

2015

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Recommended Citation

Catrocho, Daniel P., "Do You Know Where your Children Are? Caylee's Law and a Parent's Fifth Amendment Privilege Against Self-Incrimination" (2015). *Law School Student Scholarship*. 815.
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**DO YOU KNOW WHERE YOUR CHILDREN ARE? CAYLEE’S LAW AND A PARENT’S FIFTH
AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION**
Daniela Catrocho*

I. INTRODUCTION

*“I desire the law may punish not make offenders,
I desire that our words and actions may be subject to the law;
I would have thought free.”¹*

Caylee’s Laws came into fruition after the much-publicized 2011 murder trial of Casey Anthony, a Florida mother accused of murdering her two-year-old daughter, Caylee, and lying to police about Caylee’s whereabouts after Caylee had gone missing for thirty-one days.² On July 5, 2011, Anthony was acquitted of murder and found guilty of lying to police.³ Shortly after the verdict was read, public outcry sparked Caylee’s Law legislation throughout the nation.⁴ Since the push for this legislation began over two years ago, twelve states have enacted or revised legislation as Caylee’s Law, with a number of other states still proposing Caylee’s Laws.⁵ As a

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¹ JOHN MACARTHUR MAGUIRE, EVIDENCE OF GUILT: RESTRICTIONS UPON ITS DISCOVERY OR COMPULSORY DISCLOSURE 33 (1959) (quoting from M.H. Maguire’s *Attack of the Common Lawyers on the Oath Ex Officio*, as administered in the Ecclesiastical Courts in England, c. 7 of *Essays in History and Political Theory in Honor of Charles Howard McIlwain*).

² *Casey Anthony Trial: Timeline of Key Events in the Murder Trial of the Florida Mother*, ABC NEWS (July 6, 2011), <http://abcnews.go.com/US/casey-anthony-trial-timeline-key-events/story?id=13990853>.

³ *Id.*

⁴ Mikaela Conley, *Publicirate Over Casey Anthony Verdict*, ABC NEWS (July 5, 2011), <http://abcnews.go.com/Health/casey-anthony-verdict-outrage-spills-online/story?id=14002257>; *Showbiz Tonight: The Worldwide Outrage Over Casey Anthony* (CNN television broadcast July 8, 2011), available at <http://transcripts.cnn.com/TRANSCRIPTS/1107/08/sbt.01.html>; Elizabeth Flock, *Casey Anthony Verdict Sparks Campaign for “Caylee’s Law,”* WASHINGTON POST BLOG (July 6, 2011, 10:06 AM), http://www.washingtonpost.com/blogs/blogpost/post/casey-anthony-verdict-sparks-campaign-for-caylees-law/2011/07/06/gIQAbjHX0H_blog.html. See also *Caylee’s Law*, FACEBOOK, <https://www.facebook.com/CreateCayleesLaw> (last visited Sept. 21, 2013).

⁵ ALA. CODE § 13A-13-8 (2013); CAL. PENAL CODE § 273j (West 2013); CONN. GEN. STAT. § 53-21a (2012); DEL. CODE ANN. tit. 11 § 1102 (2012); FLA. STAT. § 837.055 (2012); 720 ILL. COMP. STAT. 5/10-10 (2013); KAN. STAT. ANN. § 21-5904 (2013); LA. REV. STAT. ANN. § 14:403.7 (2012); LA. REV. STAT. ANN. § 14:403.8 (2012); N.J. STAT. ANN. § 52:17B-89 (West 2012); N.J. STAT. ANN. § 2C:12-1.3 (WEST 2012); N.C. GEN. STAT. ANN. § 14-318.5

result of these laws, parents can be prosecuted for failing to report the death or disappearance of their child within a certain time period.⁶ The time periods vary from state to state, usually according to a child's age.⁷

Since their inception in 2012, Caylee's Laws have sparked numerous debates. Proponents of these laws argue that the law will prevent similar crimes in the future, giving states another tool to prosecute neglectful parents who cannot otherwise be charged with abuse or murder because of a lack of evidence.⁸ Opponents of this law argue that Caylee's Law will not prevent child deaths.⁹ There is also intense debate over whether these laws are constitutional under the Fifth Amendment privilege against self-incrimination.¹⁰

This Note surveys Caylee's Laws in several states and explores a few issues with the laws, with a focus on the law's infringement of a parent's constitutional right against self-incrimination. This Note argues that Caylee's laws violate the Fifth Amendment right against self-incrimination, and states should tweak Caylee's Law to include a use immunity clause that would provide protection for parents against self-incrimination. Part II lays out the history of Caylee's Law, beginning with an overview of the *State of Florida v. Casey Marie Anthony* case and its controversial outcome that became the social media catalyst for these laws. Part III

(West 2013); S.D. CODIFIED LAWS § 22-11-37 (2012); WIS. STAT. ANN. § 948.23 (Wis. 2012). *See, e.g.*, 2015 N.Y. Assembly Bill No. 2835 (Jan. 20, 2015); 2015 Miss. House Bill No. 295 (January 12, 2015).

⁶ Jon Kuhl & Rich Williams, *Caylee's Law*, STATE LEGISLATURES, Feb. 2012 ed. at 9, available at <http://www.ncsl.org/bookstore/state-legislatures-magazine/trends-february-2012.aspx#4>. *See infra* Part II.

⁷ *See infra* Part II.

⁸ Laura Riparbelli, *Casey Anthony Trial Aftermath: "Caylee's Law" Drafted in Four States*, ABC NEWS (July 7, 2011), <http://abcnews.go.com/US/casey-anthony-trial-aftermath-caylee-law-drafted-states/story?id=14020260>; *Caylee's Law Report*, RENEWAL FORUM (Jan. 9, 2013), <http://renewalforum.org/wp-content/uploads/Caylees-Law-Report.pdf>; Kim Chandler, *Caylee's Law Becomes Law in Alabama*, AL.COM BLOG (June 10, 2013, 2:11 PM), http://blog.al.com/wire/2013/06/caylees_law_becomes_law_in_ala.html; *See also* Camille Kimball, *Caylee's Law is about Tools, Not Tricks*, CAMILLE KIMBALL BLOG (July 23, 2011, 8:27 PM), <http://camillekimball.blogspot.com/2011/07/caylees-law-is-about-tools-not.html>.

⁹ Jenny Carroll, Op-Ed., *Now There's Caylee: Laws of Good Intention*, THE RECORD (N.J.), July 17, 2011, http://www.northjersey.com/news/opinions/caylee_071711.html.

¹⁰ *Id.*

examines the various approaches states have taken when adopting Caylee’s Law in the three areas of reporting deadlines, age limitations, and penalties. Part IV briefly reviews pending legislation and a few debates regarding the laws, settling on the Fifth Amendment issue. This Note also discusses North Carolina’s adoption of the use immunity clause in its Caylee’s Law pertaining to reporting a missing child. Finally, Part V argues that Caylee’s Law violates Fifth Amendment rights against self-incrimination and that states should redraft the laws to include immunity clauses, similar to North Carolina. Using North Carolina as the prototypical statute, states should incorporate immunity clauses in their Caylee’s laws pertaining to reporting requirements for missing *and* deceased children, to protect parents and other innocent reporters from unjustifiable prosecution. For purposes of this Note, the “innocent reporter” is one who is presumably not responsible for the underlying offense that caused the child’s demise, but is guilty of violating the requirements under Caylee’s Law.

II. THE ORIGINS OF CAYLEE’S LAW

The first part of this section discusses the case of *State of Florida v. Casey Marie Anthony*, whose verdict was the catalyst for Caylee’s Law. When the case began, it quickly became referred to as the “Trial of the Twenty-First Century,” with an attractive young mother and her doe-eyed child captivating the nation.¹¹ Part B concludes this section, addressing the social media push that occurred after the trial verdict was announced, urging state legislatures to make it illegal to fail to report a missing child within a timely period.

A. *The Trial of the Twenty-First Century: State of Florida v. Casey Marie Anthony*

Casey Anthony was just another young, single mother of a beautiful bright-eyed, two-year-old girl named Caylee, who was born on August 9, 2006. All of this changed on July 15,

¹¹ See Drew Iden, *Casey Anthony: Trial of the Century*, HLNTV.COM (March 7, 2012, 9:19 PM), <http://www.hlntv.com/article/2011/07/05/casey-anthony-trial-century>.

2008, when Cindy Anthony, Casey's mother (and Caylee's grandmother), frantically called 9-1-1 to report that her granddaughter had been missing since June 15, 2008 and that Casey's car smelled like "a dead body ha[d] been in the damn car."¹² Casey would later admit to police that she had not seen her daughter for thirty-one days.¹³

For the next several days, Casey proceeded to tell police stories of her daughter's whereabouts, all of which turned out to be lies.¹⁴ Casey lied about whom her daughter was with for the past thirty-one days, where she worked, and who her co-workers were.¹⁵ These lies severely impeded the investigation, as Casey led police on a wild goose chase to places where she no longer worked or to see people she did not know, or did not in fact exist.¹⁶ Several days into the investigation of Caylee's disappearance, Casey was arrested for lying to law enforcement and charged with child neglect, both minor charges.¹⁷ Casey originally insisted to police that a fictitious babysitter named Zenaida Gonzalez took Caylee.¹⁸ However, before the trial began, Casey's defense settled on a new theory that Caylee had drowned in the family pool and Casey's father, George Anthony, was responsible for disposing of his granddaughter's body.¹⁹

¹² JOSE BAEZ & PETER GOLENOCK, PRESUMED GUILTY CASEY ANTHONY: THE INSIDE STORY 9 (2012); JEFF ASHTON, IMPERFECT JUSTICE: PROSECUTING CASEY ANTHONY 20 (2011). See also *Casey Anthony Trial: Transcript of 911 Call*, 10 NEWS TAMPA (May 31, 2011, 1:06 PM), <http://www.wtsp.com/news/local/story.aspx?storyid=194785> (transcript of 911 call placed by Cindy Anthony reporting Caylee Anthony's disappearance).

¹³ ASHTON, *supra* note 12 at 22.

¹⁴ Jessica Hopper, *Listen to Casey Anthony's Top Ten Lies*, ABC NEWS (June 2, 2011), http://abcnews.go.com/US/casey_anthony_trial/casey-anthony-top-ten-lies/story?id=13742643.

¹⁵ ASHTON, *supra* note 12 at 32-41, 43-60. (Casey stated several times in the early stages of the investigation that Caylee was with a fictitious nanny named Zenaida Gonzalez and led police to Gonzalez's apartment before admitting Gonzalez did not exist; Casey also lied about working at Universal Studios, and told police she had confided in co-workers that did not exist at Universal).

¹⁶ ASHTON, *supra* note 12 at 55.

¹⁷ BAEZ, *supra* note 12 at 23. See *Casey Anthony Trial*, *supra* note 2.

¹⁸ BAEZ, *supra* note 12 at 10.

¹⁹ BAEZ, *supra* note 12 at 176.

Tragically, Caylee's remains were found in a swamp near the Anthony family home in December 2008, nearly six months after Caylee disappeared.²⁰ Casey Anthony was subsequently charged with first-degree murder, aggravated child abuse, aggravated manslaughter and providing false information to law enforcement.²¹ The defense requested a continuance the day the body was found, to properly sift through discovery and allow both sides to prepare an adequate case, thereby waiving their client's right to a speedy trial.²² Anthony's trial began May 9, 2011, and lasted through mid-summer, with "Tot-Mom" at the center of the most riveting trial this nation had seen since O.J. Simpson's murder trial in 1995.²³

The prosecution sought the death penalty, theorizing that Casey drugged Caylee with chloroform, suffocated her with duct tape, and placed Caylee's body in the trunk of her car for some time until she disposed of Caylee's body in a swamp area.²⁴ Ultimately, the prosecution failed to prove the murder, child abuse, and manslaughter charges because they lacked evidence of the manner in which Caylee actually died.²⁵ On July 5, 2011, after less than eleven hours of jury deliberation, Casey Anthony was acquitted of first-degree murder, manslaughter, and aggravated child abuse.²⁶ The jury did, however, convict her of four counts of "providing false

²⁰ ASHTON, *supra* note 12 at 137. See *Casey Anthony Trial*, *supra* note 2.

²¹ Indictment, State of Florida v. Casey Marie Anthony, No. 48-2008-CF-010925, 2008 WL 8589437 at 1 (Fl. Cir. Ct. Oct. 14, 2008); Anthony v. State, 108 So. 3d 1111 (Fla. Dist. Ct. App. 2013), reh'g denied (Mar. 25, 2013).

²² BAEZ, *supra* note 12 at 112; ASHTON, *supra* note 12 at 135.

²³ Anthony Colarossi, *Why Did Casey Anthony Case Rivet Us?*, ORLANDO SENTINEL (July 9, 2011), http://articles.orlandosentinel.com/2011-07-09/news/os-casey-anthony-what-it-means-20110708_1_casey-anthony-bella-vita-tattoo-body-language-expert-and-jury; Chris Rovzar, *Nancy Grace Explains What the Heck "Tot Mom" Means*, NEW YORK MAG. BLOG (July 12, 2011), http://nymag.com/daily/intelligencer/2011/07/nancy_grace_explains_what_the.html (Nancy Grace explained her reason for dubbing Casey Anthony "Tot Mom" was to provide a short name for viewers to see below the television screens and know what topic Grace was covering during her show.); *Casey Anthony Trial*, *supra* note 2.

²⁴ ASHTON, *supra* note 12 at 158-172.

²⁵ BAEZ, *supra* note 12 at 306 (noting the jury's reason for a not-guilty verdict).

²⁶ ASHTON, *supra* note 12 at 4.

information to law enforcement,” misdemeanors under Florida law carrying penalties of one year imprisonment per count.²⁷

B. The Social Media Push for Caylee’s Law

The day the verdict was announced, a Facebook page dedicated to Caylee Anthony inspired an Oklahoma woman, Michelle Crowder, to start a petition to push state legislatures to enact Caylee’s Law.²⁸ Crowder started her petition on Change.org, a public online petition platform that is used to instigate social change worldwide.²⁹ Crowder’s petition was so successful that, two days after the verdict, it “garner[ed] more than 250,000 signatures in less than 36 hours.”³⁰ The proposed Caylee’s Law would make it a felony for parents failing to report the death or disappearance of a child within a certain time period.³¹ Until January 2014, Crowder’s petition was the most successful petition on Change.org, attracting signatures every few hours, and spawning numerous other petitions dedicated to individual states.³²

²⁷ *Casey Anthony Trial*, *supra* note 2.

²⁸ *News9: Oklahoma Woman Creates Online Petition for Caylee’s Law* (News9 Oklahoma television broadcast July 6, 2011), available at <http://www.news9.com/story/15034710/oklahoma-woman-creates-campaign-for-caylees-law>; See also Michelle Crowder, *Create Caylee’s Law*, CHANGE.ORG, <http://www.change.org/petitions/create-caylee-s-law-3> (last visited Sept. 21, 2013) (hereinafter *Crowder*); *Caylee’s Law Facebook*, *supra* note 4.

²⁹ *About*, CHANGE.ORG, <https://www.change.org/about> (last visited March 1, 2014).

³⁰ Nina Mandell, *Caylee’s Law Petition Goes Viral*, N.Y. DAILY NEWS (July 7, 2011, 2:06 PM), <http://www.nydailynews.com/news/national/caylee-law-petition-viral-250-000-signatures-casey-anthony-verdict-article-1.160927>; Chloe Stepney, *Caylee’s Law Petition Drive*, CHRISTIAN SCIENCE MONITOR (July 7, 2011), <http://www.csmonitor.com/USA/Justice/2011/0707/Caylee-s-Law-petition-drive-Do-missing-child-laws-need-to-change>.

³¹ *Crowder*, *supra* note 28.

³² *Popular Petitions*, CHANGE.ORG, <https://www.change.org/petitions#all-time> (last visited Jan. 29, 2014) (Crowder’s petition ranked number one). See *Crowder*, *supra* note 26; Search for ‘Caylee’s Law,’ CHANGE.ORG, <https://www.change.org/search?utf8=%E2%9C%93&q=caylee%27s+law> (last visited on Jan. 29, 2014) (a search on Change.org for ‘Caylee’s Law’ yields over ten pages of petitions from different states, including Texas, Wisconsin, Montana, New York, and Georgia).

The petition for Caylee’s Law is not the first time social media has been utilized to mobilize legislatures. For example, television host Jon Stewart was instrumental in Congress passing the 9/11 Health Act, and Lady Gaga used Twitter and YouTube to push for the repeal of the “Don’t Ask Don’t Tell” policy in the military.³³ Like these other social media momenta, the Caylee’s Law petition has played a significant role in getting state legislatures to enact Caylee’s Law since 2012.³⁴

III. STATE APPROACHES TO CAYLEE’S LAW

Since the end of the Anthony trial in 2011, and as a result of the vast social push discussed in the previous section, twelve states have enacted Caylee’s laws and twenty-six others have proposed legislation.³⁵ Although Caylee’s laws serve the same purpose—to charge a parent or caregiver with a felony for failing to report the disappearance or death of a child—the terms vary from state to state in several respects. The most significant differences occur in three areas: a) reporting deadlines, b) applicability of a child’s age, and c) the penalties imposed on someone who fails to comply with the law. This section surveys the various ways states have handled these areas in their respective Caylee’s law.

A. Reporting Deadlines

³³ Onika Williams, *How Jon Stewart and Lady Gaga Made Congress Less Lame: The Impact of Social Media on the Passage of Bills Through the “Lame Duck” Session of the 111th Congress and Beyond*, 87 IND. L.J. SUPP. 17, 18-22 (2012).

³⁴ See e.g., Laura Riparbelli, *Casey Anthony Trial Aftermath: Caylee’s Law Drafted in Four States*, ABC NEWS (July 7, 2011), <http://abcnews.go.com/US/casey-anthony-trial-aftermath-caylee-law-drafted-states/story?id=14020260> (Oklahoma Rep. Paul Wesselhoft stated that, “the petition, created by Michelle Crowder . . . caught his eye and the eyes of his constituents”).

³⁵ Mark Randall & Hendrick deBoer, “*Caylee’s Law*”: *Legislation in Other States*, OLR RESEARCH REPORT 2012-R-0130 (March 19, 2012) available at <http://www.cga.ct.gov/2012/rpt/2012-R-0130.htm>. See also, 2015 N.Y. A.B. Bill 2835 (Jan. 20, 2015); 2015 Miss. House Bill No. 295 (January 12, 2015) (Caylee’s Law legislation proposed in 2015 not included in the OLR Report).

All but three Caylee's laws have explicit reporting deadlines – a specific timeframe in which a named actor is required to report a child missing or dead.³⁶ Most states require that missing children be reported within twenty-four hours.³⁷ A minority of states, however, have a forty-eight hour reporting deadline in their Caylee's Law for reporting a missing child.³⁸ Louisiana requires caretakers of children under age thirteen to report a missing child within a two-hour window after that child has been missing for twelve hours.³⁹ Wisconsin requires caretakers to report children under eighteen within seventy-two hours, but has incrementally smaller timeframes for children under ages sixteen and thirteen respectively.⁴⁰

The Caylee's law reporting deadlines have caused heated debate in some state legislatures, including New Jersey.⁴¹ The New Jersey State Assembly debated *when* the appropriate time is for a parent should report a missing or dead child.⁴² In determining that twenty-four hours was appropriate, the Law and Public Safety Committee considered situations, for instance, when a ten-year-old heads down the street to a friend's house, a parent would not necessarily know that the child is missing until perhaps much later than twelve hours.⁴³

³⁶ See ALA. CODE § 13A-13-8 (2013); DEL. CODE ANN. tit. 11, § 1102 (West 2012); FLA. STAT. ANN. § 837.055 (West 2012) (Alabama, Delaware and Florida do not have any reporting requirements in their Caylee's Law).

³⁷ CAL. PENAL CODE § 273j (West 2013); CONN. GEN. STAT. ANN. § 53-21a(d) (West 2012); 720 ILL. COMP. STAT. 5./10.-10. (2013); N.J. STAT. ANN. § 52:17B-89 (West 2012); N.C. GEN. STAT. ANN. § 14-318.5 (West 2013). See WIS. STAT. ANN. § 948.23(b)(1) (Wis. 2012) (twenty-four hour requirement applies to a child under age 13).

³⁸ S.D. CODIFIED LAWS § 22-11-37 (2012). See WIS. STAT. ANN. § 948.23(b)(2) (Wis. 2012) (forty-eight hour requirement applies to a child between 13-16 years old).

³⁹ LA. REV. STAT. ANN. § 14:403.7 (2012) (the timeframe increases to twenty-four hours for children over age thirteen).

⁴⁰ WIS. STAT. ANN. § 948.23(b)(1) (Wis. 2012).

⁴¹ See e.g., *Hearing on Caylee's Law Before the Assemb. Comm. on Law and Pub. Safety*, 2010-2011 Leg., 214th Sess. 1 (N.J. 2011, 7:00), available at http://www.njleg.state.nj.us/MEDIA/OLS_MEDIA_PLAYER.HTM?wma=!{A}http://rmsserver.njleg.state.nj.us/internet/2011/ALP/1208-0200PM-M0-1.wma! (twelve hours was the originally proposed timeframe in New Jersey's Caylee's Law) (hereinafter *NJ Public Safety Hearing*).

⁴² *Id.*

⁴³ *Id.* *NJ Public Safety Hearing*, *supra* note 41.

New Jersey already had a similar law in place where parents who failed to report the death or disappearance of a child could be charged with disorderly persona conduct, a misdemeanor.⁴⁴ Its Caylee’s Law, however, added the twenty-four hour notice requirement to the existing reporting law, which New Jersey Assemblyman John McKeon hoped would give children a “better chance at being found,” despite admitting that, “we would never know whether this timeframe would have made a difference [for] Caylee. . . .”⁴⁵

Florida, Alabama and Delaware took a different approach by not including a reporting deadline within their Caylee’s laws.⁴⁶ Florida’s law, for example, was the result of much consideration over the unintended consequences of setting time limits to report a child’s death and disappearance.⁴⁷ The State Senate instead amended the existing Florida statute on providing false information to law enforcement, and decided against including a timeframe when parents are required to report.⁴⁸ Florida Senator Joe Negron expressed concern that setting a timeframe for reporting would confuse parents.⁴⁹ The result was a “watered-down” version of the law that settled the state’s legislative debates.⁵⁰

⁴⁴ N.J. STAT. ANN. § 52:17B-89 (West 1968); Randall & DeBoer, *supra* note 35. See Assoc. Press, *In Wake of Casey Anthony Trial, N.J. Lawmakers Push Caylee’s Law*, THE STAR LEDGER (July 12, 2011, 7:01 AM), http://www.nj.com/news/index.ssf/2011/07/in_wake_of_casey_anthony_trial.html (a disorderly person is a misdemeanor in New Jersey).

⁴⁵ Stacy Proebstle, *Gov. Christie Signs Caylee’s Law*, N.J. 101.5.COM (Jan. 9, 2012, 3:22 PM), <http://nj1015.com/governor-christie-signs-caylees-law>. See also *NJ Public Safety Hearing*, *supra* note 41.

⁴⁶ ALA. CODE § 13A-13-8 (2013); DEL. CODE ANN. tit. 11, § 1102 (West 2012); FLA. STAT. ANN. § 837.055 (West 2012); See KAN. STAT. ANN. § 21-5904 (2013) (Kansas’ timeframe is cited only as “promptly” rather than specific hours).

⁴⁷ Assoc. Press, *States’ Efforts to Enact ‘Caylee’s Laws’ Garner Support, Controversy*, FOX NEWS (Dec. 26, 2011), <http://www.foxnews.com/politics/2011/12/26/states-efforts-to-enact-caylees-laws-garner-support-controversy>.

⁴⁸ STAFF OF FLA. S. CRIMINAL JUSTICE COMM., *Bill Analysis and Fiscal Impact Statement for S.B. 858*, 114th Leg., Reg. Sess. (Jan. 3, 2012) available at <http://www.flsenate.gov/Session/Bill/2012/0858/Analyses/2012s0858.pre.cj.PDF>. See also STAFF OF FLA. H.R. JUSTICE APPROP. COMM., *H.R. Staff Analysis for H.B 37*, 114th Leg., Reg. Sess. (Feb. 14, 2012) available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0037c.JUAS.DOCX&DocumentType=Analysis&BillNumber=0037&Session=2012>.

⁴⁹ Dara Kam, *House Unanimously Passes Watered- Down Caylee’s Law*, POST ON POLITICS (Feb. 29, 2012), <http://postonpolitics.blog.palmbeachpost.com/2012/02/29/house-unanimously-passes-watered-down-caylees-law/>.

Similarly, Alabama representatives cited the importance of preserving evidence as one of the reasons for not including a specific timeframe in Caylee’s law.⁵¹ Delaware’s law was a result of revamping the existing child endangerment statute by adding “failing to report a missing child,” to the present section pertaining to child abuse.⁵² Legislators in Delaware felt that adding this language to the existing law was sufficient to “clear[] up any ambiguity about whether a parent must report a missing child as soon as possible.”⁵³

Reporting deadlines in Caylee’s Law also vary for reporting a deceased child. For example, in Illinois and Louisiana, a child’s death must be reported within one hour, while South Dakota has a six-hour window.⁵⁴ In South Dakota, the timeframe does not apply to healthcare providers or facilities.⁵⁵ Similar to South Dakota’s law, Louisiana’s Caylee’s Law requires that a caretaker report the death of a child under age seventeen within one hour of discovery, as long as that child is within the caretaker’s physical care.⁵⁶ Illinois’ reporting requirements drop to one hour for missing children under age two, but remain a twenty-four hour requirement for children over age two.⁵⁷ Alternatively, Wisconsin requires that a child’s death be reported immediately.⁵⁸ Supporters of Caylee’s Law have argued that reporting deadlines are crucial for increasing a

See also ‘Caylee’s Law’ Bill Strikes a Proper Balance, THE DAYTONA BEACH NEWS-JOURNAL (March 1, 2012, 5:30 AM), <http://www.news-journalonline.com/article/20120301/ARTICLES/303019961/0/SEARCH?p=2&tc=pg>.

⁵⁰ Kam, *supra* note 49.

⁵¹ *Alabama Gov. Robert Bentley signs Caylee’s Law*, WRBL.COM (June 11, 2013, 4:02 PM), <http://www.wrbl.com/story/22555764/alabama-gov-robert-bentley-signs-caylees-law>.

⁵² DEL. CODE ANN. tit. 11 § 1102(a)(1)(b) (West 2012).

⁵³ *Bipartisan Bill Would Strengthen Missing Child Reporting Laws*, NEWARK POST ONLINE (Jan. 27, 2012, 12:11 PM) http://www.newarkpostonline.com/news/article_f58db83e-4909-11e1-81f3-0019bb2963f4.html.

⁵⁴ 720 ILL. COMP. STAT. 5/10-10 (2013) (the one hour timeframe applies to children under age two); LA. REV. STAT. ANN. § 14:403.8(A) (2012); S.D. CODIFIED LAWS § 22-11-38 (2012).

⁵⁵ *See* S.D. CODIFIED LAWS § 22-11-38 (2012).

⁵⁶ LA. REV. STAT. ANN. § 14:403.8 (2012).

⁵⁷ 720 ILL. COMP. STAT. 5/10-10 (2013).

⁵⁸ WIS. STAT. ANN. § 948.23 (West. 2012).

missing child's chances of recovery, and preserving evidence where a child is found dead.⁵⁹ Information leading to the discovery of a deceased child allows for crime scene evidence to be preserved; where a missing child is concerned, every hour affects that child's safety and rescue efforts.⁶⁰ The 2011 national statistics for missing children illustrate that over forty-six percent of abducted children were murdered within the first hour after abduction and that likelihood increases as more time passes.⁶¹ Supporters of the reporting requirement in Caylee's Law claim that it addresses this increased likelihood of preventing child murders from occurring if that child's disappearance is reported in a timely manner. However, most Caylee's laws require reporting a missing child within twenty-four hours, which opponents argue will not prevent most child murders.⁶²

Opponents of Caylee's Law also have posited that custody arrangements in divorced or separated families can further complicate reporting a child missing within these proscribed deadlines. Some Caylee's Laws require custodial parents to report a missing child within a specific timeframe, and as Steve Chapman points out, that becomes problematic when "a divorced dad [is] . . . tardy returning the kids from a weekend outing."⁶³ These custody

⁵⁹ *Verdict Spurs Talk of Caylee's Law*, WKMG LOCAL 6 (Oct. 3, 2011, 3:14 PM), <http://www.clickorlando.com/news/Verdict-Spurs-Talk-Of-Caylee-s-Law/-/1637132/1931908/-/xukeau/-/index.html>.

⁶⁰ *Caylee's Law Fills a Gap in Missing Children Laws*, LAWYERS.COM, <http://criminal.lawyers.com/Criminal-Law-Basics/Caylees-Law-Fills-a-Gap-in-Missing-Children-Laws.html> (last visited Sept. 21, 2013); Deborah Highland, *Local Officials Voice Support For Proposed "Caylee's Law"*, BOWLING GREEN DAILY NEWS (Mar. 16, 2012), http://www.bgdailynews.com/news/local-officials-voice-support-for-proposed-caylee-s-law/article_289e9fc8-8e78-5209-9a9c-815ad2e3c4ca.html?mode=jqm.

⁶¹ OFFICE OF JUV. J. AND DELINQUENCY PREV., *Investigative Case Management for Missing Children Homicides: Report II, No. 98-MC-CX-0001, Op. Att'y Gen. Wash. 14 (2006) available at* [http://www.atg.wa.gov/uploadedFiles/Another/Supporting_Law_Enforcement/Homicide_Investigation_Tracking_System_\(HITS\)/Child_Abduction_Murder_Research/CMIIIPDF.pdf](http://www.atg.wa.gov/uploadedFiles/Another/Supporting_Law_Enforcement/Homicide_Investigation_Tracking_System_(HITS)/Child_Abduction_Murder_Research/CMIIIPDF.pdf) (hereinafter *Delinquency Report*); *Verdict Spurs Talk of Caylee's Law*, *supra* note 59.

⁶² *Delinquency Report*, *supra* note 61 at 13 (88.5% of abducted children are murdered within twenty-four hours).

⁶³ Steve Chapman, *The Dangers of Caylee's Law*, REASON.COM (July 18, 2011), <http://reason.com/archives/2011/07/18/the-dangers-of-caylees-law>; Op-Ed., *Courtney, Cozzie and Caylee*, NORTHWEST FLORIDA DAILY NEWS, *available at* <http://www.creators.com/opinion/daily-editorials/courtney-cozzie->

arrangements could cause unwanted results under Caylee’s Law. For example, an ex-wife, as the custodial parent, could be prosecuted for not reporting her children missing if they were in their father’s care at the time of their disappearance.⁶⁴

So far, seven states have adopted the more common twenty-four hour timeframe for reporting under Caylee’s Law, but a minority of states has declined to include any reporting timeframe at all. These differing approaches discussed in this section reflect the debates that state legislatures grappled with when initially crafting the laws. The next section will consider another area of Caylee’s Law that challenged state legislatures: age limitations for applicability.

B. Age Limitations of Caylee’s Law

In addition to the reporting requirements, state legislatures had to determine the appropriate age of a child where Caylee’s Law would apply to their parent. Caylee’s laws only apply to parents of children of a certain age, best categorized into three groups: “thirteen years and under,” “thirteen to sixteen,” and “under eighteen” years of age. This section surveys the three different age groups that states have identified in their Caylee’s laws.

A majority of states have included age limitations in Caylee’s Law at or below age thirteen.⁶⁵ For example, Caylee’s Law in New Jersey now requires parents of children under age thirteen to report a missing child within twenty-four hours.⁶⁶ Louisiana’s Caylee’s Law follows this approach, where there is a two-hour window to report the child missing after they have

and-caylee.html (last visited Sept. 21, 2013). . See ALA. CODE § 13A-13-8 (2013) (a parent with legal custody is required to report a missing child).

⁶⁴ Marie Owens, *Caylee’s Law Drafted to Protect Parents and Missing Children*, IT’S A MYSTERY TO ME! (Sept. 18, 2011), <http://itsamysterytome.wordpress.com/2011/09/18/caylees-law-drafted-to-protect-parents-and-missing-children>; See also Op-Ed., *Caylee’s Law Will Protect Politicians*, THE EXPRESS TIMES (PA.) July 15, 2011, http://www.lehighvalleylive.com/opinion/index.ssf/2011/07/opinion_caylees_law_will_prote.html.

⁶⁵ CONN. GEN. STAT. ANN. § 53-21a (West 2012); 720 ILL. COMP. STAT. 5/10-10 (2013); KAN. STAT. ANN. § 21-5904 (2013); N.J. STAT. ANN. § 52:17B-89 (West 2012); S.D. CODIFIED LAWS § 22-11-37 (2012). See WIS. STAT. ANN. § 948.23 (West. 2012).

⁶⁶ N.J. STAT. ANN. § 2C:12-1.3 (West 2012). See also CAL. PENAL CODE § 273j (West 2013); CONN. GEN. STAT. ANN. § 53-21a (West 2012); N.C. GEN. STAT. ANN. § 14-318.5 (West 2013) (California, Connecticut, and North Carolina’s Caylee’s Laws also have twenty-four hour reporting requirements).

already been missing for twelve hours.⁶⁷ However, in Louisiana, children over age thirteen need to be reported missing within twenty-six hours after their disappearance.⁶⁸ Connecticut's law applies to children under age twelve.⁶⁹ Similarly, South Dakota also punishes parents, caretakers or guardians who fail to report the disappearance of a child under the age of thirteen."⁷⁰ The South Dakota Association of Criminal Defense Lawyers heavily opposed South Dakota's law, citing concerns that the bill was too broad and could create unintended consequences.⁷¹ The Association emphasized that minors under age thirteen often run away from home, and Caylee's Law could lead to parents being prosecuted for not reporting their runaway child.⁷²

Wisconsin law differs from other Caylee's laws because it has three age groups that correspond to different offenses, unlike other states where the law just applies to a single age group.⁷³ Caretakers in Wisconsin are required to report missing children that fall within the following age groups: under thirteen, thirteen to sixteen, and under eighteen.⁷⁴ These three, separate age groups also affect the different reporting deadlines that caretakers have under Caylee's Law in Wisconsin.⁷⁵

⁶⁷ LA. REV. STAT. ANN. § 14:403.7(A)(1)(b) (2012).

⁶⁸ *Id.*

⁶⁹ CONN. GEN. STAT. ANN. § 53-21a (West 2012).

⁷⁰ S.D. CODIFIED LAWS § 22-11-37 (2012); *See also* S.B. 43, 87th Leg., Reg. Sess., (S.D. 2012).

⁷¹ *Hearing on S.B. 43 Before the Judiciary Comm.*, 87th. Leg. Assemb. (S.D. 2012) available at <http://sdpb.sd.gov/SDPBPodcast/2012/sju08.mp3>. *See* Lindsey Riter-Rapp, *State Criminal Justice Network Legislative Update*, 36 *Champion* 55 (Nov. 2012); David Montgomery, "Caylee's Law" Bill Moves Out of Committee, *Will be Considered by Senate*, RAPID CITY JOURNAL (Jan. 24, 2012), http://rapidcityjournal.com/news/caylee-s-law-bill-moves-out-of-committee-will-be/article_54c81d8e-469f-11e1-8c5c-001871e3ce6c.html. *See e.g.* Alexis Shaw, "Street Smart" Boy Hops on Flight to Las Vegas Alone, ABC NEWS (Oct. 6, 2013), <http://abcnews.go.com/US/boy-boards-flight-minneapolis-las-vegas-ticket/story?id=20486346> (nine-year-old runaway's mother believed her son was at a friend's house before she reported him missing; the runaway managed to board a plane alone and without a boarding pass, from his hometown near Minneapolis to Las Vegas).

⁷² *Hearing on S.B. 43 Before the Judiciary Comm.*, *supra* note 71. *See also* Chapman, *supra* note 63.

⁷³ WIS. STAT. ANN. § 948.23 (West. 2012).

⁷⁴ *Id.*

⁷⁵ *Id.*

The remaining six Caylee’s Law fall within two categories: the “thirteen to sixteen” and “under eighteen” age categories of Caylee’s Law.⁷⁶ Both North Carolina and Florida have laws that apply to children under age sixteen, and California’s applies to children under fourteen.⁷⁷ Under Louisiana law, a caretaker must report the death of a child under the age of seventeen within one hour of discovery if the child was in that caretaker’s physical custody at the time of death.⁷⁸ Delaware amended their existing Child Endangerment law, making it applicable to any child under eighteen.⁷⁹ Similarly, Caylee’s Law in Alabama and Wisconsin applies to children under eighteen years of age.⁸⁰

In sum, states use three age categories to determine how Caylee’s Law applies to parents or caregivers of those children. Although a small number of states have multiple age groups in their Caylee’s Law, most states employ just one category. The most common group defined in Caylee’s Law is “under thirteen” seen in six states, while just three states’ laws apply to all children under age eighteen. The next section of this part discusses the third area of Caylee’s Law discussed in this Note: the wide range of penalties that states have chosen for Caylee’s Law.

C. Penalties in Caylee’s Law

The penalties in Caylee’s Law vary widely from state to state, as this section will explore. Some states with existing laws similar to Caylee’s Law, decided simply to increase penalties within those existing laws, from misdemeanors under the old laws, to now felonies under

⁷⁶ See ALA. CODE § 13A-13-8 (2013); CAL. PENAL CODE § 273j (West 2013); DEL. CODE ANN. tit. 11 § 1102 (West 2012); FLA. STAT. ANN. § 837.055 (West 2012); LA. REV. STAT. ANN. § 14:403.8 (2012); N.C. GEN. STAT. ANN. § 14-318.5 (West 2013). See also WIS. STAT. ANN. § 948.23 (Wis. 2012).

⁷⁷ FLA. STAT. ANN. § 837.055 (West 2012); CAL. PENAL CODE § 273j (West 2013); N.C. GEN. STAT. ANN. § 14-318.5 (West 2013).

⁷⁸ LA. REV. STAT. ANN. § 14:403.8 (2012).

⁷⁹ DEL. CODE ANN. tit. 11, § 1102 (West 2012).

⁸⁰ ALA. CODE § 13A-13-8 (2013); WIS. STAT. ANN. § 948.23 (Wis. 2012).

Caylee's Law.⁸¹ While other states enacting new laws deliberated adequate penalties for a parent or caretaker failing to report under Caylee's Law, all states agree that a parent or caretaker may be charged with a felony for failing to report.⁸² Penalties in these laws range from four months to twenty-five years of imprisonment, coupled with fines ranging from \$5,000 to \$100,000.⁸³

As mentioned in the previous section, some states like Delaware and New Jersey opted to revamp existing laws by increasing penalties instead of enacting new Caylee's laws.⁸⁴ New Jersey's law allowed the state to charge parents who failed to report with a disorderly persons offense.⁸⁵ However, this type of disorderly persons offense is punishable by a maximum of six months imprisonment.⁸⁶ Parents or guardians who fail to report a missing child under New Jersey's Caylee's Law are now guilty of a fourth-degree crime, which carries a prison term up to eighteen month and fines up to \$10,000.⁸⁷

Similarly, Delaware's Caylee's Law amended its existing Child Endangerment law, now applying a class E or G felony for failing to report.⁸⁸ A class E felony pertains where death occurs while the child is endangered, and carries punishment of up to five years in prison.⁸⁹ Where the child sustains serious physical injuries or becomes the victim of a sexual offense while endangered, a class G felony applies, carrying a prison term of up to two years.⁹⁰

⁸¹ See, e.g., N.J. STAT. ANN. § 52:17B-89 (West 2012); DEL. CODE ANN. tit. 11 § 1102 (West 2012).

⁸² Contra S.D. CODIFIED LAWS § 22-11-37 (2012); S.D. CODIFIED LAWS § 22-6-2 (2005) (South Dakota may penalize parents who fail to report a missing child with a class One misdemeanor – up to one year imprisonment, \$2,000 fines, or both).

⁸³ See, e.g., Randall, *supra* note 35.

⁸⁴ See *infra* Part II (C)(i).

⁸⁵ N.J. STAT. ANN. § 52:17B-89 (West 1968); The Assoc. Press, *In Wake of Casey Anthony Trial, N.J. Lawmakers Push Caylee's Law*, THE STAR LEDGER, July 12, 2011, http://www.nj.com/news/index.ssf/2011/07/in_wake_of_casey_anthony_trial.html.

⁸⁶ N.J. STAT. ANN. § 2C:43-8 (West 1978).

⁸⁷ N.J. STAT. ANN. § 52:17B-89 (West 2012).

⁸⁸ DEL. CODE ANN. tit. 11, § 1102(b)(1-2) (West 2012).

⁸⁹ DEL. CODE ANN. tit. 11, § 4205(b) (West 1990).

⁹⁰ DEL. CODE ANN. tit. 11, § 1102(b)(1-2) (West 2012).

A few states have penalties under Caylee's Law with imprisonment terms of less than one to two years. For example, California and Connecticut allow one-year imprisonment, while Alabama's law has a wider range beginning at one-year imprisonment.⁹¹ Illinois' prison terms under Caylee's Law begin at eighteen months, which is also New Jersey's maximum prison sentence.⁹² Additionally, North Carolina's penalty involves a maximum of twenty-five months, with a minimum sentence of four months.⁹³

Another group of states imposes stiffer prison sentences of five years or more for failing to report. For example, both South Dakota and Florida impose a five-year prison sentence for violators.⁹⁴ Wisconsin's penalties, on the other hand, begin with six-year imprisonment terms and can increase all the way up to twenty-five years, depending on how much harm a child suffers.⁹⁵

Similar to Wisconsin's penalties, some states impose different penalties for those failing to report a child missing versus those failing to report a deceased child. In Louisiana, the penalties for failing to report a missing child range depending on whether a missing child is found alive, dead, or was physically/sexually abused.⁹⁶ For example, if a parent failed to report a child missing, but the child is later found unharmed, the parent may be imprisoned for six

⁹¹ ALA. CODE § 13A-13-8 (2013) (Alabama's imprisonment term ranges from one to ten years); CAL. PENAL CODE § 273j(c) (West 2013); CONN. GEN. STAT. ANN. § 53-21a (West 2012).

⁹² N.J. STAT. ANN. § 52:17B-89 (West 2012); 720 ILL. COMP. STAT. 5/10-10(e) (2013) (this felony under Illinois' law can go up to three years).

⁹³ *Felony Punishment Chart*, THE NORTH CAROLINA COURT SYSTEM, http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/FelonyChart_1013MaxChart.pdf (last visited Feb. 7, 2015) (North Carolina's Caylees Law is a Class I felony with jail terms beginning at four months). *See* KAN. STAT. ANN. § 21-5904(b)(3) (West 2013) (prison sentence maximum of twenty-three months under Caylee's law). *See also* DEL. CODE ANN. tit. 11 § 1102 (West 2012); FLA. STAT. ANN. § 837.055(2) (West 2012) (prison term from two to five years).

⁹⁴ FLA. STAT. ANN. § 837.055 (West 2012); S.D. CODIFIED LAWS § 22-11-37 (2012).

⁹⁵ WIS. STAT. ANN. § 948.23 (West 2012).

⁹⁶ LA. REV. STAT. ANN. § 14:403.7(C)(1-4) (2012).

months and/or pay a \$500 fine.⁹⁷ On the other hand, if the child is found dead, the parent may be imprisoned for two to five years, and fined up to \$50,000.⁹⁸ Furthermore, if the child is found alive, but abused, the penalty is prison up to ten years and fines up to \$10,000.⁹⁹

In addition to prison terms, most states have the ability to impose fines on violators of Caylee's Law.¹⁰⁰ These fines range from \$1,000 to \$100,000 and are usually carried out at the court's discretion, unless the law stipulates different levels of harm as seen in Louisiana's law, for instance.¹⁰¹ Wisconsin, an outlier in fines among the states, can inflict fines as high as \$100,000 for someone violating Caylee's Law.¹⁰² In contrast, Delaware, Illinois, and New Jersey do not specify the amount of fines under their Caylee's Law, but nonetheless reserve the right to impose fines on those who violate the law by leaving the word "fines" in the statutes.¹⁰³

Given the vast range of penalties under Caylee's Law throughout the country, it is evident that states have latitude on the penalties they can impose on parents who violate the law. This wide range does not present an identifiable pattern of penalties, but a portion of states have opted for prison terms of two years or less, and fines between \$1,000 and \$5,000 dollars. In addition to penalties, this Note has discussed thus far two other main areas in which Caylee's Law differs amongst the states: age reporting deadlines and age limitations. The next part will briefly cover pending legislation in other states, and some of the contemplated problems with Caylee's Law that state legislatures have attempted to address.

⁹⁷ LA. REV. STAT. ANN. § 14:403.7(C)(4) (2012).

⁹⁸ LA. REV. STAT. ANN. § 14:403.7(C)(1) (2012).

⁹⁹ LA. REV. STAT. ANN. § 14:403.7(C)(3) (2012).

¹⁰⁰ See N.C. GEN. STAT. ANN. § 14-318.5 (West 2013) (North Carolina does not states fines as a penalty for violating Caylee's Law).

¹⁰¹ E.g., LA. REV. STAT. ANN. § 14:403.7(C)(1-4) (2012).

¹⁰² WIS. STAT. ANN. § 948.23 (Wis. 2012).

¹⁰³ DEL. CODE ANN. tit. 11 § 1102 (West 2012); 720 ILL. COMP. STAT. 5/10-10 (2013); N.J. STAT. ANN. § 52:17B-89 (West 2012); N.J. STAT. ANN. §2C:12-1.3 (West 2012).

IV. PENDING LEGISLATION & THE FIFTH AMENDMENT PROBLEM IN CAYLEE'S LAW

Some states have successfully passed Caylee's Law since 2011, but other states are still considering whether to implement Caylee's Law.¹⁰⁴ This section briefly reviews some of the pending legislation and some of the issues debated by that state legislatures during attempts to adopt Caylee's Law. Although details of these various issues are beyond the scope of this Note, they are offered here briefly to provide the reader with a glimpse of the controversy surrounding Caylee's Law. These issues include several unintended consequences of having a Caylee's Law, one of which is a violation of a reporter's Fifth Amendment right against self-incrimination. Finally, we will see how North Carolina has uniquely addressed the Fifth Amendment issue in their Caylee's Law to protect innocent reporters from prosecution.

A. Pending Legislation & Problems with Caylee's Law

Caylee's Law has faced much opposition in state legislatures since Crowder's Petition began demanding state legislatures to act. Some states have stalled legislation because lawmakers question whether stronger missing children laws are needed if the state already has similar laws.¹⁰⁵ In 2012, Iowa attempted to introduce Caylee's Law but lawmakers could not agree on the specific terms of a new law.¹⁰⁶ The proposed law required that parents know where

¹⁰⁴ See, e.g., H.B. 295, 2015 Leg., Reg. Sess. (Miss. 2015) (introduced Jan. 12, 2015); H.B. 572, 2014 Leg. 434th Gen. Assemb., Reg. Sess. (Md. 2014) (introduced Jan. 29, 2014 – Judiciary Committee reported unfavorably) (hereinafter *Proposed 2014 Legislation*).

¹⁰⁵ Mike Glover, Caylee's Law Stalls in Iowa, HUFFINGTON POST (Feb. 23, 2012, 10:24 AM), http://www.huffingtonpost.com/2012/02/23/caylee-law-stalls-in-iowa_n_1296308.html. See *Iowa Opting Not to Pass So-Called Caylee's Law*, KCRG.COM (Apr. 23, 2014, 9:03 AM), <http://www.kcrg.com/news/local/Iowa-Opting-Not-To-Pass-So-called-Caylees-Law-140075693.html> (Iowa's attorney general also opposed Caylee's Law, noting that Iowa already has legislation that allows authorities to charge parents who fail to report the death of a child). See Johnny Anderson, *Rep. Anderson: Caylee's Law Issues Already Addressed in Utah Code*, UTAH REPS BLOG (Aug. 30, 2011), <http://www.utahreps.net/commentary/rep-anderson-caylees-law-issues-already-addressed-in-utah-code> (Utah's proposed Caylee's Law would be an overlap of existing laws concerning body desecration and obstructing murder investigations, therefore not further protecting children from abuse or death).

¹⁰⁶ "Caylee's Law" Legislation Stalled in Iowa, Other States, CBS NEWS (Feb. 23, 2012, 2:10 PM), http://www.cbsnews.com/8301-504083_162-57383736-504083/caylees-law-legislation-stalled-in-iowa-other-states/.

their children are during any given twenty-four-hour period.¹⁰⁷ Iowa lawmakers were concerned that the proposed law was “too vague,” and that the law would have parents “check[ing] in daily on their children in summer camp.”¹⁰⁸

Similarly, Pennsylvania already has a law against parents who conceal the death of their child: offenders are charged with a first-degree misdemeanor that carries up to five years in prison.¹⁰⁹ Nevertheless, the public urged state lawmakers to introduce new legislation in the aftermath of the Anthony case, and legislators wanted to increase the penalties under the current law.¹¹⁰ A companion bill passed in the Pennsylvania House of Representatives in early October 2013 increased the penalties for concealing the death of a child.¹¹¹ Pennsylvania’s 2013 bill also addresses an issue in Caylee’s Law regarding innocent reporters potentially becoming ensnared in the law when reporting a missing child. Pennsylvania legislators added safeguards in this bill to ensure that innocent parents would not be prosecuted.¹¹²

Some states, such as New York, have yet to decide whether to propose any Caylee’s Law legislation, but a recent New York case highlights the need for Caylee’s Law.¹¹³ Levon Wameling’s father reported the nine-month old missing in June 2013, two weeks after he had

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ 18 Pa. Cons. Stat. Ann. § 4303 (West 2015); Sara Ganam, *Proposed Caylee’s Law Would Be a Balancing Test*, THE PATRIOT-NEWS (PA.) (July 19, 2011, 11:15 AM), http://www.pennlive.com/midstate/index.ssf/2011/07/proposed_caylees_law_would_be.html.

¹¹⁰ Caroline Johnston, *Caylee’s Law May Be Coming to PA*, POLITICS PA (July 12, 2011), <http://www.politicspa.com/caylee’s-law-may-be-coming-to-pa/26025/>; H.B. 494, 197th Leg., Reg. Sess. (Pa. 2013); H.B. 20, 197th Leg., Reg. Sess. (Pa. 2013) (Senator Larry Farnese proposed a third-degree felony for parents who fail to report the death of a child, with a sentence of up to seven years, and \$15,000 fine, and a misdemeanor for failing to report a missing child with \$10,000 fine); Ganam, *supra* note 107; John Timpane et. al, *Fueled By Verdict Anger*, PHILLY.COM (July 8, 2011), http://articles.philly.com/2011-07-08/news/29750663_1_casey-anthony-trial-farnese-verdict.

¹¹¹ H.B. 20, 197th Leg., Reg. Sess. (Pa. 2013); Rep. Karen Boback, *House Passes Boback’s ‘Caylee’s Law’ Bill*, PENN. HOUSE REPUBLICAN CAUCUS (Oct. 16, 2013), <http://www.pahousegop.com/NewsItem.aspx?NewsID=18772>. Boback, *supra* note 95.

¹¹² Boback, *supra* note 111.

¹¹³ Assemb. Will Barclay, *See Missing Child Case in Utica*, OSWEGO CNTY. TODAY (June 24, 2013), <http://oswegocountytoday.com/missing-child-case-in-utica-highlights-importance-of-passing-caylees-law>.

been missing.¹¹⁴ Authorities eventually found Levon's body floating in a container in a Utica river in September 2013.¹¹⁵ New York does not have a version of Caylee's Law, as it failed to move past the Codes Committee in February 2013.¹¹⁶ In light of this tragic case, lawmakers were hoping the New York legislature would reconsider a bill in the new session.¹¹⁷ In January 2015, Caylee's Law was reintroduced to the State Assembly, and referred to the Committee on Codes.¹¹⁸

In addition to the issues discussed thus far, state legislatures have deliberated many other issues while considering Caylee's Law, demonstrating the extensive nature of the Caylee's law debate. One of those issues is that Caylee's Law may not effectively prevent future tragedies like Caylee Anthony's death. Supporters claim that had these laws had been in place at the time of Caylee's death, Casey Anthony would be in prison now.¹¹⁹ Under Florida law, for example, Casey Anthony would have been sentenced to five years for each count that she failed to report the death and disappearance of her child for a maximum sentence of twenty years.¹²⁰ However, the fact that Casey Anthony could be imprisoned longer as a result of this law would not change

¹¹⁴ Erin Donaghue, *Levon Wameling Missing*, CBSNEWS.COM (Sept. 9, 2013, 2:02 PM), http://www.cbsnews.com/8301-504083_162-57602010-504083/levon-wameling-missing-police-searching-for-missing-baby-discover-remains-of-an-infant-in-upstate-ny-river.

¹¹⁵ *Id.*

¹¹⁶ *Missing Child Case in Utica*, *supra* note 111.

¹¹⁷ *Id.* See Rocco LaDuca, *No Apology, No Answers as Wameling Heads to Prison for Son's Death*, UTICA OBSERVER-DISPATCHER.COM (Feb. 13, 2014, 9:0904:20 PAM09 AM), <http://www.uticaod.com/article/20140213/News/140219614/?tag=1>. (Update: Levon Wameling's father was charged with second-degree manslaughter in the death of his son after confessing to sinking the boy's body into the Mohawk River after the child apparently died from an untreated head injury; Jevon Wameling is currently serving a prison sentence up to fifteen years).

¹¹⁸ 2015 N.Y. Assembly Bill No. 2835, 238th Legis. (Jan. 20, 2015).

¹¹⁹ Bill O'Reilly, *Caylee's Law*, BILLOREILLY.COM (July 14, 2011), <http://www.billoreilly.com/newslettercolumn?pid=32950>.

¹²⁰ Michael Peltier, *Florida Governor Signs Caylee's Law*, ORLANDO SENTINEL (Apr. 6, 2012, 9:03 PM), http://articles.orlandosentinel.com/2012-04-06/news/os-caylees-law-casey-anthony-0407-20120406_1_funeral-expenses-florida-governor-signs-caylee-s-law.

the fact that Caylee died.¹²¹ Although Caylee’s Law is meant to protect children like Caylee, the law cannot bring Caylee back.¹²²

Relatedly, proponents suggest that penalties under Caylee’s Law may be insufficient to deter similar crimes in the future. Declining to support a Caylee’s Law bill, Nebraska Senator Burke Harr posited that Caylee’s Law is merely a “feel-good law” that will not prevent parents from murdering or abusing their children.¹²³ Parents are unlikely to be deterred by Caylee’s Law if they have the propensity to overlook murder laws that carry much stiffer penalties.¹²⁴ Conversely, supporters claim the penalties in Caylee’s Law may be enough to prevent Caylee’s death.¹²⁵

One final noteworthy issue with Caylee’s Law is that, much like other laws named after dead children, Caylee’s Law may have unintended consequences. For example, Megan’s Law, named after a New Jersey child who was raped and murdered by a neighbor with prior sexual convictions, requires that all convicted sexual offenders be registered on a national registry to alert parents of any predators that reside in their neighborhood.¹²⁶ However, this well-intentioned law has caused a drain on law enforcement in many areas, who spend a significant amount of time tracking down the valid and current addresses for each and every sex offender in a neighborhood.¹²⁷ Similarly, California’s Polly’s Law, named after Polly Klaas, who was

¹²¹ Dianne Williamson, *A Law Against Laws Named for Victims*, WORCESTER TELEGRAM (July 12, 2011), <http://www.telegram.com/article/20110712/COLUMN01/107129929/0> (quoting Worcester County District Attorney Joseph Early, “it’s too late to affect the case it was crafted for”).

¹²² Carroll, *supra* note 9.

¹²³ Glover, *supra* note 103.

¹²⁴ Chapman, *supra* note 71.

¹²⁵ See Assoc. Press, *supra* note 47.

¹²⁶ Michael Covin, *After Casey Anthony Verdict: Caylee’s Law Might Be in the Works in New Jersey*, EXAMINER.COM (July 12, 2011), <http://www.examiner.com/article/after-casey-anthony-verdict-caylee-s-law-might-be-the-works-new-jersey>. See Carroll, *supra* note 9.

¹²⁷ Carroll, *supra* note 9.

abducted and murdered by a “recidivist offender,” led to a three-strikes-out rule.¹²⁸ Now, California’s prisons suffer from serious overcrowding with criminals who commit more than three petty offenses, in addition to more serious criminals.¹²⁹ One of the unintended consequences of Caylee’s Law is that a parent, innocently reporting a missing or dead child, can become embroiled in the legal system, with his or her report being used against that parent in a criminal proceeding.¹³⁰ This unintended consequence is a violation of a person’s Fifth Amendment right against self-incrimination.

As the Crowder Petition for Caylee’s Law continued to attract signatures well into 2014, state representatives continued to receive letters from constituents urging them to enact Caylee’s Law.¹³¹ Despite such tremendous support for the law, many states have stalled legislation for numerous reasons, including disagreements in the legislature over whether the state needs stronger laws and if such laws can deter parents from hurting their children. Caylee’s Law, like other laws named after high-profile victims, may come with unintended consequences. Under Caylee’s Law, a reporting parent is compelled to incriminate himself in reporting under the law, an unintended consequence of the law that is discussed in detail in the following section.

B. The Fifth Amendment Problem in Caylee’s Law

Both proponents and opponents of Caylee’s Law have contemplated several issues in adopting Caylee’s Law, as examined in the previous section, including unintended consequences that could come with this law. One of those consequences that opponents raise is a Fifth

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ Radley Balko, *Why Caylee’s Law Is a Bad Idea*, HUFFINGTON POST (9/10/11, 5:12 AM), http://www.huffingtonpost.com/2011/07/11/caylees-law-casey-anthony-_n_893953.html.

¹³¹ Crowder, *supra* note 28 (showing new signatures roughly every hour; the petition closed in 2014).

Amendment infringement upon a parent's right against self-incrimination.¹³² This section will delve into this issue of Caylee's Law, followed by a discussion of the right against self-incrimination in Fifth Amendment, and the use of immunity statutes in some states that protect parties from having their words turned against them in later criminal proceedings. This discussion serves as the foundation for this Note's argument in Part V.

Caylee's Law has been criticized as violating the Fifth Amendment privilege against self-incrimination.¹³³ Under Caylee's Law, parents are criminalized for remaining silent.¹³⁴ Parents are essentially compelled to call in a missing or dead child, a call that ultimately can be used as evidence against them in court. Susan Rozelle, a law professor at Stetson University College of Law, pointed out that Caylee's Law requires parents to turn themselves in when reporting.¹³⁵ Caylee's Law has been deemed no different than making it a crime for not calling the police and reporting that you killed someone.¹³⁶ Incidentally, a petition on Change.org opposing the enactment of Caylee's Law observes that by requiring a parent to report the death of a child, a parent is "effectively testifying against him [or] herself by proving the time of death."¹³⁷

In a recent South Dakota case, this specific issue came to the forefront as a problem with Caylee's Law, when a caretaker was charged and convicted under Caylee's Law for failing to report the death of a child in her care within the specified timeframe.¹³⁸ The defense in that case

¹³² John Kennedy, *'Caylee's Law' Likely to Join Others Named for Children Whose Deaths Sparked Outrage*, THE PALM BEACH POST (July 8, 2011, 8:49 PM), <http://www.palmbeachpost.com/news/news/state-regional/caylees-law-likely-to-join-others-named-for-childr/nLtwX> (quoting Stetson University College of Law Professor Susan Rozelle).

¹³³ E.g. Carroll, *supra* note 9; Kennedy, *supra* note 132.

¹³⁴ *South Dakota Lawyer Challenges Child Death Law*, FOXNEWS.COM (Sept. 9, 2012), <http://www.foxnews.com/us/2012/09/11/south-dakota-lawyer-challenges-child-death-law>.

¹³⁵ Kennedy, *supra* note 132.

¹³⁶ Michael McNutt, *Oklahoma legislators asked not to rush into writing 'Caylee's Law'*, NEWS OK (July 13, 2011), <http://newsok.com/oklahoma-legislators-asked-not-to-rush-into-writing-caylees-law/article/3585059> (quoting David Tackett, founder of Oklahomans for Liberty, a watch-group).

¹³⁷ *Do Not Enact Caylee's Law*, CHANGE.ORG, <http://www.change.org/petitions/do-not-enact-caylees-law>.

¹³⁸ See Complaint, *State of South Dakota v. Laurie Cournoyer*, No. CR-12-257 (1st. Cir. July 12, 2012) (a two-year-old child under Mrs. Cournoyer's care was found dead in a closet after an older child in the home strangled the

challenged the constitutionality of Caylee’s Law in South Dakota, noting in a 2012 court motion that this law, “presents a defendant with the proverbial choice between ‘a rock and a hard place’—either incriminate herself or commit a crime for failing to do so.”¹³⁹ Ultimately, the defendant was convicted under Caylee’s Law, in addition to other child abuse charges that were filed.¹⁴⁰ Despite her conviction, the defense points to an important Fifth Amendment problem with Caylee’s Law.

The Fifth Amendment can be traced as far back as the English common law and inquisition origins.¹⁴¹ It provides citizens with the privilege against self-incrimination, stating that no one may “be compelled in any case to be a witness against himself;” a privilege that was established in the colonies, and then woven into the Bill of Rights in 1791, after the colonies became the United States.¹⁴² Any involuntary statement made by someone raises an issue of self-incrimination.¹⁴³ Where someone’s free will is “significantly impaired,” even without police wrongdoing, they are subject to the voluntariness standard of self-incrimination.¹⁴⁴ The test

child; Mrs. Cournoyer and her husband were under the influence of methamphetamines for two days and had not noticed the child was missing until her body was found), *available at* <http://www.keloland.com/classlibrary/page/news/files/Wagner%20Toddler%20Death%20Court%20Papers.pdf>. See Kristi Eaton, *Taylor and Laurie Cournoyer Charged with Failing to Report Toddler’s Death Under “Caylee’s Law”*, HUFFINGTON POST (Aug. 22, 2012), http://www.huffingtonpost.com/2012/08/23/taylor-laurie-cournoyer-caylees-law-toddler-death_n_1824482.html.

¹³⁹ *South Dakota Lawyer Challenges Child Death Law*, FOXNEWS.COM (Sept. 9, 2012), <http://www.foxnews.com/us/2012/09/11/south-dakota-lawyer-challenges-child-death-law>.

¹⁴⁰ Gene Hetland, *Woman Sentenced Under Caylee’s Law*, KSOO 1140 AM (March 14, 2013, 12:36 PM), <http://ksoo.com/woman-sentenced-under-caylees-law>.

¹⁴¹ Charles J. Walsh & Steven R. Rowland, *Immunized Testimony and the Inevitable Discovery Doctrine: An Appropriate Transplant of the Exclusionary Rule or an Excuse for a Broken Promise?*, 23 SETON HALL LAW REVIEW 967, 970-71 (1993).

¹⁴² U.S. CONST., amend. V.; William Wesley Patton, *Rethinking the Privilege Against Self-Incrimination in Child Abuse Dependency Proceedings: Might Parents Be Their Own Worst Witnesses?*, 11 U.C. Davis J. Juv. L. & Pol’y 101, 103-04 (2007).

¹⁴³ *Bram v. United States*, 168 U.S. 532, 542 (1897) (noting that confessions can only be admissible if made “freely and voluntarily”). See also Alfredo Garcia, *THE FIFTH AMENDMENT: A COMPREHENSIVE APPROACH* 49-50 (2002) (citing *Columbe v. Connecticut*, 367 U.S. 568, 602 (1961), a voluntary statement has been defined as “the product of an essentially free and unrestrained choice by its maker,” where uttering such statements must be made of free will so as not to “render the confession inadmissible”).

¹⁴⁴ Garcia, *supra* note 143 at 58 (citing Wayne R. LaFave et al., *CRIMINAL PROCEDURE* 312-13 (3d ed. 2000)).

under the Fifth Amendment is whether “the free will of the witness was overborne.”¹⁴⁵ If a law requires a person to report something, it may raise self-incrimination issues because the statements may be deemed to be involuntary and thereby protected by the Fifth Amendment. A confession cannot be received as evidence if the person making the confession is making it under a threat.¹⁴⁶

Further, a statement is incriminating if it:

Constitutes, or forms an essential part of, or, taken in connection with other matters *already* disclosed, is a basis for a reasonable inference of such a violation of the laws . . . as to subject him to liability to punishment. . . .¹⁴⁷ (emphasis added)

The privilege against self-incrimination may be asserted when there is a real threat of criminal prosecution.¹⁴⁸ This privilege is often regarded as, “a fundamental right to remain silent.”¹⁴⁹ Additionally, state constitutions and state statutes often provide protection against involuntary self-incrimination.¹⁵⁰

Since 1857, statutes have been adopted to provide immunity to state citizens from the use of any compelled testimony.¹⁵¹ These statutes can provide one of two types of immunity—transactional or use immunity—but must comply with the Fifth Amendment privilege against

¹⁴⁵ Steven M. Salky & Paul B. Haynes, Jr., *THE PRIVILEGE OF SILENCE: FIFTH AMENDMENT PROTECTIONS AGAINST SELF-INCRIMINATION* 22 (2nd ed. 2014) (citing *United States v. Washington*, 431 U.S. 181, 188 (1977)).

¹⁴⁶ 23 C.J.S. Criminal Law § 1252.

¹⁴⁷ Maguire, *supra* note 1 at 39 (citing the MODEL CODE OF EVID. 202 (1942); UNIF. R. OF EVID., 24 (1953)).

¹⁴⁸ John C. Mayoue, *BALANCING COMPETING INTERESTS IN FAMILY LAW* 6 (Second Edition, 2003) (citing various case law).

¹⁴⁹ R. H. Helmholtz, *Introduction*, *THE PRIVILEGE AGAINST SELF-INCRIMINATION: ITS ORIGINS AND DEVELOPMENT* 2 (1997); Lawrence Taylor, *WITNESS IMMUNITY* 46 (1983). *See also* Ronald N. Boyce et al., *CRIMINAL LAW AND PROCEDURE* 1396-97 (11th ed. 2010).

¹⁵⁰ Mayoue, *supra* note 148 at 5 (giving examples of the MD. Declaration of Rights art. 22 and Georgia Annotated Code § 24-9-27(a) (1982 & Supp. 1997)).

¹⁵¹ *See* Walsh, *supra* note 141 at 973. *See also* Joshua M. Dickey, *Compelled Testimony and Self-Incrimination: Is “Use and Derivative Use” Immunity Worth Adopting?*, 28 PAC. L. J. 722, 725 (1997) (“statutes provide an essential function in accommodating the government’s interest in compelling testimony while preserving a person’s Fifth Amendment privilege against self-incrimination”).

self-incrimination.¹⁵² Transactional immunity provides immunity from prosecution for *any* offenses that relate to compelled testimony.¹⁵³ This is a broad immunity power that protects citizens from ever being prosecuted for the offense the testimony relates to; however this immunity is also subject to denial on occasion.¹⁵⁴ Transactional immunity applies to present and future prosecution, but does not apply to any past convicted offenses (as a pardon) that a witness mentions in testimony.¹⁵⁵

In contrast, use (or derivative use) immunity is immunity granted only as to the *use* of the compelled testimony and any derived evidence of that testimony.¹⁵⁶ Derivative evidence can include physical or testimonial evidence that is discovered during an investigative lead that the witness provided during immunized testimony.¹⁵⁷ Use/derivative use immunity offers limited protection compared to transactional immunity because the state is not precluded from prosecuting a witness for the offense for which the testimony refers.¹⁵⁸ Essentially, this means that the state merely cannot *use* the witness' testimony or any "derivative evidence" against him or her in a subsequent prosecution for the actual crime.¹⁵⁹ These statutes have been dubbed as allowing prosecutors to "have their cake and eat it too," because of the power this type of immunity gives a prosecutor to obtain testimony and still charge a witness with a crime.¹⁶⁰ All

¹⁵² Lawrence Taylor, WITNESS IMMUNITY 47 (1983).

¹⁵³ 81 AM. JUR. 2D *Witnesses* § 137 (2014). See 22 C.J.S. *Criminal Law* § 98 (2014).

¹⁵⁴ 81 AM. JUR. 2D *Witnesses* § 137 (2014); 1 WHARTON'S CRIMINAL LAW § 80 (15th ed.).

¹⁵⁵ Taylor, *supra* note 152 at 75.

¹⁵⁶ 81 AM. JUR. 2D *Witnesses* § 137 (2014); Taylor, *supra* note 152 at 79.

¹⁵⁷ Taylor, *supra* note 152 at 79.

¹⁵⁸ *Id.* at 79-80.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 80.

three types of immunity have been deemed constitutional, but the most popular immunity statute today is the use or derivative use immunity.¹⁶¹

With the increased existence of use/derivative use immunity statutes, the Supreme Court began defining the scope of protection afforded by use immunity in *Murphy v. Waterfront Commission*.¹⁶² Where a state statute has granted immunity, evidence that is gathered via an independent source in a related federal prosecution, is not considered derivative evidence and is therefore allowed at trial.¹⁶³ The Court also posited that the Fifth Amendment privilege has two facets: 1) the government cannot use compulsion to elicit self-incriminating statements; and 2) the government cannot allow the use of self-incriminating statements elicited by compulsion as evidence in a criminal trial.¹⁶⁴

It was not until 1972, in *Kastigar v. United States*,¹⁶⁵ that the Supreme Court articulated a standard for analyzing use and derivative use immunity statutes. The Court held that transactional immunity statutes provided a broader protection than the Fifth Amendment privilege, but this privilege “has never been construed to mean that one who invokes it cannot subsequently be prosecuted;” use and derivative use immunity are coextensive with the Fifth Amendment.¹⁶⁶ After *Kastigar*, a witness testifying under a use immunity statute may be prosecuted for a crime related to that testimony, but the state has the burden of proving that the evidence of the crime is not tainted and was gathered from an “independent, legitimate

¹⁶¹ Patton, *supra* note 142. See *Kastigar v. United States*, 406 U.S. 441 (1972); *Zicarelli v. New Jersey State Comm’n of Inv.*, 406 U.S. 472 (1972) (companion cases where the Supreme Court ruled that transactional immunity and use/derivative use immunity in statutes was constitutional).

¹⁶² 378 U.S. at 79; Taylor, *supra* note 152 at 81.

¹⁶³ Taylor, *supra* note 152 at 81.

¹⁶⁴ Alan Dershowitz, IS THERE A RIGHT TO REMAIN SILENT?: COERCIVE INTERROGATION AND THE FIFTH AMENDMENT AFTER 9/11 41-42, 43 (2008).

¹⁶⁵ 406 U.S. 441 (1972).

¹⁶⁶ *Id.* at 453.

source.”¹⁶⁷ Nevertheless, the Supreme Court has upheld use and derivative use immunity statutes.

In sum, Caylee’s Law has experienced strong opposition from those who claim the law violates a reporter’s constitutional right against self-incrimination provided by the Fifth Amendment. This privilege has led to states adopting numerous immunity statutes to protect their citizens from having compelled testimony used against them later; these statutes have withstood several constitutional challenges over time. North Carolina is one such state that has taken this immunity statute and embedded it into its Caylee’s Law.

C. North Carolina’s Immunity Clause

North Carolina’s Caylee’s Law is much like other Caylee’s laws, covered in Part III, and it serves the same purpose – to penalize parents or caregivers who fail to report.¹⁶⁸ However, unlike other Caylee’s laws, North Carolina has added an immunity clause into their version of Caylee’s Law.¹⁶⁹ This immunity clause, written into the section requiring parents to report the disappearance of a child, states:

Any person who reports the disappearance of a child as required by this section is immune from any civil or criminal liability that might otherwise be incurred or imposed for that action, provided that the person was acting in good faith. In any proceeding involving liability, good faith is presumed.¹⁷⁰

Parents in North Carolina who report the disappearance of a child in good faith are immune from civil or criminal liability after reporting under Caylee’s Law.¹⁷¹ Further, any proceedings for liability against a reporting parent presume good faith.¹⁷² Notably, this immunity clause is not included in the state’s Caylee’s Law statute relating to reporting the death

¹⁶⁷ Taylor, *supra* note 152 at 83.

¹⁶⁸ See N.C. GEN. STAT. ANN. § 14-318.5 (West 2013).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ N.C. GEN. STAT. ANN. § 14-318.5(g) (West 2013).

¹⁷² *Id.*

of a child.¹⁷³ This immunity clause at a minimum protects parents and other reporters who are innocent of the potential underlying crime that caused the child's disappearance from prosecution when reporting a missing child, but it still allows the state to prosecute parents who are responsible for their child's disappearance. By granting immunity to those who report, the law draws a distinction between those parents who are responsible for their child's disappearance (the underlying offense) versus those parents who are guilty of failing to *report* their child's disappearance under Caylee's Law.

Like other Caylee's laws in other states, North Carolina's law took three years since the Casey Anthony trial for the law to be enacted, suggesting that lawmakers did not want to rush legislation to placate public outcry without due diligence.¹⁷⁴ North Carolina legislators were concerned that Caylee's Law would impede on a reporter's Fifth Amendment privilege against self-incrimination.¹⁷⁵ Representative Kelly Hastings, who spearheaded the bill, ensured critics that the immunity clauses were implemented in this bill to specifically protect innocent reporters from unlawful prosecution.¹⁷⁶ Legislators also recognized that Caylee's Law was meant to punish those "who know what's happening in the house and fail to do something . . . when they could have intervened, should have intervened and didn't intervene."¹⁷⁷

Thus, North Carolina opted to include an immunity clause in its Caylee's Law, something that no other state with Caylee's Law has yet chosen to include. This immunity clause protects

¹⁷³ N.C. GEN. STAT. ANN. § 14-401.22 (West 2013).

¹⁷⁴ *North Carolina Lawmakers Consider "Caylee's Law"*, WTOC.COM (July 15, 2011, 5:45 PM), <http://www.wtoc.com/story/15090538/north-carolina-lawmakers-consider-caylees-law> (Caylee's Law in North Carolina was first introduced in 2011).

¹⁷⁵ See Justin Quesinberry, *Caylee's Law Continues Moving Through NC General Assembly*, WNCN NEWS (May 2, 2013, 12:32 PM) <http://www.wncn.com/story/22010888/caylees-law-continues-moving-through-nc-general-assembly>.

¹⁷⁶ *Id.*

¹⁷⁷ Matthew Burns, *Bill Inspired by Florida Girl's Death Gets Nod*, WRAL.COM (Mar. 7, 2013), <http://www.wral.com/bill-inspired-by-florida-girl-s-death-gets-house-nod/12195280/> (quoting Rep. Rick Glazier).

innocent parents' Fifth Amendment right against self-incrimination, assuming the parent is reporting in good faith, while leaving room for the state to prosecute those who are responsible for their child's disappearance. The final section of this Note argues that North Carolina's inclusion of an immunity clause protects innocent reporters from prosecution when complying with Caylee's Law and that states should rewrite their Caylee's laws to include such clauses.

V. CAN CAYLEE'S LAW BE FIXED TO PROTECT INNOCENT PARENTS?

Despite the many issues with Caylee's Law discussed in the previous sections, Caylee's Law is unconstitutional. Facially, these laws were created to protect the most vulnerable members of our society – our children. As North Carolina representatives pointed out, these laws are not meant to punish parents who are scared to act or make minor mistakes, but those who deliberately make a choice to not report a missing or dead child.¹⁷⁸ However, as applied, however, Caylee's laws violate a parent's Fifth Amendment right to be protected against self-incrimination. This violation can, however, be corrected if states add use immunity clauses to existing Caylee's laws, as will be discussed in section B below. These immunity clauses, similar to North Carolina's immunity clause, will protect reporters from incriminating themselves when the law compels them to report both a missing or deceased child.

A. Caylee's Law Violates the Fifth Amendment Privilege Against Self-Incrimination

As Caylee's Law is introduced in more states, one of the main concerns, offered in Part IV, is the unintended consequence of parents incriminating themselves for their child's disappearance when reporting as the law requires.¹⁷⁹ This section argues that Caylee's laws need to be revised to follow North Carolina's approach of including an immunity clause within their statute to protect innocent parents.

¹⁷⁸ *Id.*

¹⁷⁹ See *infra* Part IV(B); see also *Proposed 2014 Legislation, supra* note 102.

In most states, Caylee’s Law compels parents or caretakers to report a missing or dead child within a certain timeframe.¹⁸⁰ This need to report a missing child came after the extraordinary case of Casey Anthony. It is important to note, however, that most parents are not like Casey Anthony, and would report a missing child immediately.¹⁸¹ As a parent, I cannot imagine failing to report my children missing quickly if something happened to them. Yet, a parent may not report a child missing or dead for many reasons, none of which is that he or she committed a crime. For example, in a recent Wisconsin case, Kevin Hooper was charged under Wisconsin’s Caylee’s Law for failing to report that his wife had stabbed his infant son during a psychotic episode she experienced.¹⁸² Instead of reporting his child’s death within the prescribed time under Caylee’s law, Hooper chose instead to bring his wife to a mental hospital once he determined the child could not be saved, and his other children were in danger. Although Wisconsin law requires reporting a child’s death within two hours, Hooper reported the stabbing five hours later after his children had been removed from the home.¹⁸³ Here, a bereaved father, who is innocent of the underlying crime (his child’s death), is now guilty of violating Caylee’s Law and potentially facing prison time.

It is well established in our jurisprudence that the government has the power to compel people to testify in court.¹⁸⁴ However, this power must yield to the greater power of the Fifth

¹⁸⁰ See *infra* Part III(A).

¹⁸¹ Audrey Barrick, *Casey Anthony Acquittal Inspires Push for Caylee’s Law*, CHRISTIAN POST (July 7, 2011), <http://www.christianpost.com/news/casey-anthony-acquittal-inspires-caylees-law-51949/> (quoting Rep. Paul Wesselhoft of Oklahoma). But See Joe Trovato, *More Details Emerge in Death of Oconomowoc Infant*, LIVING LAKE COUNTRY (Sept. 18, 2012), <http://www.livinglakecountry.com/blogs/staffblogs/170246836.html>. See also *WISN 12 News: Caylee’s Law to Be Used in Oconomowoc Infant Death Case* (WISN 12 ABC news broadcast Sept. 19, 2012), <http://www.wisn.com/news/south-east-wisconsin/waukesha/Caylee-s-Law-to-be-used-in-Oconomowoc-infant-death-case/-/10150328/16657078/-/oa6ialz/-/index.html>.

¹⁸² *WISN 12 News: Caylee’s Law to Be Used in Oconomowoc Infant Death Case* (WISN 12 ABC news broadcast Sept. 19, 2012), <http://www.wisn.com/news/south-east-wisconsin/waukesha/Caylee-s-Law-to-be-used-in-Oconomowoc-infant-death-case/-/10150328/16657078/-/oa6ialz/-/index.html>.

¹⁸³ *Id.*

¹⁸⁴ *Kastigar v. U.S.*, 406 U.S. 441, 443 (1972).

Amendment privilege against self-incrimination when a conflict arises between the two.¹⁸⁵ In Caylee’s Law, this requirement to report a missing or deceased child directly conflicts with a parent’s Fifth Amendment right, and that right must prevail.

Most Caylee’s laws today are written such that they violate the Fifth Amendment privilege against self-incrimination. Josh Blackman, a law professor at South Texas College of Law, remarks that the purpose of the law is to allow parents to be easily arrested and prosecuted without “sufficient cause to show they committed [an] underlying offense.”¹⁸⁶ A report made under the law may be used against a parent (or other reporter) in a subsequent criminal proceeding involving that child’s disappearance or death, even if that parent is innocent. A parent’s phone call to law enforcement as required under the law could be the very piece of evidence used against him or her in a criminal prosecution for that child’s disappearance or death. Any further statements given by a parent reporting a child missing or dead could reasonably be connected to other facts of the case and that parent could be punished for their child’s disappearance or death.

Thus, the very core of Caylee’s Law – requiring parents to report missing or dead children – violates Fifth Amendment rights against self-incrimination. Although the goal of Caylee’s Law was not to punish innocent parents, the current language in the statutes does not protect innocent parents at all. The next section determines that this problem would be resolved by adding use immunity clauses to all parts of Caylee’s Law.

B. Caylee’s Law Needs An Immunity Clause

¹⁸⁵ Dickey, *supra* note 151.

¹⁸⁶ Josh Blackman, *Black Swans and Caylee’s Law*, JOSH BLACKMAN.COM (July 6, 2011), <http://joshblackman.com/blog/2011/07/06/black-swans-and-caylees-law/>.

As noted in the prior sections, states are becoming more attuned to this self-incrimination issue in Caylee's Law and are finding ways to safeguard innocent parents. For example, the safeguard issue that Pennsylvania's legislators addressed in their 2013 proposed Caylee's Law specifically referred to this Fifth Amendment issue. Pennsylvania's proposed bill is designed to protect innocent parents from self-incrimination while still allowing the state to prosecute those parents who are responsible for their child's disappearance or death.¹⁸⁷

North Carolina's immunity clause is a prime example of use immunity granted to a reporter when complying with the statute. North Carolina has provided a path for legislators to utilize immunity clauses to protect innocent reporters from prosecution under Caylee's Law. As of today, only North Carolina's citizens are protected from self-incrimination as long as they are reporting a missing child in good faith.¹⁸⁸ The statute compels a parent to report, but the immunity granted is limited to testimony from that report only and does not grant parents immunity from any future prosecution if there is other evidence that the parent is somehow responsible for the child's disappearance.

States should adopt North Carolina's safeguard approach in Caylee's Law but take it one step further by adding the same immunity clause to all provisions of Caylee's laws, including reporting a deceased child. North Carolina's law offers a worthy protection with an immunity clause for missing children reports, but this protection is not complete. When a parent or caregiver is required to report a *dead* child, the law should also immunize the reporting parent from prosecution. Public policy supports including a report of a deceased child because our

¹⁸⁷ See *infra* Part IV(A).

¹⁸⁸ See *infra* Part IV(C).

society generally has sympathy toward grieving parents who have lost a child.¹⁸⁹ Even when the parent's own neglect causes a child's death, juries struggle to convict because of this overwhelming sympathy for that parent.¹⁹⁰ This sympathy grows exponentially when a grieving parent is falsely prosecuted for their child's death. Although it is not entirely clear why North Carolina did not include an immunity clause in the death-reporting portion of Caylee's Law, the legislature recognized that Caylee's Law was intended to target those parents who know something about their child's whereabouts. Naturally, this should be extended to include reporting circumstances where a child's death occurs, and a bereaved parent inadvertently fails to report the child's death within the proscribed time, as illustrated earlier in the Hooper case in Wisconsin.

However, as stipulated in other immunity clauses, parents should only be immunized when they are not found to be responsible for their child's disappearance or death. If there is sufficient evidence that a parent is responsible for the child's disappearance or death, then the immunity clause will be void and the parent may be prosecuted to the extent of the law. Voiding the parent's immunity will ensure that parents who are responsible will be properly prosecuted and adjudicated. Adding an immunity clause to Caylee's Law still allows the law to punish parents who are irresponsible while also protecting innocent parents of any possible incrimination.

¹⁸⁹ Jennifer M. Collins, *Lady Madonna, Children at Your Feet: The Criminal Justice System's Romanticization of the Parent-Child Relationship*, 93 IOWA L. REV. 131, 153 (2007).

¹⁹⁰ Jennifer M. Collins, *Crime and Parenthood: The Uneasy Case for Prosecuting Negligent Parents*, 100 NW. U.L. REV. 807, 810-11 (2006) (citing Ruth Teichroeb, *Cases Among Toughest to Prosecute: "Juries Don't Want to Believe a Parent Could Kill a Child,"* SEATTLE POST-INTELLIGENCER (Nov. 1, 2002) at A1 (reporting that "prosecutors . . . say child homicides are among the toughest cases to prove beyond a reasonable doubt" and that "when young children die because of parental neglect, the chance of convicting a parent is so small prosecutors rarely file any charges"))).

Immunity clauses also protect innocent parents from overzealous prosecutors who do not have enough evidence to charge that parent with a crime. Arguably, one of the issues with the prosecution's case in the Casey Anthony case was the lack of evidence to convict Anthony of murdering her child. The impressive number of signatures on Caylee's Law petition serves as evidence that public opinion of Casey Anthony was that she was somehow responsible for her child's death, exacerbated by the fact that she did not report it for thirty-one days and only reported it when her mother called the police. An immunity clause will force prosecutors to develop a solid case against that reporting parent because the parent is otherwise immune from prosecution unless independent evidence shows bad faith.

Opposing views note that Casey Anthony would have been in prison much longer than the four years had she been convicted under Caylee's Law. Under Florida's law, Casey Anthony would have been sentenced to five years for each count that she failed to report the death and disappearance of her child, a maximum sentence of 20 years.¹⁹¹ However, the fact that Casey Anthony could be imprisoned as a result of this law would not change the fact that Caylee is dead. Caylee's Law would not bring back Caylee and it is not the goal of our criminal justice system to make criminals out of innocent parties just for the sake of punishing one wrongdoer.

Use immunity would also encourage good faith reporting under Caylee's Law, making Caylee's Law much more effective. This type of immunity has achieved this result in encouraging people to report child abuse under child abuse laws where mandatory reporting of child abuse is required in all fifty states. Laws mandating that suspected child abuse be reported

¹⁹¹ Michael Peltier, *Florida Governor Signs Caylee's Law*, ORLANDO SENTINEL (Apr. 6, 2012, 9:03 PM), http://articles.orlandosentinel.com/2012-04-06/news/os-caylees-law-casey-anthony-0407-20120406_1_funeral-expenses-florida-governor-signs-caylee-s-law.

were enacted beginning in the 1960s.¹⁹² Prior to 1980, there was evidence of serious underreporting of child abuse because people feared prosecution.¹⁹³ After legislative debates, the Federal Child Abuse Prevention and Treatment Act now requires states to extend “immunity for persons reporting instances of child abuse and neglect from prosecution . . . arising out of such reporting.”¹⁹⁴ This provision encouraged people to report child abuse by removing the threat of legal action.¹⁹⁵

Similar to the immunity clause in North Carolina, all jurisdictions today require that child abuse reports be made in “good faith,” with about twenty states “presuming good faith.”¹⁹⁶ Certain states expressly deny immunity if “the reporter is charged with or suspected of abusing or neglecting the child” that was at issue in the report.¹⁹⁷ Caylee’s Law could be as effective as child abuse laws have been in protecting children if innocent parents did not have to fear prosecution by simply reporting a child missing or deceased.

Finally, this fear of prosecution may also lead to parents over-reporting under Caylee’s Law. An immunity clause curbs false reports under Caylee’s Law, releasing public resources to

¹⁹² Irving J. Sloan, CHILD ABUSE: GOVERNING LAW & LEGISLATION 15 (1983).

¹⁹³ See, e.g., *Child Abuse Reporting: Hearing Before the Assemb. Comm. on Criminal J.*, 16-18, 1977-1978 Reg. Sess. (Calif. 1978); *Thomas v. Chadwick*, 224 Cal. App.3d 813 (Cal. App. 4th Dist. 1990) (“One of the problems perceived by Congress was inadequate reporting (see 1974 U.S. Code Cong. & Admin. News, at pp. 2763-2765) . . . Congress clearly intended to authorize immunity for reporters in order to encourage more extensive reporting”).

¹⁹⁴ Sloan, *supra* note 192, at 31.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 34-5; U.S. DEP’T OF HEALTH AND HUMAN SERV., ADMIN ON CHILDREN, YOUTH AND FAMILIES, CHILDREN’S BUREAU, IMMUNITY FOR REPORTERS OF CHILD ABUSE AND NEGLECT, 2 (2011), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/immunity.pdf

¹⁹⁷ Sloan, *supra* note 192, at 35; U.S. DEP’T OF HEALTH AND HUMAN SERV., ADMIN ON CHILDREN, YOUTH AND FAMILIES, CHILDREN’S BUREAU, IMMUNITY FOR REPORTERS OF CHILD ABUSE AND NEGLECT, 2 (2011), available at https://www.childwelfare.gov/systemwide/laws_policies/statutes/immunity.pdf. See Alaska Stat. Ann. § 47.17.050(b) (West); Colo. Rev. Stat. Ann. § 19-3-309 (West); Conn. Gen. Stat. Ann. § 17a-(e) (West); Mass. Gen. Laws Ann. ch. 119, § 51A (West); Minn. Stat. Ann. § 626.556(c) (West); N.D. Cent. Code Ann. § 50-25.1-09 (West); Ind. Code Ann. § 31-33-6-1 (West); Wash. Rev. Code Ann. § 26.44.060 (West); Tex. Fam. Code Ann. § 261.106 (West); S.D. Codified Laws § 26-8A-14; Tenn. Code Ann. § 37-1-410(6) (West); Vt. Stat. Ann. tit. 33, § 4913 (West); Ariz. Rev. Stat. Ann. § 13-3620(J) (2013); Fla. Stat. Ann. § 39.203(1)(b) (West); Wis. Stat. Ann. § 48.981 (West).

address legitimate reports instead. For example, a common scenario among teenagers where a teen heads to a friend's home for a sleepover and his parents may feel they have to report to authorities the moment their child does not check in with them the following morning. This fear of possible prosecution for not reporting a missing child may lead to over-reporting to law enforcement out of fear of becoming suspects.¹⁹⁸

This over-reporting places an undue burden on law enforcement because police are forced to investigate calls for missing children that may not be missing at all.¹⁹⁹ Further, police officers are burdened with the administrative task of writing up reports on non-missing children, when they could be focusing on children who are genuinely missing. Police are generally in favor of increasing penalties under existing laws for providing false information to police.²⁰⁰ However, with the rise of Caylee's Law, states have seen opposition from law enforcement for these reasons. An immunity clause would curb the number of false reports law enforcement receives under Caylee's Law because parents would be reporting freely, without fear of prosecution.

Therefore, North Carolina has partially solved the Fifth Amendment problem in Caylee's Law by including a use immunity clause in its missing report statute, but this does not shield parents who are reporting a deceased child. States should revise their Caylee's laws to include similar immunity statutes that would apply to reporters, whether they are reporting a missing or a dead child. Accordingly, adding immunity clauses will make Caylee's Law much more effective

¹⁹⁸ Ilya Somin, *Political Ignorance and Caylee's Law*, THE VOLOKH CONSPIRACY (July 11, 2011, 8:00 PM), <http://www.volokh.com/2011/07/11/political-ignorance-and-caylees-law/>.

¹⁹⁹ Chapman, *supra* note 87.

²⁰⁰ Assoc. Press, *Police Agencies Against Caylee's Law Proposals*, CBS MIAMI (Oct. 4, 2011, 10:14 AM), <http://miami.cbslocal.com/2011/10/04/police-agencies-against-caylees-law-proposals>.

at preventing future harm to children, while also protecting innocent parents from inadvertently becoming entangled in the legal system.

VI. CONCLUSION

Legislation should be based on a deep and rational analysis of the consequences that these laws could have on society, rather than on an emotional drive. As journalist John Stossel highlights, “the passage of these laws could adversely affect innocent parties.”²⁰¹ The media has successfully driven state legislatures to quickly make emotionally charged laws, such as Caylee’s Law.

As a society, we want strong laws that keep our children safe and punish those who harm our children. Caylee’s Law serves a noble purpose of punishing those parents or caretakers who may not have the same inclinations, as the majority of parents, to report a missing or deceased child. The criminal justice system can, and should, play an important role in protecting our children, but not at the cost of disregarding a parent’s constitutional rights against self-incrimination under the Fifth Amendment. As states continue to propose Caylee’s Law, the law’s purpose would be better served if use immunity clauses were included; states with existing laws should strongly consider similar revisions to protect innocent reporters from prosecution.

Perhaps Caylee’s Law is just another way for Americans to avoid the weak prosecution problem, by giving prosecutors an easier way to simply charge parents that they cannot charge under current laws where substantial proof is required but does not exist.²⁰² Perhaps this law will punish parents and caretakers in ways all other laws failed to punish Casey Anthony years ago. Regardless of the goal proponents had in mind, Caylee’s Law should not be a tool that

²⁰¹ *O’Reilly Factor: John Stossel on Caylee’s Law*, (Fox News television broadcast July 12, 2011), available at <http://www.businessinsider.com/john-stossel-on-caylees-law-are-we-going-to-pass-a-law-every-time-we-dont-like-a-ruling-2011-7>.

²⁰² Balko, *supra* note 130.

prosecutors can use against parents who are simply reporting in good faith and as required by law.