guilty of a Class C Felony and can go to jail for 5 years? Trying to think of a willful situation?

Rep. Diane Larson: In response to Rep. Klemin's question as you know I work at the police youth bureau when I am not here and there are times when I have gotten called because a youth was picked up breaking into motor vehicles. We contact the parent and the youth tells that they have been just gone for a few days and the parent has no idea where they are; they have never even contacted the police to report their child missing. They let them fend for themselves and a lot of the times the parents are drinking or something like that. Nobody is looking out for the interest of the child. That would be an example of a negligent situation where parents are more interested in their drinking friends than their children. Parents have gone out of town and left their kids and they are doing whatever. They should notice their child is gone within 24 hours.

Vice Chairman Larry Klemin: Rep. Larson talked about the reporting being done within that 24-48 hour period, but that is not the way this statue reads. It reads that you have to report immediately after. What if the parents say I did not know he was missing? I thought he was over at John's house.

Senator Axness: There should have been intent to say for the 24 hours a parent should be trying to find their kid that is under 13 within 24 hours. I don't know how else to describe that but just being a good parent.

Chairman Kim Koppelman: You talked a couple of times in your testimony about this being a collaborate effort among law enforcement. Who asked you to introduce the bill?

Senator Axness: After Florida there was an outrage and there should be something done to protect kids in this state in case this would happen. That is where the discussion started so after the election I decided there hasn't been any action on this so I will take it upon myself to do so.

Chairman Kim Koppelman: It is difficult to legislate good parenting. It is difficult to enforce some of these standards that we are talking about. The terms willfully or negligently are two very different standards under the law. These are hard laws to enforce. Did this come up in the Senate side?

Senator Axness: I have good faith in this committee to figure out what those concerns are in the language of this bill to make this bill the best it can be.

Rep. Kathy Hogan: (See handout #2) 28:13 - 29:29. During the interim I got numerous contacts. It was the one issue I got contacts on was about Caylee's Law. I did research and this handout is what I found and how it affects various states. Regarding a question you asked about Section 2 of the 2nd section Chairman K. Koppelman all the health care providers are reported currently mandated reporters. That is why it is currently covered.

Chairman Kim Koppelman: Is there a criminal penalty for not reporting like it would be under this bill?

Opposition: None

Neutral:

Annette Bendish, Legal Counsel, ND School Boards Association: We do support the spirit of the bill; however I do have concerns with the definition of caretaker. A person acting instead of a child's parent at the request of a parent or another with authority to make the request would include our teachers and school administrators. For a child under 13 if a child would potentially miss one day of school and the parent did not call in and the teacher or administrator could not verify the whereabouts of that child they could potentially be prosecuted.

Rep. Kathy Hogan: Do you have any proposed amendments?

Annette Bendish: On the Senate side they did introduce a proposed amendment that included an exemption for those individuals who are responsible for enforcing compulsory attendance laws under Title 15.1 of the Century Code and I can certainly provide that language to the committee.

Rep. Kathy Hogan: We would like to see them.

Chairman Kim Koppelman: I understand your concern but it is the intent of the bill but I think that anyone that would have knowledge of a child being missing should be excluded for a particular reason? If it is a 24 hour it would be a second day of an absence probably.

Annette Bendish: I think you are correct. Another issue that Rep. Klemin has hit on is the language of negligently. That coupled with the definition that could include our teachers and administrators is very concerning to me.

Rep. Diane Larson: Isn't the precept a local responsibility of the school. Doesn't that caretaker part only apply when the child is in school?

Annette Bendish: Yes it does apply while they are in school. I think when you start looking at the timeframes in this law and how strict they are so we do get into that situation if a child is absent for one day two days or three days. When is that 24 hour period under this law applied? That period would be shorter than what is under the compulsory attendance laws.

Rep. Larson: It would seem to me if a second grader left school at noon and didn't return that it would be the responsibility of the school because they were in that custody of that child during that time then that would be their obligation to report that child is missing.

Annette Bendish: I agree if that second grader leaves and doesn't return for 2-3 days does this law kick in? That is my concern with the language of it to make sure that it is clear to our teachers and administrators what their responsibilities are. I think it is just a clarity issue.

Rep. Lois Delmore: Kids usually signed out at the office when they left school. Following up on what Rep. Larson's said; if a kid simply left school my administrators followed up on it. Maybe that was part of putting that amendment on in the Senate because there is a fine line there.

Chairman K. Koppelman: I think what Rep. Larson was making that it was her reading of the bill that it wouldn't apply unless a student was there during that day and then left. If a student is enrolled and marked absent that day they are missing. How soon could you get that amendment to us?

Annette Bendish: As soon as I get back to the office.

Vice Chairman Larry Klemin: How do you interpret when the time frame starts? Does it start when you try and make contact and can't or does it start some other time?

Annette Bendish: I think it would be at the point that the student is absent and there hasn't been parental contact. That is a concern as to when does those 24 hours starts in the school setting?

Rep. Klemin: When does it start in a non-school setting?

Closed.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2125
JOB 20826
Date April 3, 2013

Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the duty to report a missing child or the death of a child; and to provide a penalty

Minutes:

1

Chairman Kim Koppelman: Opens SB 2125 for committee action.

Vice Chairman Larry Klemin: Explained proposed amendments, 13.0007.02001. Rep. Hogan and he worked on the amendments to make it less of a strict liability statute and more of an objective standard. This relates to the duty to report a missing child and its limitation statute. This is based on Caylee's law.

Rep. Lois Delmore: The court would understand and rule what was reasonable if there was a question? They would determine depending on the circumstances?

Vice Chairman Larry Klemin: The prosecutor would have to, to start with. The courts are used to dealing with what's reasonable standard. Section 2 that deals with the death of a child is a strict liability standard. If you don't report a death of a child to law enforcement within two hours you are guilty. If you are overcome with emotion and couldn't do it for whatever reason too bad but we changed that to put in the work "willfully" on line 5 after "caretaker". That is the same wording in the first part. We kept the same time limits and penalties.

Vice Chairman Larry Klemin: Made a motion on the proposed amendments.

Rep. Andy Maragos: Second the motion.

Chairman Kim Koppelman: The amendments improved the bill significantly and get at some of the issues and concerns that came up during the testimony on the bill. What if the missing child has already been reported?

Vice Chairman Larry Klemin: We determined the law does not require trifles. The court is going to take that into account, you are not going to hold somebody guilty of a felony for not reporting something that has been reported. It's been reported and that is the whole point of it. We go back to the term caretaker and it is a parent, an adopted parent, or a babysitter acting instead of the child's parent.

Chairman Kim Koppelman: Could you have a scenario where mom thought dad made the call and dad thought mom made the call and nobody made the call and they are both felons?

Vice Chairman Larry Klemin: Then we get into the reasonable man standard and the use of the word willfully.

Chairman Kim Koppelman: The first part of the proposed amendment where you excluded educators in school that was a request that the Senate did not take up even though it was offered to them. Looking at the definition of caretaker in the bill it is the parent of a child or an individual acting in the stead of a child parent at the request of the parent or another with authority to make the request. The child spends more time at school and questions why school personal are immune. Why would you want to eliminate them?

Vice Chairman Larry Klemin: The statute referred to 15.20.1-03 requires reporting by the school administrator if the child is missing. That statute says each teacher and administrator is charged with enforcement to call compulsory attendance provisions. If a teacher determines a student is not in attendance and not been excused the teacher notifies the administrator, the administrator shall then initiate an investigation into the cause of the absence if the administrator has reason to believe the person having responsibility has failed to ensure that the students in attendance the administrator shall refer the matter to local law enforcement agency. Any person who fails to ensure this is required by this chapter is guilty of an infraction or a Class B misdemeanor. The goal here is to have a report to law enforcement agency. The compulsory attendance law that referred to in this amendment has that requirement.

Chairman Kim Koppelman: Except with what you just read an educator or an administrator not making that report could be guilty of an infraction or Class B misdemeanor. A parent not making that report if this bill becomes law would be a Class C felony.

Vice Chairman Larry Klemin: The penalty is different. The goal here is the same is to have the report made and the schools, I'm sure all schools have some kind of policy procedure they follow with the possibility of a child missing to comply with this compulsory attendance law.

Rep. Kathy Hogan: The other issue that schools are all mandated reporters for child abuse and neglect and many of the missing child reports actually come through the child abuse and neglect kinds of situations. There are penalties for not reporting.

Rep. Lois Delmore: There are also circumstances where it's a little different with a teacher that has 30 kids or a school that has 600 than hiring a babysitter who is in your house under the purview. Sometimes parents decide to take their kids away for the weekend and forget to call the school. So you setting up situations that could hold up law enforcement as well checking into things aren't emergencies.

Chairman Kim Koppelman: I don't disagree with that but what about a day care that has 30 kids and they forget to call the day care and tell them? We are holding that day care provider who has less training professionally than an administrator at a school and we are saying this person is a Class C felon and the school would have an infraction.

Rep. Lois Delmore: But it is covered in statute that there will be something done if the school knows something is going on. Teachers are mandated and somebody will pay the price if that would be what is going on. Day care providers are also mandated to report.

Rep. Diane Larson: In the case of a day care provider, I think the school part of the amendment is unnecessary but it won't do any harm. This applies to a caretaker who is when a child is supposed

to be in their care. So a day care is only supposed to take care of the child when they show up. It's not like they should be responsible for reporting to law enforcement.

Vice Chairman Larry Klemin: I think they would be if the child goes missing after they show up.

Rep. Diane Larson: After they show up, that's my point. Once they show up and then they go missing they better report it. But if parents forget to call, I don't think it's the responsibility of the day care to call law enforcement to say this child didn't show up today because they would assume for day care that they are in their parents' custody still.

Chairman Kim Koppelman: I think that is reasonable but I'm not sure the language of the bill defines it the way you are describing.

Vice Chairman Larry Klemin: It's a chain of custody situation. Until that child shows up at the day care that child is in the custody of the parent or other person that is responsible for his care.

Chairman Kim Koppelman: If that's true the same would be true of the school. So that would render this unnecessary.

Vice Chairman Larry Klemin: They do have this compulsory attendance law that requires reporting to law enforcement.

Chairman Kim Koppelman: Rep. Klemin you mentioned when you and Rep. Hogan did not do anything with the penalty, I am looking at the penalty referenced under the compulsory attendance law which is a Class C felony. The people we are looking at penalizing here is parents.

Rep. Lois Delmore: If you asked the general public about this what happened with Caylee, I don't think you would find an argument in this state. We added willfully in there, this is I failed to take care of my child so I don't think anyone is going to argue with it.

Rep. Diane Larson: If the school has a second grader that walks away at noon and does not show back up then the school could be held to the felony offense because this wouldn't have anything to do with compulsory attendance. They were in the schools care at that time.

Chairman Kim Koppelman: But the amendment specifically removes them.

Rep. Diane Larson: Just for compulsory attendance.

Chairman Kim Koppelman: So you are saying if they left, is that your understanding of that also.

Vice Chairman Larry Klemin: It says if a teacher determines if a student is not in attendance and has not been excused then the teacher shall notify the administrator. It doesn't say if they are not in attendance at the beginning of the school day or if a student is not in attendance sometime during the school day. Even if they were there initially and now are not there I think the compulsory attendance law still applies.

Chairman Kim Koppelman: But your amendment doesn't deal with the activity is deals with the definition; it says caretaker does not include an individual who is charged with the enforcement of compulsory attendance provisions under section 15.120.03. I read that to say it has nothing to do with the activity of enforcing compulsory attendance it has to with the people. So it is excluding those educators from this statute. So I think if you show up and leave at ten o'clock in the morning they are not required to report, except arguably under this is you want to read it that way.

Rep. Gary Paur: Should it say caretaker under this section as it does not include an individual?

Chairman Kim Koppelman: It wouldn't need to say that because we are in a subsection that has the definition. It says for the purposes of this section and section two of this act caretaker means - and we would be adding what caretaker does not include.

Vice Chairman Larry Klemin: I'm not comfortable placing the duty on the teacher to make a report of a missing child within the time limits that are required here or face a felony offense if they do follow this compulsory attendance requirement.

Rep. Kathy Hogan: Again teachers are mandated reporters for child abuse and neglect and if there was a concern that is the other way they would report to law enforcement. This is not a major concern for education.

Vice Chairman Larry Klemin: Even though the penalties aren't the same in the compulsory attendance statute there are penalties.

Rep. Karen Karls: Here is another scenario, a friend runs a day care she has several moms that are receiving government assistance there are times they do not bring their kids, they don't let her know, she can't reach them by phone what would her duty to report be under this?

Rep. Kathy Hogan: There would not be any because until the child is there she is not responsible. She doesn't have custody of the child.

Rep. Lois Delmore: If a second grader doesn't come back after recess I don't know a teacher that would not immediately go into the office and say this kid is gone. If a child has disappeared someone will track them down and find out where they are. Once they are in your custody we have to leave it to the responsible adult that is going to do the right thing if suddenly a child isn't there.

Vice Chairman Larry Klemin: The compulsory attendance law deals with the time frame that is much shorter than the 24 and 48 hour periods here. This is during the day and if they don't show up after two hours they are guilty of a penalty. The other one takes 24 to 48 hours before the penalty kicks in.

Chairman Kim Koppelman: The chain of custody you talked about is the intent of the bill but when it says an individual acting in the stead of a child's parent at the request of the parent or another authority to make that request does not mean a physical change of custody?

Rep. Kathy Hogan: On line 13 it says a caretaker who is responsible "at that time".

Chairman Kim Koppelman: So if I wanted to read it the other way, is the day care provider responsible for the physical control of the child, yes. Are they responsible at that time if the parents normally drop the child off at 7:30am and that is the routine, they are physically responsible at that time?

Vice Chairman Larry Klemin: If we followed that rationale she would also have to report the parents missing.

Rep. Vicky Steiner: On page 2 where you have within two hours do you think two hours is a magic time or should we have a reasonable time. If you are out and don't have cell phone service for three hours are you guilty?

Vice Chairman Larry Klemin: There is where willfully comes in.

Rep. Diane Larson: It almost seems like the schools part of the amendment starting on line 12 complicates the issue by specifically exempting them from those day time hours. That almost seems like the day care would potentially fit in if we are excluding them specially instead of just keeping the caretaker responsible at that time.

Vice Chairman Larry Klemin: I'm not sure the Senate was presented with this exact amendment.

Chairman Kim Koppelman: It is my understanding she had presented it to them and they didn't adopt it.

Rep. Lois Delmore: Teachers are under tighter restrictions with that in than with that out. If a child disappears and I don't report that to my supervisor you think I'm not going to be charged with abuse and neglect? Something happens to that child and he is in my care and I think as a teacher I'm responsible under the law I will be punished as well as I should be.

Vice Chairman Larry Klemin: But you have 24 hours to do it as a teacher under this bill whereas you don't have that long under the compulsory attendance statute.

Chairman Kim Koppelman: But I don't think it is accurate to say that with the amendment you have a stricter standard because that standard is in law now.

Voice vote carried.

Rep. Nathan Toman: I have a Century Code question, so this is dealing with reporting is there already something in code for abuse and neglect that they can be charged for?

Chairman Kim Koppelman: Yes.

Rep. Nathan Toman: Would we charge them with two things then?

Rep. Kathy Hogan: Because this is primarily focused on parents or caregivers there are not mandatory reporters where schools, day cares all of those individuals are mandatory reporters under the child protection so that is why this is needed. A parent is not a mandatory reporter. They can be charged with abuse and neglect and in fact in the Florida situation there were significant questions about that. But the reporting piece wasn't included in the law.

Chairman Kim Koppelman: Under current law are there other laws they can get charged with neglect or abuse under?

Rep. Kathy Hogan: That was the situation because it wasn't clearly defined in law and the conclusion was that most states needed this kind of missing child law.

Vice Chairman Larry Klemin: In response to Rep. Toman's question about abuse, we have a statute 14.09.22 which is the same chapter that this bill puts a new section and that deals with abuse or neglect of a child and the penalty there is a Class C felony unless the child is under the age of six, in which case it is a Class B felony. There is four different subdivisions detailing what abuse and neglect might be. The abuse and neglect statute is broad and provides for even greater penalty than is under this bill.

House Judiciary Committee

SB 2125

April 3, 2013

Page 6

Rep. Andy Maragos: Made a do pass as amended motion.

Rep. Lois Delmore: Second the motion.

Vote 13-0-1

Rep. Kathy Hogan: Will carry the bill.

12
4/3/13

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2125

Page 1, line 12, after the underscored period insert "Caretaker" does not include an individual who is charged with the enforcement of compulsory attendance provisions under section 15.1-20-03."

Page 1, line 15, after "hours" insert "after the caretaker knows or reasonably should have known the child is missing"

Page 1, line 16, remove "or negligently"

Page 1, line 17, replace "immediately" with "within a reasonable time"

Page 1, line 21, after "hours" insert "after the caretaker knows or reasonably should have known the child is missing"

Page 1, line 21, remove "or negligently"

Page 1, line 22, replace "immediately" with "within a reasonable time"

Page 2, line 5, after "caretaker" insert "willfully"

Renumber accordingly

Date: 4-3-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2125

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.0007.02001

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote - Carried

Date: 4-3-13
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2125**

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning			Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hogan

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2125, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2125 was placed on the Sixth order on the calendar.

Page 1, line 12, after the underscored period insert "Caretaker" does not include an individual who is charged with the enforcement of compulsory attendance provisions under section 15.1-20-03."

Page 1, line 15, after "hours" insert "after the caretaker knows or reasonably should have known the child is missing"

Page 1, line 16, remove "or negligently"

Page 1, line 17, replace "immediately" with "within a reasonable time"

Page 1, line 21, after "hours" insert "after the caretaker knows or reasonably should have known the child is missing"

Page 1, line 21, remove "or negligently"

Page 1, line 22, replace "immediately" with "within a reasonable time"

Page 2, line 5, after "caretaker" insert "willfully"

Renumber accordingly

2013 TESTIMONY

SB 2125

Senate Bill 2125
Senator Tyler Axness
Senate Judiciary Committee
January 16, 2013

Mr. Chairman, members of the Senate Judiciary Committee:

For the record, I am Senator Tyler Axness representing District 16 in Fargo and West Fargo and I am to here to testify in support of Senate Bill 2125. This bill is to create a penalty for a caregiver who willfully or negligently does not report a missing child within a twenty four hour time period or the death of a child within a two hour time period.

This is a bill to further protect North Dakota children by allowing the men and women in North Dakota's law enforcement the time necessary to do their duty and ensure the safety of our kids. In North Dakota, it is illegal to abandon a child, it is illegal to abuse a child, but it is perfectly legal to not report a missing child. This bill will change that by helping North Dakota law enforcement keep our kids safe.

Section 1 of the bill establishes a penalty for a caregiver who is unable to make contact or verify the whereabouts and safety of a child and willfully or negligently does not report to law enforcement a missing child within a twenty four hour time period. The penalty established for not reporting a missing child in this section is a Class C Felony which carries with it up to five years in prison, a fine of five thousand dollars, or both.

Section one establishes a twenty four hour time period for reporting a missing child at the recommendation of law enforcement in this state. It is agreed the ability of law enforcement to find a missing person is greatly enhanced if a report is made within this time frame.

Section two establishes a penalty for a caregiver who fails to report a child's death and the location of the corpse to law enforcement within a two hour time frame of learning of the child's death. The penalty established for not reporting the death of a child in the two hour time frame is a Class C Felony with the implications I mentioned earlier.

Section two exempts the reporting requirement if the child's death occurs under the care of health care professionals or emergency medical personnel.

Mr. Chairman in closing, Senate Bill 2125 does not cost the state anything if enacted but can potentially cost a North Dakota child everything if we fail to act. I believe we have the responsibility as policy makers of this great state to ensure we are doing what's in the best interest of our future generations.

That concludes my testimony for Senate Bill 2125 and I will be happy to answer any questions you may have.

2/25 (2)

13.0007.01001
Title.

Prepared by the Legislative Council staff for
Senator Axness
January 14, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 1, after line 7, insert:

"1. For purposes of this section and section 2 of this Act, "caregiver" means a parent, guardian, adult household member, or other individual responsible for a child's welfare.

2."

Page 1, line 8, after "responsible" insert "at that time"

Page 1, line 11, remove "For"

Page 1, remove lines 12 and 13

Renumber accordingly

SB 2125

Senate Judiciary Committee

January 16, 2013

Chairman Houge, Judiciary committee members, and guests, my name is Tim Hathaway and I am the Executive Director with Prevent Child Abuse North Dakota. We are a not for profit agency partnering to prevent the maltreatment of children in our state for over 30 years. I am testifying today in support of SB 2125.

The children of North Dakota are among our most vulnerable populations. Creating policy that ensures swift action by law enforcement and effective prosecutorial tools is essential to their protection. After the acquittal of Casey Anthony, who neglected to report her child as missing for 31 days, states began looking at legislation that would ensure that this would not happen in their states. Beginning in January 2012 states began enacting legislation that criminalized the failure to report a missing or dead child. Since September 2012 eleven states had enacted legislation revolving around this issue and an additional eight states have filed similar bills. This bill will strengthen the network of policies that protect children and hold potential abusers accountable for their actions. I urge you to support SB 2125. Thank you for your time today.



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Caylee's Law

Updated November 16, 2012

Concerns stemming from the acquittal of Casey Anthony in Florida, following her daughter Caylee's death, have prompted state lawmakers to consider legislation. This legislation, often dubbed "Caylee's law," criminalizes the failure to report a missing or dead child. As of September 19, 2012, at least eleven states have enacted legislation, and an additional eight states have filed bills: Alabama (1), Illinois (1), Massachusetts (2), Michigan (4), New Jersey (1), New York (4), Ohio (3), and Pennsylvania (1). Key points in the bills include the qualifying age of a missing or dead child, how long the legal guardian has to report the incident to law enforcement and how the crime is classified.

NCSL Civil and Criminal Justice Program

[Civil and Criminal Justice Homepage](#)

Contact

NCSL Criminal Justice Program
Denver, Colorado, (303) 364-7700 or
info@ncsl.org

Enacted Legislation

<p>California Cal. [Penal] Code §273j [Chapter 805]</p>	<p>Enacted on September 30, 2012, AB 1432 requires a parent or guardian of a child under a specified age who knows or should have known that the child has died to notify a public safety agency within a specified time period of the time that the parent or guardian knew or should have known that the child has died and to notify law enforcement within that same time period of the death or that the child is a missing person. Violation is a misdemeanor.</p>
<p>Connecticut Conn. Gen Stat. §53-21a [Public Act 12-112]</p>	<p>Effective on October 1, 2012, HB 5512 created a Class A misdemeanor for any parent, guardian, person in custody, or person providing supervision for a child under twelve years who knowingly fails to report the disappearance of a child. "Disappearance of a child" is defined as the parent or guardian does not know the location of and has not had contact with the child for a twenty-four hour period.</p>
<p>Delaware Del. Code Ann. Tit. 11 §1102 [Chapter 242 and Act 406]</p>	<p>1). Signed into law on May 21, 2012, HB 256 adds failing to report a missing child as an act that would make the child "neglected or abused." 2.) Approved on September 12, 2012, SB 234 additionally modifies a law previously amended by HB 256 that makes "endangering the welfare of a child" a class E or G felony when a parent, guardian, or any other person who has assumed responsibility for the care or supervision of a child intentionally, knowingly, or recklessly fails to act, including failing to report a missing child. As a result the child becomes "neglected or abused."</p>
<p>Florida Fla. Stat. §837.055 [Chapter 2012-53]</p>	<p>Effective on October 1, 2012, CS/HB 37, creates a criminal penalty (first degree misdemeanor) for knowingly and willfully giving false information to mislead a police officer's investigation of a missing child. If the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death then the crime becomes a third degree felony.</p>
<p>Illinois Ill. Rev. Stat. Ch. 720 §5/10-10 [Public Act 097-1079]</p>	<p>Effective January 1, 2013, SB 2537 creates a felony punishable by up to three years in prison and a \$25,000 fine for failing to report a missing child. The bill requires legal guardians of any missing child thirteen years old or younger to notify police within twenty-four hours. For children two years old or younger must be reported within one hour of their disappearance. The bill also criminalizes the failure to report the death of any child within twelve hours.</p>
<p>Indiana Ind. Code §35-44.1-2-3 [Act 262]</p>	<p>Signed into law on March 19, 2012, Indiana Senate Bill 262 creates the class B misdemeanor crime of false informing for anyone who makes a false report of a missing person, knowing the report or information is false or gives a false report concerning a missing child or endangered adult knowing the report or information to be false. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to an innocent person.</p>
<p>Kansas Kan. Stat. Ann. §21-5904 [Chapter 119] (pg 920)</p>	<p>Effective on July 1, 2012 HB 2534 criminalizes failing to report a missing child, failing to report the death of a child, and providing false information to a police officer.</p>
<p>Louisiana La. Rev. Stat. Ann. §§403.3; 403.7; 403.8 [Act 454 and Act 446]</p>	<p>1). Effective August 15, 2012 Act No. 454, criminalizes the failure of a caretaker to report within two hours of after a period of twenty-four hours where the caretaker does not know nor has been in contact with a child of thirteen years or older. For a child under the age of thirteen the period is reduced to twelve hours. The act also makes it a crime for a caretaker to fail to report a child's death within one hour of discovery of the death or learning the location of the body. The act provides for specific penalties. 2). Effective August 15, 2012 Act No. 446 criminalizes the act of intentionally providing false information to law</p>

	enforcement concerning a missing child or the recovery of a missing child.
New Jersey N.J. Rev. Stat. §52:17B-89 [Chapter 174]	Effective immediately upon approval on January 9, 2012, Chapter 174 creates a fourth degree felony for a person with legal custody of a child, 13 years old or younger, who fails to report the disappearance of that child to police more than 24 hours after becoming aware of the disappearance.
South Dakota S.D. Code Ann. §22-11-37 [SB 43]	Signed into law on March 16, 2012, South Dakota Senate Bill 43 provides that any parent, legal guardian, or caretaker who knowingly fails to notify law enforcement within a specified time frame of learning that a child, in his or her care and less than 13 years of age, is missing is guilty of a Class 1 misdemeanor. Further provides that if such persons fail to notify law enforcement within a specified time period of learning of the death of a minor child in his or her care is guilty of a felony; exempts health care providers and facilities.
Wisconsin Wis. Stat. §973.06; 948.23 [Act 262 and Act 268]	1). Published on April 4, 2012 AB 263 makes it a crime to provide false information to a law enforcement officer, or place physical evidence with the intent to mislead an officer. The person may also be charged with the costs incurred by the law enforcement agency during their investigation. 2). Signed into law on April 9, 2012, Wisconsin Assembly Bill 397 creates the crime of failing to report the death of a child, failing to report a missing child, and moving the corpse of a child.

Pending Legislation

Alabama	SB 1 (2013)
Illinois	SB 3432 (2012)
Massachusetts	HB 3766 (2012) HB 3978 (2012)
Michigan	HB 4872 (2011) SB 578 (2011) SB 580 (2011) SB 625 (2011)
New Jersey	AB 187 (2012)
New York	AB 5269 (2011) AB 8541 (2011) SB 2937 (2011) SB 5862 (2011)
Ohio	HB 799 (2011) HB 301 (2011) HB 279 (2012) SB 203 (2011)
Pennsylvania	HB 1799 (2011)
Texas	HB 60 (2013)

Profit Concerns from the Casey Anthony Trial

In addition to criminal concerns, some legislators are considering measures to prohibit participants in a criminal trial from profiting from their experience. [Florida HB 51 \(2012\)](#), for example, would prohibit a juror from requesting or accepting any benefit or compensation related jury service until 270 days after the end of the trial. Similar laws already exist in California, Delaware, Louisiana, New York and New Jersey.

Additionally, concerns have been raised over the potential for defendants to profit from their experiences. "Son of Sam Laws," named for Sam Berkowitz, prevent only those found guilty—not those acquitted—from profiting from their crimes.

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Senate Bill 2125
Senate Judiciary Committee
January 16, 2012

Chairman Hogue and members of the committee, I am Annette Bendish, Legal Counsel for the North Dakota School Boards Association (NDSBA). NDSBA supports the spirit of Senate Bill 2125, however, we have concerns that the scope of this bill would include school district personnel and would create an undue burden due to the twenty-four hour time period.

The definition of caregiver in this bill includes "other individual responsible for a child's welfare." Each day, schools are responsible for the care and welfare of children. School districts already have a responsibility to require school attendance under Chapter 15.1-20 and have a duty to report to local law enforcement if a student is not meeting attendance requirements.

The language of Senate Bill 2125 creates practical concerns for teachers and administrators. If a student is absent for one school day and the teacher or administrator is unable to verify the whereabouts of that student until the next school day, the teacher or administrator would have to report the student as missing to law enforcement. If the report was not made, the teacher or administrator would be guilty of a class C felony.

Section 15.1-20-03 already charges each teacher and administrator with enforcement of compulsory attendance provisions. If a teacher determines that a student is not in attendance as required by the law and that the student has not been excused in accordance with law or the school district's policies, the teacher must notify the administrator of the school. When an administrator is informed about a student's absence, the administrator is required to initiate an investigation into the reason for the absence. If the administrator has reason to believe that the person having responsibility for the student has failed to ensure that the student is in attendance, the administrator shall refer the matter to the local law enforcement agency. Any person who fails to

ensure that a student is in attendance as required by the current law is subject to a penalty.

To address our concerns with this bill we have drafted a proposed amendment that provides an exemption for teachers and administrators that are charged with the enforcement of the compulsory attendance provisions under existing law.

This concludes my testimony, I am happy to answer any questions you may have.

PROPOSED AMENDMENT TO SB 2125

Page 1, Line 13, after "welfare" insert "that is not charged with enforcement of compulsory attendance provisions under section 15.1-20-03"

Renumber accordingly

February 13, 2013

4/18 - (1)
Lyson
amendments

PROPOSED AMENDMENTS TO SENATE BILL NO. 2125

Page 1, after line 7, insert:

"1. For purposes of this section and section 2 of this Act, "caretaker" means the individual who is responsible for the physical control of a child and who is the child's biological or adoptive parent, the spouse of the child's biological or adoptive parent, or an individual acting in the stead of a child's parent at the request of the parent or another with authority to make the request.

2."

Page 1, line 8, replace "caregiver" with "caretaker"

Page 1, line 8, after "responsible" insert "at that time"

Page 1, line 8, after "child" insert "under the age of thirteen years"

Page 1, line 10, replace "caregiver" with "caretaker"

Page 1, line 11, remove "For"

Page 1, replace lines 12 and 13 with:

"3. A caretaker who is responsible at that time for the care of a child at least thirteen years of age but under the age of seventeen years and who is unable to make contact with or otherwise verify the whereabouts and safety of that child for a period of forty-eight hours is guilty of a class B misdemeanor if the caretaker willfully or negligently fails to report the child as missing to law enforcement immediately after the forty-eight-hour period expires."

Page 1, line 17, replace the first "caregiver" with "caretaker"

Page 1, line 17, replace "caregiver's" with "caretaker's"

Page 1, line 17, replace the second "caregiver" with "caretaker"

Renumber accordingly

Senate Bill 2125
Senator Tyler Axness
House Judiciary Committee
April 2, 2013

Mr. Chairman, members of the House Judiciary Committee:

For the record, I am Senator Tyler Axness representing District 16 in Fargo and West Fargo and I am here to testify in support of Senate Bill 2125. This bill is to create a penalty for a caretaker who willfully or negligently does not report a missing child or the death of a child within a defined time frame.

SB 2125 is intended to further protect North Dakota children by allowing the men and women in North Dakota's law enforcement the time necessary to do their duty and ensure the safety of our kids. In North Dakota, it is illegal to abandon a child, it is illegal to abuse a child, but it is perfectly legal to not report a missing child. This bill will close that loophole and provide another mechanism for law enforcement to keep our kids safe.

Engrossed Senate Bill 2125 comes to this committee as a collaborative effort between elected officials, law enforcement, attorneys, and advocates who help those who have been abused or neglected. I'd like to briefly guide you through each section of the bill and attempt to answer any questions you may have.

Section 1 subsection 1 defines the term caretaker as an individual who is responsible for the physical control of a child.

Section 1 subsection 2 of the bill establishes a penalty for a caretaker who is unable to make contact or verify the whereabouts and safety of a child and willfully or negligently does not report to law enforcement a missing child who is under the age of thirteen within a twenty four hour time period. The penalty established for not reporting under this section is a Class C Felony which carries with it up to five years in prison, a fine of five thousand dollars, or both.

The twenty four hour time period for reporting a missing child comes at the recommendation of law enforcement in this state. It is agreed the ability of law enforcement to find a missing person is greatly enhanced if a report is made within this time frame.

Subsection 3 states that if a caretaker negligently or willfully fails to report a child missing between the ages of 13 and 17 and having no contact within 48 hours will be charged with a class B misdemeanor which carries with it a penalty of up to thirty days in prison, a one thousand dollar fine, or both. The reason for this change is the fact that kids are more independent and active at this time, making it more difficult for a caretaker to instantly make contact with the child. This section allows for more flexibility.

(Over)

Section 2 establishes a penalty for a caretaker who fails to report a child's death and the location of the deceased to law enforcement within a two hour time frame of learning of the child's death. The penalty established for not reporting the death of a child in the two hour time frame is a Class C Felony with the implications I mentioned earlier.

Subsection 2 exempts the reporting requirement if the child's death occurs under the care of health care professionals or emergency medical personnel.

Mr. Chairman in closing, Senate Bill 2125 does not cost the state anything if enacted but can potentially cost a North Dakota child everything if we fail to act. This session we've talked a lot about protecting children. SB 2125 is an additional protection in this state.

I believe we have the responsibility as policy makers of this great state to ensure we are doing what's in the best interest of our future and for our state's children.

Mr. Chairman, that concludes my testimony for Senate Bill 2125, I urge your favorable recommendation, and I will be happy to answer any questions you may have.

*Kathy Hogan**SB 2125 2
4-2-13***Location:**

CRIME AND CRIMINALS; JUVENILES - LEGISLATION;

Scope:

Other States laws/regulations:



March 19, 2012

2012-R-0130

(Revised)

"CAYLEE'S LAW": LEGISLATION IN OTHER STATES

By: Mark Randall, Research Fellow

Hendrik deBoer, Research Fellow

You asked for (1) a summary of passed or proposed legislation in other states in response to the result of the Caylee Anthony case and (2) policy arguments for and against these measures.

SUMMARY

At least 35 states are considering or have considered legislation in response to the highly publicized death of Caylee Anthony, often called "Caylee's Law." New Jersey so far is the only state to have enacted a version of "Caylee's Law." The Florida legislature has recently passed legislation that is pending governor approval.

The model statute is named after Caylee Anthony, a Florida toddler whose death became nationwide news. Casey Anthony, Caylee's mother, failed to report her daughter missing for more than a month and the child's body was discovered near the Anthony home several months later. After giving several fabricated explanations, Ms. Anthony admitted that she had known about Caylee's death and disposed of the body. After a high-profile trial, Ms. Anthony was acquitted of 1st degree murder and related felony charges; she was convicted on four misdemeanor counts of providing false information to the police.

The "not guilty" verdict shocked and angered many who had been following the case

and produced a groundswell of legislative proposals that would criminalize a parent's failure to report the disappearance or death of a child. The volume of bill filings is partly due to a well-organized, online petition campaign urging legislators to pass Caylee's Law. As of July 2011, it was reported that more than 1.5 million people had signed the petition.

Policymakers are divided in their support of such legislation. Proponents argue that the law is needed to make parents act more responsibly by holding them accountable for failing to report their child missing or dead. Some prosecutors have indicated that such laws would give them another tool to protect vulnerable children.

Opponents contend that the bill is unnecessary because a parent's failure to (1) act to protect the health and safety of his or her child and (2) notify the authorities about a death or the location of a dead body are already crimes in most states. Moreover, some members of law enforcement have warned that ill-considered laws on reporting missing children risk punishing the innocent and tying the police up with investigations of missing child cases where no foul play was suspected.

ENACTED LAW

New Jersey

In 2011, New Jersey became the first state to enact a version of Caylee's Law. The law requires the parent, legal guardian, or custodian of a child under age 14 to report the child's disappearance within 24 hours of the time the parent knew or should have known that the child was missing. It makes failure to do so a crime of the 4th degree, punishable by imprisonment for up to 18 months, a fine of up to \$10,000, or both (P.L. 2011, ch. 174, *codified at* NJSA § 2c:12-1.3).

The law also increased the penalty, from a misdemeanor to felony, for violating the state law that prohibits a person from willfully failing or refusing to notify authorities of any death.

Florida

Pending the governor's signature, Florida will become the second state to enact a version of Caylee's Law. Its new law makes it a crime to knowingly and willfully give false information to mislead a police officer's investigation of a missing child. If the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death, the person commits a third degree felony, punishable by imprisonment up to five years or a fine up to \$5,000. Otherwise, the person commits a first degree misdemeanor, punishable by imprisonment up to one year or a maximum \$1,000 fine ([House Bill 37](#)).

PROPOSED LEGISLATION

Based on information from the National Conference of State Legislatures (NCSL) and media reports, legislators in at least 35 states have proposed Caylee's Law legislation. Many states are considering multiple bills. While all deal generally with the issues addressed in Caylee's Law, there is considerable variation among them. For example, proposed laws vary in the age range of children covered, the time period within which a parent must report the child's death or disappearance, and the penalty for failing to do so.

Table 1 below provides information on a representative sample of the pending bills. Where a state has more than one bill pending, we selected those that were farthest along in the legislative process.

It shows, where applicable,

1. the legislative citation;
2. the ages of children covered;
3. reportable events;
4. reporting deadlines;
5. penalties; and
6. notes on significant aspects of the legislation, including provisions that apply when a parent or guardian gives false information to the police.

Table 1: Proposed State Legislation

<i>State / Cite</i>	<i>Age</i>	<i>Reportable Event</i>	<i>Reporting Deadline</i>	<i>Penalty</i>	<i>Notes</i>
Alabama (SB 65)	Under age 13	Disappearance	Within 12 hours	Class B felony, punishable by imprisonment for between one year and two days and 20 years, a fine of up to \$30,000, or both	Applies when child suffers great bodily harm, permanent disability, or disfigurement while missing
	Under age 13	Disappearance	Within 24 hours	Class C felony, punishable by imprisonment for between one year and one day and 10 years, a fine up to \$15,000, or both	

	Under age 13	Disappearance	Within 12 hours	Class A misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$6,000, or both	
	Under age 13	Death / location of body	Within One hour	Class C felony	Applies when death occurs while in parent or guardian's care
Arizona (HB 2018)	Under age 6	Disappearance: Parent must report if he or she believes that child is victim of physical injury	Within 24 hours of knowledge	Class 5 felony, punishable by imprisonment with a presumptive term of 18 months	
	Under age 18	Death	Unspecified	Class 6 felony, punishable by imprisonment with a presumptive term of one year	
California (AB 1432)	Under age 14	Disappearance	Within 24 hours	Misdemeanor, punishable by imprisonment for up to six months, a fine of up to \$1,000, or both	
	Under age 14	Death or disappearance under circumstances where a crime may have occurred or the child may be in danger	Within 24 hours	Misdemeanor, punishable by imprisonment for up to one year, a fine up to \$2,000, or both	
Delaware (HB256)	Under age 18	Disappearance	Unspecified	If the child dies: Class E felony, punishable by imprisonment up to five years If the child suffers a serious physical injury or is sexually	

				<p>assaulted: Class G felony, punishable by imprisonment up to two years</p> <p>Otherwise: Class A misdemeanor, punishable by imprisonment up to one year, or a fine up to \$2,300</p>	
Georgia (HB974)	Under age 13	Disappearance	Within 18 hours	Punishable by imprisonment between one and ten years	
	Under age 16	Death	Within 12 hours	Punishable by imprisonment between one and ten years or a fine between \$1,000 and \$5,000	Not applicable when the death occurs in a hospice or under the care of a physician
Hawaii (SB2485)	Under age 18	Disappearance	As soon as reasonably possible	Class C felony, punishable by imprisonment up to five years or a fine up to \$10,000	
	Under age 18	Death	As soon as reasonably possible		
	Under age 18	Not specified	Not specified		Applies when the parent or guardian knowingly, intentionally, or willfully gives false information to the police
Illinois (HB 3804)	Under age 13	Disappearance or death	Within 24 hours	Class 4 felony, punishable by imprisonment between one and three years, a fine of up to \$25,000, or both	Parent or guardian must reasonably believe child is missing, dead, or that death of child was caused by homicide, accident, or other suspicious circumstances

	Under age 2	Disappearance or death	Within one hour		Same circumstances as above	
	Under age 13	Not specified	Not specified		Applies when parent of guardian gives false information to police	
Illinois (SB 2537)	Under age 12	Death or disappearance	In a timely manner	Class 3 felony, punishable by imprisonment between two and five years, a fine up to \$25,000, or both	Applies when parent or guardian knows that child is missing and knew or reasonably should have known child in potential danger of death or serious injury	
	Under age 12	Not specified	Not specified	Class 3 felony	Applies when parent or guardian gives false or misleading information to police and includes willfully touching, removing, or disturbing the evidence	
Iowa (HF 2253)	Under age 13	Disappearance	Reckless failure to make contact or verify whereabouts within 24 hours	Class B felony, punishable by imprisonment for up to 25 years	Applies when child found dead or died from injuries sustained while missing	
	Under age 13				Class C felony, punishable by imprisonment for up to 10 years and a fine of between \$1,000 and \$10,000	Applies when child suffers serious injury
	Under age 13				Aggravated misdemeanor, punishable by imprisonment for up to two years and a fine of between \$625 and \$6,250	Applies when child suffers no injury

	Under age 13	Disappearance	Failure to make contact or verify whereabouts within 24 hours	Class C felony	Applies when child found dead or died from injuries sustained while missing
	Under age 13			Class D felony, punishable by imprisonment for up to five years and a fine of between \$750 and \$7,500	Applies when child suffers serious injury
	Under age 13			Serious misdemeanor, punishable by imprisonment for up to one year and a fine between \$315 and \$1,875	Applies when child suffers no injury
	Under age 13	Disappearance	Within 24 hours	Serious misdemeanor	Applies when parent or guardian fails to make contact or verify whereabouts and safety of child
Kansas (HB2534)	Under age 13	Disappearance	Promptly	Severity level 8, nonperson felony, punishable by imprisonment up to 23 months, a fine up to \$100,000, or both	Must be with the intent to conceal another crime
	Under age 18	Death	Promptly	Failure by a parent to report Severity level 8, nonperson felony Failure by person otherwise required to report Class B nonperson misdemeanor, punishable by imprisonment up to six months, a fine up to \$1,000, or both	

	Under age 13	Unspecified	Unspecified	Severity level 0, nonperson felony	Applies when parent of guardian gives false information to police knowing that such information is false and intending that the officer or agency will act relying upon such information
Kentucky (SB 33)	Under age 13	Disappearance	Within one hour	Class D felony, punishable by imprisonment between one and five years	
Louisiana (SB75)	Under age 13	Disappearance	Within 14 hours	<p>If the child is found dead: Punishable by imprisonment between two and 50 years or a fine up to \$50,000</p> <p>If the child is missing more than six months, but not dead: Punishable by imprisonment between two and 10 years or a fine up to \$25,000</p> <p>If the child is physically or sexually abused: Punishable by imprisonment up to 10 years or a fine up to \$10,000</p> <p>If the child is unharmed: Punishable by imprisonment up to six months, a fine up to \$500, or both</p>	
	Between ages 14 and 17	Disappearance	Within 26 hours	Same as above	
	Under age 18	Death	Within one hour	Punishable by imprisonment up to	

				five years and a fine up to \$5,000	
	Under age 18	Unspecified	Unspecified	Punishable by imprisonment up to five years	Applies when parent of guardian gives false information to police
Maine (LD1633)	Under age 18	Disappearance	Within 24 hours	Class C crime, punishable by imprisonment up to five years or a fine up to \$5,000	Must know that the child is missing and know or reasonably should know that that child is potentially in danger
Maine (LD1634)	Under age 13	Disappearance	Within 48 hours	Class C crime	
	Under age 18	Death	Within 2 hours	Class C crime	
	Under age 18	Unspecified	Unspecified	Class C crime	Applies when parent of guardian gives false information to police with the intent the intent to mislead the agency or employee or impede the investigation
Maryland (SB139)	Under age 13	Disappearance	Within 24 hours	Felony punishable by imprisonment up to 10 years, a fine up to \$10,000, or both	
	Between ages 13 and 17	Disappearance	Within 48 hours	Misdemeanor, punishable by imprisonment up to five years, a fine up to \$5,000, or both	Only if (1) the child suffers from a mental or physical handicap, (2) the disappearance is of a suspicious or dangerous nature, (3) there is reason to believe the child has been abducted, or (4) the child has previously been

abuse report

Under age 18

Death

Within one hour

Felony punishable by imprisonment up to 10 years, a fine up to \$10,000, or both

Under age 18

Unspecified

Unspecified

Felony punishable by imprisonment up to 10 years, a fine up to \$10,000, or both

Applies when parent of guardian gives false information to police

Massachusetts
(HB 3905)

Under age 17

Disappearance

When whereabouts unknown for 48 hours

Punishable by imprisonment for of up to five years

Under age 17

Death

Within one hour of occurrence

Punishable by (1) imprisonment for up to five years or (2) a fine of up to \$10,000 including imprisonment for up to one and a half years

Michigan
(SB 580)

Under 13 years

Disappearance

When no contact or knowledge of whereabouts for 24 hours

Felony, punishable by imprisonment for up to two years, or a fine of up to \$5,000

Provides affirmative defenses

Mississippi
(HB126)

Under age 14

Death

Within 24 hours

Circumstances that would lead a reasonable person to believe that the death occurred as a result of a crime: Felony punishable by imprisonment between one and five years and a fine of at least \$5,000

Otherwise: Misdemeanor punishable by imprisonment between 30 days

				and one year and fine of \$1,000	
	Under age 14	Disappearance	Within 24 hours	<p>Circumstances that would lead a reasonable person to believe that the child was in danger of physical danger: Felony punishable by imprisonment between one and five years and a fine of at least \$5,000</p> <p>Otherwise: Misdemeanor punishable by imprisonment between 30 days and one year and fine of \$1,000</p>	
Missouri (HB1167)	Under age 17	Disappearance	Within 24 hours	<p>If death or serious injury occurs: Class B felony, punishable by imprisonment between five and 15 years</p> <p>Otherwise: Class A misdemeanor, punishable by imprisonment up to one year or a fine up to \$1,000</p>	
	Under age 17	Death	Within one hour	Class D felony, punishable by imprisonment up to four years or a fine up to \$5,000	
Nebraska (LB 1169)	Under age 13	Disappearance or death	Within 72 hours of knowledge	Class 4 felony, punishable by imprisonment for up to five years, a fine up to \$10,000, or both	Provides affirmative defenses

<p>New Hampshire (SB271)</p>	<p>Under age 12</p>	<p>Disappearance</p>	<p>Within 24 hours</p>	<p>Misdemeanor, punishable by imprisonment up to one year or a fine up to \$2,000</p>	
	<p>Under age 12</p>	<p>Death</p>	<p>Within 12 hours</p>	<p>Class A misdemeanor</p>	
<p>New Mexico (SB13)</p>	<p>Under age 18</p>	<p>Disappearance</p>	<p>Within 24 hours</p>	<p>Misdemeanor, punishable by imprisonment between six months and one year or a fine up to \$1,000</p>	
	<p>Under age 18</p>	<p>Death</p>	<p>Within one hour</p>	<p>Misdemeanor, punishable by imprisonment between six months and one year or a fine up to \$1,000</p>	<p>Not required if the death occurred under the care of a health care professional or emergency medical personnel</p>
<p>New York (AB 596)</p>	<p>Under age 18</p>	<p>Disappearance or death</p>	<p>Within 24 hours</p>	<p>Class D felony, punishable by imprisonment for up to seven years, a fine of up to \$5,000, or both</p>	<p>Failure to report must be knowing or intentional</p>
<p>New York (AB936)</p>	<p>Under age 18</p>	<p>Disappearance or death</p>	<p>Within 24 hours</p>	<p>Class E felony, punishable by imprisonment for up to four years, or a fine of up to \$5,000, or both</p>	<p>Not required to report death if child is under the care of a health care professional or emergency medical personnel</p>
<p>Ohio (HB299)</p>	<p>Under age 17</p>	<p>Disappearance</p>	<p>Within one hour of knowledge</p>	<p>Felony of the 2nd degree, punishable by imprisonment between two and eight years, a fine up to \$15,000 fine, or both Felony of the 3rd</p>	<p>Applies if child is harmed Applies if child is unharmed</p>

				degree, punishable by imprisonment between nine and 36 months, a fine of up to \$10,000, or both	
	Under age 17	Death	Within one hour of knowledge	Felony of the 3 rd degree	
Ohio (SB203)	Under age 18	Disappearance	Child under age 13: within 24 hours Child age 13 to 17: within 48 hours	If child is harmed: felony of the 2 nd degree If child is unharmed: felony of the 3 rd degree	Applies if child is harmed Applies if child is unharmed
	Under age 18	Death	Within one hour of knowledge	Felony of the 3 rd degree	
Oklahoma (SB1721)	Under age 16	Disappearance	Within 48 hours of knowledge	Felony, punishable by imprisonment for up to 10 years	Also prohibits parent or guardian from concealing the death or disappearance of a child
	Under age 16	Death	As soon as reasonably possible	Felony, punishable by imprisonment for up to 10 years	
Oregon (HB4048)	Under age 12	Disappearance	Within 24 hours	Class C felony, punishable by imprisonment up to five years, or a fine up to \$125,000, or both	Must be under circumstances that would cause a reasonable person to believe that the child is in danger of physical harm
	Under age 12	Death	Within 24 hours	Class C felony	Must be under circumstances which would cause a reasonable person to believe that the death was a result of a crime
Pennsylvania (HB1841)	Under age 18	Death	Not specified	Felony in the 3 rd	Prohibits parent from

				by imprisonment for up to seven years	of a child
Pennsylvania (HB1842)	Under age 18	Disappearance or death	Not specified	Felony in the 3 rd degree	Also prohibits parent from falsely incriminating another or providing fictitious reports to law enforcement authorities regarding child
South Carolina (H4442)	Under age 18	Disappearance or death	Within 24 hours	Felony, punishable by up to five years imprisonment	
	Under age 18	Unspecified	Unspecified	Felony, punishable by up to five years imprisonment	Applies when parent or guardian gives false information to police with the intent to obstruct, delay, prevent, or impede the investigation of the death or disappearance of the child
South Dakota (SB 43)	Under age 14	Disappearance	Within 48 hours of knowledge	Class 1 misdemeanor, punishable by imprisonment for up to one year, a fine of up to \$2,000, or both	
	Under age 18	Death	Within six hours of knowledge	Class 5 felony, punishable by imprisonment for up to five years and a fine of up to \$10,000	
Tennessee (SB 2123)	Under age 18	Disappearance	Within 24 hours of knowledge	Class E felony, punishable by imprisonment for between one and six years and a fine of up to \$3,000	

Vermont (S124)	Under age 18	Disappearance	Within 24 hours or as soon thereafter as reasonably practicable	Punishable by imprisonment up to five years, a fine up to \$10,000, or both	
	Under age 18	Death	Within two hours or as soon thereafter as reasonably practicable	Punishable by imprisonment up to five years, or a fine up to \$10,000, or both	Not required if the child dies at a health care facility or while under the care of a health care provider
Virginia (HB494)	Under age 18	Death	Within one hour	Class 6 felony, punishable by imprisonment for up to five years, a fine of up to \$2,500, or both	Not required to report death if child is under the care of a health care provider
Washington (HB2726)	Under age 13	Disappearance	Within 48 hours	Gross misdemeanor, punishable by imprisonment up to one year, or a fine of \$5,000, or both	
	Under age 18	Death	Within 6 hours	Class C felony, punishable by imprisonment up to five years, or a fine of \$10,000, or both	
West Virginia (HB4242)	Under age 18	Disappearance	Within 24 hours of knowledge, or within 12 hours of knowledge if disappearance creates a substantial risk of serious bodily injury or death	Child under age 12: felony, punishable by imprisonment of between one and five years and a fine up to \$3,000 Child ages 12 to 17: misdemeanor, punishable by imprisonment for up to one year, a fine of between \$100 and \$500, or both	If failure to report is for the purpose of concealing a criminal act or activity, penalty is a felony, punishable by imprisonment of between three and 13 years and a fine of between \$1,000 and \$5,000
Wisconsin (SB299)	Under age 13	Disappearance	Within 24 hours	If the child dies: Class D felony, punishable by imprisonment up	

Age 16-17	Disappearance	Within 72 hours	<p>to 20 years, a fine up to \$100,000, or both</p> <p>If the child suffers an injury that causes a permanent disfigurement</p> <p>or results in a permanent or protracted loss or impairment of a bodily function: Class F felony, punishable by imprisonment up to 12 years and six months, a fine up to \$25,000, or both</p> <p>If the child suffers pain or an injury such as a broken bone or one that requires stitches: Class H felony, punishable by imprisonment up to six years, a fine up to \$10,000, or both</p> <p>If the child is unharmed: Class A misdemeanor, punishable by imprisonment up to nine months, a fine up to \$10,000, or both</p>	
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Source: State Legislatures' websites and official statutes

HD/MR:km

Karls, Karen

From: Annette Bendish <annette.bendish@ndsba.org>
Sent: Tuesday, April 02, 2013 10:03 AM
To: Koppelman, Kim A.; Klemin, Lawrence R.; Boehning, Randy G.; Brabandt, Roger L.; Delmore, Lois M.; Hanson, Ben W.; Hogan, Kathy L.; Karls, Karen; Kretschmar, William E.; Larson, Diane K.; Maragos, Andrew G.; Paur, Gary A.; Steiner, Vicky L.; Toman, Nathan P.
Cc: Martinson, Jon; Annette Bendish
Subject: Proposed amendment to Senate Bill 2125
Attachments: Proposed amendment to SB 2125 2.docx

As you requested, attached is the proposed amendment language.

I have also pasted the language of the compulsory attendance law below.

Thank you for your consideration.

Annette

Annette Bendish

North Dakota School Boards Association
800-932-8791
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15.1-20-03. Compulsory attendance law - Enforcement - Penalty.

1. Each teacher and administrator is charged with the enforcement of compulsory attendance provisions. The compulsory attendance provisions are applicable to any student who is offered school facilities by a school district, regardless of whether or not the student actually resides in the district.
2. If a teacher determines that a student is not in attendance as required by this chapter and that the student has not been excused in accordance with this chapter or in accordance with the school district's or nonpublic school's policies, the teacher shall notify the administrator of the school.
3. Upon receiving notice of a student's absence under subsection 2, the administrator shall initiate an investigation into the cause of the absence. If the administrator has reason to believe that the person having responsibility for the student has failed to ensure that the student is in attendance, the administrator shall refer the matter to the local law enforcement agency.
4. Any person who fails to ensure that a student is in attendance as required by this chapter is guilty of an infraction for a first offense and is guilty of a class B misdemeanor for a second or subsequent offense.
5. In a prosecution for an offense under this section, it is an affirmative defense if the person responsible for ensuring that the student is in attendance has made substantial and reasonable efforts to comply with the requirements of this section, but is unable to compel the student to attend school. If the court determines that the affirmative defense is valid, the court shall dismiss the complaint against the person.