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## **Missing and Exploited Children: Overview and Policy Concerns**

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# Missing and Exploited Children: Overview and Policy Concerns

## Summary

Concern about missing and exploited children gained national prominence over 20 years ago when six-year-old Adam Walsh was abducted and killed. Consequently, several parents of missing children and other interested persons worked for the passage of the Missing Children's Act of 1982, and later for the Missing Children's Assistance Act of 1984 (MCAA) to assist in recovering such children and to bring the perpetrators to justice. MCAA created the National Center for Missing and Exploited Children (NCMEC) and required periodic incidence studies to determine the number of children reported missing and recovered in the nation in a given year.

In 1990, the first incidence study was released entitled, *National Incidence Study on Missing, Abducted, Runaway, and Thrownaway Children in America (NISMART-1)*. In October 2002, a second incidence study referred to as *NISMART-2* was released. Both studies found that the concept of missing children was complex and that children can be considered missing because of a wide range of circumstances.

*NISMART-1* estimated that in 1988, 200 to 300 children were kidnapped by strangers. *NISMART-2* found that in 1999, 115 children were kidnapped by strangers. Although such kidnappings appear to have declined, the Department of Justice concluded that trends could not be established because of design differences in the studies. *NISMART-2* found that family abductions (203,900) outnumbered stranger abductions (58,200), which included stereotypical kidnapping among many other types of situations.

In 1996, a local AMBER Alert plan (a system to help recover abducted children) was created in the Dallas/Ft. Worth, Texas area and named for nine-year-old Amber Hagerman who was abducted and killed.

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act (P. L. 108-21) was intended to develop and/or enhance AMBER Alert plans nationwide, reauthorize NCMEC for FY2004 through FY2005, and strengthen law enforcement and federal criminal code provisions related to missing and exploited children. The Runaway, Homeless, and Missing Children Protection Act (P.L. 108-96) reauthorized and amended MCAA and the Runaway and Homeless Youth Act, and extended NCMEC funding and other MCAA program activities for FY2004 through FY2008.

In the 109<sup>th</sup> Congress, several bills have been introduced related to missing children — H.R. 96/S.133, "Tory Jo's Loophole AMBER Response Act;" H.R. 252, the "Infant Protection and Baby Switching Prevention Act;" H.R. 528, the "Audrey Nerenberg Act;" and H.R. 1223, the "Protecting Our Children from Violence Act."

This report presents an overview of *NISMART-1* and *NISMART-2*, discusses the AMBER Alert System created to help recover reported missing children, and legislative activities that address the missing children issue.

## Contents

Introduction and Background .....	1
National Incidence Studies .....	2
<i>NISMART-2</i> Definitions and Findings .....	4
Caretaker Missing Findings .....	6
Family Abductions .....	8
Nonfamily Abductions .....	11
The AMBER Alert System .....	13
Guidelines and Criteria for Issuing an AMBER Alert .....	14
America On Line's AMBER Alert Services .....	15
AMBER Alert Results Questioned .....	15
White House Conference and Other Actions by the Administration .....	16
Legislation for a Nationwide AMBER Alert System .....	17
P.L. 108-21, Title III — Public Outreach, Subtitle A — AMBER Alert ...	18
Subtitle B — National Center for Missing and Exploited Children .....	21
Subtitle D — Missing Children Procedures in Public Buildings .....	22
Definitions .....	22
Procedures in Public Buildings Regarding a Missing or Lost Child ..	22
Legislative Actions in the 109 <sup>th</sup> Congress .....	23
Concluding Observations .....	23

## List of Tables

Table 1. Missing Children, by Reason, Totals and Percentages: Caretaker Missing Children Findings, 1999 .....	6
Table 2. Missing Children, by Reason, Totals and Percentages: Reported Missing Children Findings, 1999 .....	8

# Missing and Exploited Children: Overview and Policy Concerns

## Introduction and Background

Concern about missing and exploited children gained national prominence in 1981 when Adam Walsh, the six-year-old son of John and Revé Walsh was abducted and subsequently found murdered. The Walshes, along with other parents of abducted children,<sup>1</sup> worked for the passage of the Missing Children's Act of 1982 (P.L. 97-292) and later for the Missing Children's Assistance Act of 1984 (P.L. 98-473, MCAA) to assist in recovering such children and bringing the perpetrators to justice.<sup>2</sup>

Congress amended the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDP, P.L. 93-415) by creating Title IV, the Missing Children's Assistance Act, which established a Missing and Exploited Children's Program administered by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the Department of Justice (DOJ) to coordinate federal activities related to missing and exploited children. Also, the Act authorized the use of federal funding to create and operate a national 24-hour toll-free emergency telephone line for persons reporting information about missing children, and to establish and support a national resource center and clearinghouse, which became known as the National Center for Missing and Exploited Children (NCMEC/the Center). In honor of their son's memory, the Walshes founded the Adam Walsh Child Resource Center, which comprised four separate centers in different parts of the nation dedicated to legislative reform. In 1990, the Walsh centers merged with NCMEC,<sup>3</sup> which is a private nonprofit corporation.

NCMEC initiated the AMBER Plan (that is, America's Missing: Broadcast Emergency Response system) to help recover abducted children nationwide. The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act (P.L. 108-21) was enacted to develop and/or enhance AMBER.

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<sup>1</sup> Several groups working to recover missing children existed at the time of Adam Walsh's abduction and lobbied Congress in 1982 for the passage of the Missing Children's Act. For example, Child Find, Inc. in New Paltz, NY, founded in 1980, operates a national hotline, 800-I-AM-LOST, and the Vanished Children's Alliance (VCA) was founded in 1981 by Georgia Hilgeman, whose infant daughter was abducted in 1976 by her father.

<sup>2</sup> "About John Walsh," [[http://www.americasmostwanted.com/about\\_amw/john\\_walsh.cfm](http://www.americasmostwanted.com/about_amw/john_walsh.cfm)].

<sup>3</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *National Center for Missing and Exploited Children* (Washington: 1991), p. 1.

Alert plans, to reauthorize and increase funding for NCMEC (from \$10 million to \$20 million annually) for FY2004 and FY2005, respectively, and for other purposes.

On October 10, 2003, the Runaway, Homeless, and Missing Children Protection Act was signed into law (P.L. 108-96) to reauthorize and amend the Runaway and Homeless Youth Act and the Missing Children's Assistance Act (MCAA). P.L. 108-96 extends NCMEC's annual funding and other MCAA program activities through FY2008 (that is, from FY2004 through FY2008). For FY2004, Congress appropriated \$35.621 million for MECP and \$3.958 million for the AMBER Alert plan. For FY2005, Congress appropriated \$46.9 million for MECP, of which \$5 million would support AMBER Alert.<sup>4</sup> For a detailed description of MCAA, its funding history, and reauthorization, see CRS Report RS21365, *The Missing Children's Assistance Act (MCAA): Appropriations and Reauthorization*.

This report presents an overview of two national incidence studies prepared by OJJDP to determine annually the number of reported missing and recovered children in the nation. It also discusses the AMBER Alert System created to help recover reported missing children, and legislative activities to address the missing children issue. In particular, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act, (P.L. 108-21) is discussed, which contains provisions related to missing and exploited children, and related to law enforcement in cases involving missing or exploited children. The law enforcement provisions are beyond the scope of this report.

## National Incidence Studies

The Missing Children's Assistance Act of 1984 required OJJDP to conduct periodic incidence studies to ascertain the number of children reported missing in the nation and the number recovered in a given year. The *National Incidence Study on Missing, Abducted, Runaway, and Thrownaway Children in America (NISMAART-1)*, the first study to fulfill the mandate, was released in May 1990 and focused on 1988 data. The second study, referred to as *NISMAART-2*, was released in October 2002 and focuses on 1999 data.

*NISMAART-1* found that determining the incidence of missing children was very complex. The term "missing children" was discovered to have distinct multilevel definitions. Those definitions not only included children who were literally missing because they got lost, injured, or did not adequately communicate with their caretakers about their whereabouts or when they would return home, but also included runaways who had left home without the permission of their parents, throwaways who were asked to leave the home by their parents, children abducted by a non-custodial parent, as well as children abducted by non-family members or strangers. Furthermore, it was determined that many of the children in at least four of the above categories were not really missing because caretakers knew their whereabouts, but had difficulty in recovering them. Apparently, this uncertainty led

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<sup>4</sup> These figures are subject to the required 0.80% across-the-board rescission mandated by the Consolidated Appropriations Act, 2005 (P.L. 108-447).

to controversy and confusion about the concept of missing children. Report analysts concluded that because of the lack of a single broad definition for missing children, public policy needed to clarify the missing children's issue by establishing "which children and which situations should be included, what do they have in common, and what are they to be called."<sup>5</sup>

According to OJJDP, such problems were resolved in *NISMART-2*. Although the missing child concept remained complex, substantial improvements were made in the report's design regarding definitions, methodology, and terminology. For example, OJJDP indicates that considerable refinements were made to definitions for what it terms missing children "episodes" (types of episodes studied were family abductions, nonfamily abductions, runaway/throwaway episodes, and various missing child episodes discussed below) and in methods used to collect data.<sup>6</sup> Data for *NISMART-2* were collected from several sources — a National Household Survey of Adult Caretakers, a National Household Survey of Youth (both Household surveys covered various episodes for children living in households), a Law Enforcement Study (providing accurate estimates and case characteristics for stereotypical kidnappings), and a Juvenile Facilities Study (obtaining information about children who ran away from institutional facilities where they lived).

*NISMART-1* concluded that an unknown number of the estimated 354,100 reported "broad scope family abductions"<sup>7</sup> were relatively minor situations involving interferences with custodial or non-custodial visitation privileges and did not justify being designated as an "abduction."<sup>8</sup> *NISMART-2* clarified the meaning of "family abduction" and reported that about 203,900 such cases occurred in 1999. Therefore, *NISMART-2* family abduction data do not correspond with those reported in *NISMART-1*.

The same is true regarding data reported by *NISMART-1* and *NISMART-2* on stereotypical kidnappings by strangers (see definition below). *NISMART-1* reported that 200 to 300 children were victims of stereotypical kidnappings in 1988

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<sup>5</sup> *Missing, Abducted, Runaway, and Throwaway Children in America*, First Report, Executive Summary, p. 4.

<sup>6</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *NISMART Questions and Answers*, by J. Robert Flores, OJJDP Administrator, NISMART Fact Sheet, Oct. 2002.

<sup>7</sup> In *NISMART-1* "broad scope family abductions" were defined as situations where a family member either (1) violated a custody agreement and took a child, or (2) violated such an agreement by failing to return a child at the end of an authorized visit and extending the visit to at least overnight. Additionally, a "family member" included anyone romantically or sexually involved with a parent, and an "abduction" could be perpetrated by custodial (that is, a caretaker in charge of the immediate care of a child) as well as non-custodial caretakers.

<sup>8</sup> *NISMART Questions and Answers*.

(discussed in more detail below).<sup>9</sup> *NISMART-2* reported about 115 stereotypical kidnappings occurred in 1999 out of a total 58,200 nonfamily abductions.<sup>10</sup> Although these data might appear to reflect a decline in stereotypical kidnappings, because of the differences in the methodologies<sup>11</sup> used in the two reports and the rarity of such cases, OJJDP stated that “no scientific basis exists to conclude that there has been a true decline — although it is possible. On the other hand,” the report continued, “*NISMART-2* results do not indicate an increase in abductions by strangers.”<sup>12</sup>

In the first report, there was difficulty distinguishing between runaway and throwaway youth. *NISMART-2* combined the two types of episodes into one category. Also, unlike *NISMART-1*, researchers for the second report interviewed youth directly who provided information that was either unknown or not reported by caretakers. Because of such differences in the two studies, report findings cannot be compared.<sup>13</sup>

## ***NISMART-2* Definitions and Findings**

Not all abductions result in “missing children” as defined by *NISMART* researchers. *NISMART-2* defines missing children in two different categories — the broadest category is “caretaker missing”: children were missing from their primary caretaker; and the second category is a subset of the first — “reported missing”: children missing from their primary caretaker were reported missing to an agency for help in locating them. Researchers counted a child as missing from the primary caretaker’s perspective when the child experienced an episode that qualified the child as missing (see below), and when the caretaker did not know the child’s whereabouts, resulting in the caretaker becoming alarmed for at least one hour while trying to locate the child. In order for an episode to qualify for a child to be counted as missing, the child had to be less than 18 years of age, and the situation had to meet one of the following definitions of a specific type of episode:<sup>14</sup>

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<sup>9</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Missing, Abducted, Runaway, and Throwaway Children in America*, by David Finkelhor, Gerald Hotaling, and Andrea Sedlak, First Report: Numbers and Characteristics National Incidence Studies, Executive Summary (Washington: May 1990), p. 10.

<sup>10</sup> U.S. Dept of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *NISMART: Nonfamily Abducted Children: National Estimates and Characteristics*, by David Finkelhor, Heather Hammer, and Andrea J. Sedlak, *NISMART Bulletin Series*, NCJ 196467 (Washington: Oct. 2002), p. 2.

<sup>11</sup> *NISMART-1* researchers examined police records from a sample of 83 law enforcement agencies, while *NISMART-2* analysts expanded the sample group to 4,000 law enforcement agencies and collected data from police personnel who actually investigated the abductions.

<sup>12</sup> *NISMART Questions and Answers*.

<sup>13</sup> *Ibid.*

<sup>14</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *NISMART: National Estimates of Missing Children: An Overview*, by Andrea J. Sedlak, David Finkelhor, Heather Hammer, and Dana J. Schultz, *NISMART Bulletin Series*, NCJ 196465 (Washington: Oct. 2002), p. 4.

- **Nonfamily Abduction:** A nonfamily member takes a child (without lawful authority or parental permission) by physical force or threat of bodily harm or keeps a child by force in an isolated location for at least an hour; or when a child 14 years or younger (or who is mentally incompetent) is taken (without lawful authority or parental permission), detained, or voluntarily accompanies a nonfamily perpetrator who conceals the child's whereabouts, asks for ransom, or plans to keep the child permanently;
- **Stereotypical Kidnapping:** A child is detained overnight, transported at least 50 miles, or held for ransom by a stranger or slight acquaintance in a nonfamily abduction episode with the intent of keeping the child permanently or of killing the child;
- **Family Abduction:** A member of a child's family or someone acting on behalf of a family member, violates a custody order, decree, or other legal custodial rights, by taking or failing to return the child and conceals or transports the child out of state with the intent of preventing contact or depriving the caretaker of custodial rights indefinitely or permanently. There must be evidence that a child 15 years or older (unless mentally incompetent) was taken or detained by physical force or was threatened with bodily harm.
- **Runaway/Throwaway:** A runaway is a child who either leaves home and stays away overnight without parental permission; is 14 years or younger (or older if mentally incompetent) who leaves home, chooses not to return and stays away overnight; or is 15 years or older who leaves home, chooses not to return and stays away two nights. A throwaway child is one who is asked or told to leave the home by a parent or other adult in the household who has not made adequate alternative care arrangements for the child, and the child is away from home overnight; or a child who leaves home, but is prevented from returning by a parent or other household adult who has not arranged adequate alternative care for the child who is away from home overnight.
- **Missing Involuntary, Lost, or Injured:** A child's whereabouts are unknown to the caretaker, which causes the caretaker to become alarmed for at least one hour while trying to locate the child under one of two conditions: (1) the child is trying to get home and contacts the caretaker, but is unable to do so because the child is either lost, stranded, or injured; or (2) the child is too young to know how to return home or contact the caretaker; and
- **Missing Benign Explanation:** A child's whereabouts are unknown to the caretaker, which causes the caretaker to (1) be alarmed, (2) try to find the child, and (3) call the police about the situation for any reason, as long as the child was not lost, injured, abducted, victimized, or considered to be a runaway or throwaway.



**Caretaker Missing Findings.** *NISMART-2* found that in 1999, an estimated 1,315,600 children<sup>15</sup> were classified as caretaker missing (see **Table 1** below), that is, the caretaker did not know the child's whereabouts and was alarmed for at least one hour while trying to find the child. The total estimated number of such children includes those who were reported missing and those who were not, e.g., children who ran away from home. Of that number, an estimated 33,000 (3%) were nonfamily abductions, including stereotypical kidnappings; 117,200 (9%) were family abductions; nearly one-half or 628,900 (48%) were runaway/throwaway children; 198,300 (15%) were lost or injured; and over one-fourth or 374,700 (28%) were missing because of miscommunication or misunderstandings between the child and caretaker about where the child should have been. Researchers discovered that almost all of the caretaker missing children (that is, 1,312,800 or 99.8%, including runaways) were recovered or returned home alive, or found by the time the study data were collected. Only 0.2% or 2,500 of all caretaker children were not returned home or located and the vast majority, *NISMART-2* stresses, were runaways from institutions that were identified in its Juvenile Facilities Study data collection.<sup>16</sup>

**Table 1. Missing Children, by Reason, Totals and Percentages: Caretaker Missing Children Findings, 1999**

Episode	Number of caretaker missing children (estimate) <sup>a</sup>	Percent of caretaker missing children <sup>a</sup>
<i>Caretaker missing</i>	<i>1,315,600</i>	<i>100</i>
Family abduction	117,200	9
Nonfamily abduction	33,000 <sup>b</sup>	3 <sup>b</sup>
Missing involuntary, lost, or injured	198,300	15
Missing benign explanation	374,700	28
Runaway/Throwaway	628,900	48

**Source:** Office of Juvenile Justice and Delinquency Prevention, *NISMART, National Estimates of Missing Children: An Overview*, p. 6.

<sup>a</sup> OJJDP reports that “[e]stimates sum to more than the total of 1,315,600, and percents sum to more than 100, because children who had multiple episodes are included in every row that applies to them.”

<sup>b</sup> OJJDP states that “[e]stimate is based on an extremely small sample of cases; therefore, its precision and confidence interval are unreliable.”

**Reported Missing Findings.** Reported missing is a subset of the caretaker missing category. Although the caretaker sought help from authorities in locating a

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<sup>15</sup> Researchers stipulate that this number is based on samples. The report states that “The 95% confidence interval indicates that if the study were to be repeated with the same methodology 100 times, 95 of the replications would produce an estimate between 1,131,100 and 1,500,100” (Ibid., p. 5.)

<sup>16</sup> Ibid., p. 6.

missing child, *NISMART-2* analysts indicated that this action did not necessarily measure the seriousness of the situation. Instead, it conveyed the caretaker's judgment regarding the need for law enforcement assistance.<sup>17</sup> An estimated total of 797,500 of the caretaker missing cases were reported as missing children, that is, the caretaker called the police or a missing children's agency to assist in locating the child (see **Table 2** below). Of that number, 12,100 (2%) were nonfamily abductions, including stereotypical kidnappings reported to law enforcement for assistance in locating the children. Researchers reported that stereotypical kidnappings, a type of nonfamily abduction (discussed further below), were very rare instances and only a small percentage of children were missing because of such cases. Family abductions totaled 56,500 (7%) a slightly larger percentage than reported missing nonfamily abduction cases. A larger percentage of reported missing children, 357,600 (45%) were runaway/throwaway, and 340,500 (43%) were missing because of miscommunications or misunderstandings with the caretaker, while 61,900 (8%) were missing because they were lost or injured.<sup>18</sup>

Three-fourths of missing children were 12 years and older. Researchers concluded that this meant that "children age 12 and older had a risk of becoming caretaker missing (and of being reported missing) that was significantly higher than would be expected on the basis of their representation in the U.S. child population, whereas the risk for younger children was significantly lower than would be expected."<sup>19</sup> Furthermore, the study revealed that all but a very small percentage (a fraction of 1%) of reported missing children had been recovered by the time they were entered into the report's study data.<sup>20</sup>

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<sup>17</sup> *Ibid.*, p. 3.

<sup>18</sup> *Ibid.*, p. 6.

<sup>19</sup> *Ibid.*, p. 8.

<sup>20</sup> *Ibid.*, pp. 6, 9.

**Table 2. Missing Children, by Reason, Totals and Percentages: Reported Missing Children Findings, 1999**

Episode	Number of reported missing children (estimate) <sup>a</sup>	Percent of children reported missing <sup>a</sup>
<i>Reported missing children</i>	797,500	100
Family abduction	56,500	7
Nonfamily abduction	12,100 <sup>b</sup>	2 <sup>b</sup>
Missing involuntary, lost, or injured	61,900	8
Missing benign explanation	340,500	43
Runaway/throwaway	357,600	45

**Source:** Office of Juvenile Justice and Delinquency Prevention, *NISMART, National Estimates of Missing Children: An Overview*, p. 6.

<sup>a</sup> OJJDP reports that “[e]stimates sum to more than the total of 797,500, and percents sum to more than 100, because children who had multiple episodes are included in every row that applies to them.”

<sup>b</sup> OJJDP states that “[e]stimate is based on an extremely small sample of cases; therefore, its precision and confidence interval are unreliable.”

## Family Abductions

A family abduction, as mentioned above, is when a family member or someone representing a family member violates a custody order or decree by failing to return a child and conceals or transports the child out of state with the intent of depriving the legal caretaker of their custodial rights indefinitely or permanently. Researchers discovered that with family abductions it was possible for a child to have been unlawfully taken from the custody of a family member, and for the child’s whereabouts to be fully known. This meant that a child could be abducted, but not be really missing. Furthermore, in family abduction cases there were often disputes between the parties involved regarding custodial rights and privileges and other elements that were used to determine whether an episode qualified as a family abduction. Researchers did not try to verify statements from respondents. In order for a child to be counted by *NISMART-2* researchers as one who was abducted by a family member, the child had to be under 18 years of age, and have experienced the specific episode category for a family abduction as stated above.

Researchers used National Household Surveys of Adult Caretakers and Youth to conduct the family abduction part of the study. They cautioned that when considering estimates of family abductions, it should be kept in mind that the respondents were (1) mainly female caretakers of children, and (2) generally it was the aggrieved caretaker who provided all of the information regarding custodial rights and privileges that were used to determine whether a family abduction had occurred. In family abductions, researchers surmised, rights and privileges were typically a matter of dispute between the parties involved. Along with the primary caretaker’s

responses, and with that person's permission, one randomly selected youth (between 10 and 18 years of age) in the household also was interviewed.

Key findings indicated that in 1999, an estimated total of 203,900 children were family abduction victims, however, 43% were not considered missing because their caretakers knew where they were or were not alarmed by the circumstances.<sup>21</sup> Of this number, 117,200 were missing from their caretakers (see **Table 1**), and of those children, 56,500 were reported missing to authorities who assisted with locating the children (see **Table 2**). Of the total 203,900 family abductions, 44% of family abducted children were under six years of age; 53% were taken by their biological fathers; 25% were taken by their biological mothers (other family abductors included a grandparent [14%], as well as a sibling, uncle, aunt, and the mother's boyfriend); 35% of children were abducted by more than one person, for example, a father and his girlfriend; 46% were gone for less than one week; 21% were missing for one month or longer; and only 6% had not been returned at the time of the survey interview.<sup>22</sup>

Because younger children were at disproportionate risk for family abductions (that is, 44% of the total 203,900 family abducted children were younger than six years of age,<sup>23</sup> as stated above)<sup>24</sup> researchers suggested that prevention programs should be designed to focus on such children. They noted that particular interest should be concentrated on those children who do not live with both biological parents, and should specifically promote the well-being of such children and address issues related to their safety.<sup>25</sup>

In considering those statistics, researchers pointed out that the data reflected a large number of child victims who were caught up in divisive and possibly unsettling family problems. Also, they stated that the potential for harm to family abducted children exists whether or not they are reported as missing. *NISMART-1* analysts found that family abductions could result in psychological harm to the child. *NISMART-2* researchers stated that they were not in a position to provide full

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<sup>21</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *NISMART: Children Abducted by Family Members: National Estimates and Characteristics*, by Heather Hammer, David Finkelhor, and Andrea J. Sedlak, NISMART Bulletin Series, NCJ 196466 (Washington: Oct. 2002), p. 2. These children were counted among the estimated 203,900 total children abducted by a family member, but not counted among the 117,200 caretaker missing children. In order to be counted as a caretaker missing child, three criteria had to be met — (1) the child's whereabouts must have been unknown to the caretaker; (2) the caretaker must have been alarmed for at least one hour; and (3) the caretaker must have attempted to locate the child. *NISMART: National Estimates of Missing Children: an Overview*, p. 4.

<sup>22</sup> *NISMART: Children Abducted by Family Members: National Estimates and Characteristics*, p. 2.

<sup>23</sup> *NISMART: National Estimates of Missing Children: an Overview*, p. 4.

<sup>24</sup> This finding also was determined in *NISMART-1, Missing, Abducted, Runaway, and Thrownaway Children in America*, First Report, Executive Summary, p. 6.

<sup>25</sup> *NISMART: Children Abducted by Family Members: National Estimates and Characteristics*, p. 9.

assessments of the types of harm family abductions could inflict on children or to what extent police or interventions by other authorities eased the resolution of the episode.<sup>26</sup> Another OJJDP report concerning parental abductions indicated, however, that a child was often harmed by life on the run and being deprived of the other parent. Also, the study stated that prior to abduction, many of the child victims were exposed in their homes to neglect and abuse, as well as witnessing high levels of conflict between their parents.<sup>27</sup>

*NISMART-2* analysts suggested that once reported missing family abducted children were located and returned, service agencies seeking to assist them should address the conflicts that caused the child's abduction in the first place. Analysts noted that irrespective of the image that the word "abducted" produces, most of the family abducted children were in the lawful custody of the perpetrator when the episode began, meaning that they were not returned home at the proper time. Additionally, they found that almost one-half of the family abducted children were returned to the primary caretaker in one week or less, and the majority were returned within one month.<sup>28</sup>

Family abductions, the analysts concluded, is an area that needs further attention. A December 2001 report by OJJDP appears to corroborate this concern. Entitled *The Criminal Justice System's Response to Parental Abduction*, the report's findings indicate that "the majority of law enforcement agencies and prosecutors' offices do not have written policies and procedures governing the processing of parental abduction cases, do not train staff in how to respond to these cases, and do not have special programs designed to specifically address the crime."<sup>29</sup> On the other hand, the study expressed hope by further stating that several jurisdictions had been identified that were developing promising approaches to handling such abduction cases. Another OJJDP report indicated, however, that international family abductions, which occur when a child is taken by a parent to another country, presents even more obstacles for finding and recovering the child. Consequently, many such children are never returned to the United States.<sup>30</sup>

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<sup>26</sup> *Missing, Abducted, Runaway, and Thrownaway Children in America*, First Report, Executive Summary, p. 8; *NISMART: Children Abducted by Family Members: National Estimates and Characteristics*, p. 9.

<sup>27</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Early Identification of Risk Factors for Parental Abduction*, by Janet R. Johnston, et al., OJJDP Bulletin, NCJ 185026 (Washington: Mar. 2001), p. 1.

<sup>28</sup> *NISMART: Children Abducted by Family Members: National Estimates and Characteristics*, p. 9.

<sup>29</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *The Criminal Justice System's Response to Parental Abduction*, by Kathi L. Grasso et al., OJJDP Bulletin, NCJ 186160 (Washington: Dec. 2001), p. 7.

<sup>30</sup> U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Issues in Resolving Cases of International Child Abduction by Parents*, by Janet Chiancone, Linda Girdner, and Patricia Hoff, OJJDP Bulletin, NCY 190105 (Washington: Dec. 2001), p. 1.

According to *NISMART-2* analysts, information that has been reported about family abductions should encourage prevention efforts for occurrences of family abductions, as well as for finding ways to assist the victims and their caretakers in rebounding from the effects when such episodes occur.

## Nonfamily Abductions

*NISMART-2* indicates that there are ambiguities about how to define “abduction” because of high profile kidnapping crimes, such as those of Adam Walsh (July 27, 1981), Polly Klaas (October 1, 1993), Elizabeth Smart (June 5, 2002)<sup>31</sup>, and Samantha Runnion (July 15, 2002). The legal definition for abduction according to the report is “when a person is held against his or her will for a modest amount of time or moved even a short distance, which often occurs in the commission of other crimes.”<sup>32</sup> This definition, the researchers felt, would not be satisfactory to persons concerned about estimates of stereotypical kidnappings, which, as previously mentioned, are considered to be rare, nor would only stereotypical kidnapping estimates be satisfactory to those interested in abductions in general.

Analysts met both needs by using two definitions for nonfamily abductions — (1) the more precise and serious concept of stereotypical kidnapping, defined above as when a child is detained overnight, transported at least 50 miles, or held for ransom by a stranger or slight acquaintance in a nonfamily abduction with the intent of keeping the child permanently or killing the child; and (2) a broader concept for nonfamily abductions, which includes stereotypical kidnappings, but also includes less serious nonfamily abductions with friends, acquaintances, and strangers as perpetrators. The less serious nonfamily abduction concept is described as when a child is physically threatened and moved or detained for a substantial period of time (at least one hour) in an isolated place by using physical force, or when a child younger than 15 years old is lured for purposes of ransom, concealment, or the intent to keep permanently.<sup>33</sup>

The key findings concerning nonfamily abductions broadly defined were that in 1999, there was an estimated total of 58,200 children abducted by nonfamily members.<sup>34</sup> As mentioned above, an estimated 115 were stereotypical kidnappings (the true number falls somewhere between 60 and 170 representing the 95% confidence interval around the estimate<sup>35</sup>). Although data cannot be compared between *NISMART-1* and *NISMART-2* because of methodological differences,

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<sup>31</sup> On Mar. 12, 2003, now 15-year-old Elizabeth Smart was discovered and recovered by Salt Lake City, Utah police officials after receiving several tips that led to the abductor, a former handyman of the Smart family. The suspect and his wife were taken into custody on suspicion of aggravated kidnapping.

<sup>32</sup> *NISMART: Nonfamily Abducted Children: National Estimates and Characteristics*, p. 2.

<sup>33</sup> *Ibid.*, pp. 2-3.

<sup>34</sup> This is a larger number than that reflected in **Table 1** because, as discussed previously, some of these children were not considered “missing.” Of the 58,200 total nonfamily abductions, 33,000 were caretaker missing.

<sup>35</sup> *NISMART: Nonfamily Abducted Children: National Estimates and Characteristics*, p. 11.

researchers believed that since both studies yielded the same order of magnitude, that is, in the hundreds (200 to 300 annually in *NISMART-1*) rather than the thousands, they concluded that “stereotypical kidnappings do not appear to be any more frequent in 1999 than in 1988.”<sup>36</sup> In such kidnappings, *NISMART-2* found that of the 115 stereotypical kidnappings, the child was murdered in 40% of such cases (that is, 46 victims), and 4% (or five) of the children were never recovered.<sup>37</sup> Close to 3% (or 33,000) of total caretaker missing children (that is 1,315,600) were taken by nonfamily members, among such cases 90 were stereotypical kidnapping victims, which the analysts considered an extremely small number of victims.<sup>38</sup> In addition, 57% (or 33,000) of total nonfamily abducted victims (that is, 58,200) were missing from caretakers for at least one hour, and police were called to assist in locating 21% (or 12,100) of such abducted children.<sup>39</sup>

The most frequent victims of both stereotypical kidnappings and broadly defined nonfamily abductions were teenage girls. Furthermore, almost one-half of the victims were sexually molested by the perpetrator.<sup>40</sup> Researchers believed that this finding reinforced the belief that sexual assault was the motive for a large percentage of nonfamily abductions. This finding suggested, they stated, “the importance and usefulness of combining sexual assault prevention strategies and abduction prevention strategies as a way to reduce the rates of both crimes.”<sup>41</sup> Furthermore, they noted that declines in the rates of sexual abuse during the 1990s could have reflected the noticeable effectiveness of sexual assault prevention programs, including public awareness, educational programs, and aggressive prosecution to deter such behavior.<sup>42</sup>

Researchers concluded that data on nonfamily abductions could be regularly and systematically obtained by fully implementing the Federal Bureau of Investigation’s (FBI’s) National Incident-Based Reporting System (NIBRS). This system collects data on each single crime incident that is reported to law enforcement that falls within 22 offense categories comprised of 46 specific crimes. Also, arrest data are collected for 11 of the 22 NIBRS offense categories.<sup>43</sup> NIBRS allows police to determine when an abduction occurs and whether it is connected with other crimes.

In 2000, the analysts noted, only 20 states contributed to NIBRS. When fully nationally operative, they stated, the system would be able to produce yearly estimates of the number of children reported to police who have been abducted by

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<sup>36</sup> *Ibid.*, p. 12.

<sup>37</sup> *Ibid.*, pp. 10-11.

<sup>38</sup> *NISMART: National Estimates of Missing Children: Overview*, p. 6-7.

<sup>39</sup> *NISMART: Nonfamily Abducted Children: National Estimates and Characteristics*, p. 7.

<sup>40</sup> *Ibid.*, pp. 2, 12.

<sup>41</sup> *Ibid.*, p. 13.

<sup>42</sup> *Ibid.*

<sup>43</sup> “FBI National Incident-Based Reporting System: Historical Background,” at [<http://www.fbi.gov/ucr/faqs.htm>].

nonfamily and family perpetrators. One limitation of NIBRS, they observed, is that the data collected could not ease the difficulty in determining the incidence of stereotypical kidnapping. In order to make this estimate, more data would have to be collected on such specifics as the duration of the episode and the distance kidnapped victims were taken.<sup>44</sup>

Researchers suggested that the purpose of the National Crime Information Center (NCIC), a FBI database containing information about missing children, could be expanded to track the incidence of stereotypical kidnapping. Currently, the police report to NCIC the names of missing children whom they are tracking, but the system is not designed for data gathering.<sup>45</sup>

## The AMBER Alert System

Nine-year-old Amber Hagerman was kidnapped and murdered in her hometown of Arlington, Texas in 1996. As a result of the tragedy, regional law enforcement agencies in northern Texas and the Dallas/Ft. Worth Association of Radio Managers (ARMS) developed an emergency alert plan to help recover abducted children. Called the AMBER Plan, it was used when a child was abducted and believed to be in grave danger. Law enforcement agencies and broadcasters voluntarily partnered to send out an emergency alert to the public. Local radio and television stations interrupt programming to broadcast information about an abducted child using the Emergency Alert System (EAS)<sup>46</sup> that is used to alert the public of severe weather emergencies. Other communities in the nation also adopted the system.

NCMEC notes that in 2001, missing children reports declined to the lowest total in 10 years. NCMEC President Ernie Allen credits this decline, after 20 years of increases, to a system that is working. Law enforcement is responding more effectively, he stated, technology allows transmitting images and information instantly, the public is paying greater attention to missing children photos, and the vast majority of the nation's missing children are recovered safely.

In fall 2001, NCMEC initiated the AMBER Plan (that is, America's Missing: Broadcast Emergency Response, also called the AMBER Alert system) in partnership with ARMS of Texas to help recover abducted children nationwide. NCMEC reported that the goal for this action was to assist cities and towns across the nation with establishing their own AMBER Alert emergency system. The Center credits the AMBER Plan with the successful recovery of 201 children nationwide.<sup>47</sup> When the system was launched, there were 20 such plans around the nation.<sup>48</sup> At the time of

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<sup>44</sup> *NISMART: Nonfamily Abducted Children: National Estimates and Characteristics*, p. 13.

<sup>45</sup> *Ibid.*

<sup>46</sup> The EAS was formerly known as the Emergency Broadcast System.

<sup>47</sup> "AMBER Alert Plan," at [<http://www.missingkids.com>] (link to *Amber Alert*, under *Help Now* menu).

<sup>48</sup> "National Center for Missing & Exploited Children Spearheads Campaign to Promote (continued...)"



this writing, the number has increased to 114 plans nationwide — that is, 50 statewide plans, 27 regional plans, and 37 local plans.<sup>49</sup> NCMEC President Ernie Allen has stated that the plan is highly effective, but it is not a panacea.<sup>50</sup>

In summer 2002, the media reported that several children were missing and/or abducted, including some who were found murdered. Media-generated perceptions that appeared to indicate a possible child abduction epidemic proved false. The number of such abductions at the time caused concern about a possible overuse of the AMBER Alert system, and that the program was an over reaction to the problem.<sup>51</sup> NCMEC responded to such concerns by stating that the Center had developed an AMBER Alert Kit available to all law enforcement agencies and broadcasters upon request that presents a step-by-step guide for implementing effective plans to ensure that AMBER Alert systems are created properly. Step-by-step instructions for establishing an AMBER Plan in one's area is located at NCMEC's website — [<http://www.missingkids.com>].

## Guidelines and Criteria for Issuing an AMBER Alert

DOJ recommends that the following guidelines be followed before issuing an AMBER Alert:<sup>52</sup>

- Law enforcement officials must confirm an abduction before issuing an AMBER Alert. Abuse of the system and a weakening of its effectiveness could occur if an alert was activated without significant proof that an abduction had taken place. Each case, however, must be assessed on its own merits and a judgment made quickly. Law enforcement authorities must take a “best judgment” approach based on the evidence before issuing an alert;
- Law enforcement agencies must not issue an alert unless officials believe that the victim is in imminent danger of bodily harm or death. This criteria must be based upon law enforcement's knowledge that typically, stranger abductions present the greatest danger to children;

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<sup>48</sup> (...continued)

AMBER Plan Nationwide Provides Training Video and Manual For Preventing Over Use,” Received Aug. 23, 2002 from Joann Donnellan, AMBER Plan Manager of NCMEC.

<sup>49</sup> “AMBER Alert Plan,” at [<http://www.missingkids.com>] (link to *Amber Alert*, under *Help Now* menu).

<sup>50</sup> “National Center for Missing & Exploited Children Spearheads Campaign to Promote AMBER Plan Nationwide,” Received Aug. 23, 2002 from Joann Donnellan.

<sup>51</sup> *Ibid.*

<sup>52</sup> U.S. Dept. of Justice, Office of Justice Programs, “America's Missing: Broadcast Emergency Response, AMBER Plan “Guidance on Criteria for Issuing AMBER Alerts: From the National AMBER Alert Coordinator,” Apr. 2004 at [<http://amberalert.gov>].

- Law enforcement personnel must have sufficient descriptive information about the victim, abductor, and/or the abductor's vehicle to indicate that an immediate alert broadcast to the public would be helpful by enhancing the recovery of the victim and arrest of the suspect;
- The victim must be 17 years of age or younger before an alert is issued. DOJ encourages each state to adopt the "17 years of age or younger" standard. To date, most AMBER Plans specify that alerts be activated for children under certain ages. Such ages, however, can vary. Some state plans stipulate that an alert should be issued for missing children under the age of 10, some indicate 12, some 14, 15, and 16. Such differences in age requirements cause confusion when multiple alerts are necessary across states and jurisdictions; and
- The victim's name and other critical data be must be entered into the NCIC system.

In February 2002, NCMEC reported, the Federal Communications Commission (FCC) created a special code to be used within the Emergency Alert System when a community activates an AMBER Alert about a child abduction. Because AMBER Alerts were often confused with other civil emergencies, such as a flood or tornado, the FCC adopted a special "Abducted Child Statement" event code referred to as Code CAE. NCMEC observes that not only does the Center and the FCC believe that Code CAE will enhance the process of communities mobilizing when a child abduction occurs, but it also will "build on the reputation of the EAS as the most credible and reliable vehicle for providing this type of emergency information to the public."<sup>53</sup>

## **America On Line's AMBER Alert Services**

In November 2002, America On Line (AOL) installed AMBER Alerts on its websites. When warranted, the company uses its AOL Alert Services to notify its subscribers about a child's abduction. The AOL Alert Services operates in conjunction with NCMEC, and federal, state, and local law enforcement officials.<sup>54</sup>

## **AMBER Alert Results Questioned**

Although NCMEC has stated that the AMBER Alert plan has not been over used, and has proven to be effective in recovering some 201 abducted children at various places in the nation since its inception, the February 1, 2004 abduction of 11-

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<sup>53</sup> "AMBER Plan — Support for the AMBER Plan!" at [<http://www.missingkids.com/html/amberplan.html>].

<sup>54</sup> Tom Mainelli, "AOL Puts AMBER Alert Service Online: Digital Bulletins About Missing Children offered to Anyone, Through Messaging, or Wireless Device," *PCWorld.com*, Nov. 21, 2002, at [<http://yahoo.pcworld.com/yahoo/article/0,aid,107256,00.asp>].

year-old Carlie Brucia in Sarasota, Florida caused some critics to question AMBER's effectiveness.

After a security video camera recorded the abduction of Carlie in Sarasota, Florida, an AMBER Alert was issued the next day, February 2, to get the public's attention and assistance in locating her. Five days later, her body was found. CNN news reported that after Joseph P. Smith was arrested for her abduction on February 3, he confided in a jailhouse witness that he had kidnapped and murdered Carlie. Subsequently, the witness led investigators to Carlie's body.<sup>55</sup> The AMBER system was credited for assisting detectives in locating Smith, but the system is under scrutiny regarding the ways in which it is used, and the timing of issuing an alert.<sup>56</sup>

An Associated Press (AP) reporter states that "records show the use of the alert system has been haphazard." For example, some police departments quickly issue alerts when it is believed that a child's life is in danger, while others, such as Sarasota, are more conservative and do not quickly issue an alert, although a child's life is at stake.<sup>57</sup> Marc Klaas, one of several AMBER Alert critics, whose daughter was kidnapped and murdered in 1993, says that most police agencies are too slow in issuing an Alert. One reason he cites for the delay is that states must get one another's permission to issue "cross-border" AMBER Alerts. Most states, the AP relates, have guidelines that require police to be certain that a child has been kidnapped and is in danger before issuing an Alert.<sup>58</sup> Joe Brucia, Carlie's father, disagreed with the criticism and stated that he felt that the police acted responsibly in handling his daughter's case. He didn't believe that the AMBER Alert would have helped his daughter.<sup>59</sup>

## **White House Conference and Other Actions by the Administration**

When a child is abducted, there is no AMBER Alert system that is activated nationwide. Such alerts are targeted locally, statewide, or regionally. NCMC believes that the AMBER Alert system needs to be expanded nationally so that such a system could be activated when or if an abductor travels with a child to other parts of the nation. A national AMBER Alert would only be activated when warranted, if law enforcement officials believed that a child had been transported to other parts of the nation.<sup>60</sup>

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<sup>55</sup> "Key Evidence Missing in Carlie's Killing, Warrant: Smith Told Witness About Killing Girl," CNN.com, Feb. 6, 2004, p. 1.

<sup>56</sup> "Brucia Kidnap Prompts Scrutiny of Amber Alert," Fox News Channel, Feb. 16, 2004.

<sup>57</sup> Vickie Chachere, "Girl's Death Draws Criticism to Use of Missing-Child Alert," *Miami Herald*, Feb. 17, 2004.

<sup>58</sup> "Brucia Kidnap Prompts Scrutiny of Amber Alert," Fox News Channel, Feb. 16, 2004.

<sup>59</sup> "Did the Amber Alert System Fail Carlie Brucia?" Fox News Channel, Feb. 10, 2004.

<sup>60</sup> "National Center for Missing & Exploited Children Spearheads Campaign to Promote (continued...)"

On October 2, 2002, the first White House Conference on Missing, Exploited and Runaway Children was held by the Administration “to promote public awareness of the need to improve children’s safety, and to generate recommendations and best practices from experts in the field.”<sup>61</sup> It was reported that over 600 persons from across the nation attended the conference as President George W. Bush, the keynote speaker, expressed his support for the Hutchison-Feinstein National AMBER Alert Network Act of 2002, legislation sponsored by Senators Hutchison and Feinstein and passed by the Senate in September 2002. Noting that the House had not acted on the legislation at that time, the President took immediate action to help expand and improve the AMBER Alert system.

The Administration’s plan included the Attorney General creating an AMBER Alert Coordinator at DOJ; establishing suggested nationwide standards for issuing and disseminating such alerts to help ensure that the system would be used only for rare instances of serious child abductions; the Attorney General and the Secretary of Transportation using a total of \$10 million from existing funds to develop AMBER Alert training and education programs, upgrade emergency alert systems, and to facilitate use of the electronic highway message boards and other systems as components of AMBER Alert plans.<sup>62</sup>

On October 2, 2002, the Attorney General appointed Deborah J. Daniels, the Assistant Attorney General for the Office of Justice Programs (OJP) as the first National AMBER Alert Coordinator at DOJ. The duties of this position include coordinating and assisting in developing and enhancing the system across the nation; serving as the contact point for the nation and working with state and local entities to increase the number of AMBER Alert plans; and seeking to guarantee that such organizations work together as a smooth network.<sup>63</sup> In January 2005, Tracy A. Henke, as the Acting Assistant Attorney General, became the National AMBER Alert Coordinator.<sup>64</sup>

The Attorney General dispensed the initial \$3 million for the creation of the plan to authorities around the nation for high-quality AMBER Alert education, training and technical assistance resources, assistance in developing voluntary standards for activating the system, and provision of computer software upgrades for AMBER Alert systems nationwide. The remaining \$7 million were used by the Secretary of Transportation to develop and enhance notification or communications systems along

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<sup>60</sup> (...continued)

AMBER Plan Nationwide,” Received Aug. 23, 2002 from Joan Donnellan.

<sup>61</sup> The White House, Office of the Press Secretary, “White House Conference on Missing, Exploited and Runaway Children,” Oct. 2, 2002.

<sup>62</sup> Ibid.

<sup>63</sup> “Attorney General Ashcroft Announces National Amber Alert Coordinator,” U.S. Dept. of Justice, Office of Justice Programs, *Press Release*, Oct. 2, 2002.

<sup>64</sup> U. S. Dept. of Justice, Office of Justice Programs, “AMBER Alert,” at [<http://www.amberalert.gov>].

highways for AMBER Alerts, and other relevant information needed to recover abducted children.<sup>65</sup>

## Legislation for a Nationwide AMBER Alert System

Legislation to enact a nationwide AMBER Alert system was initiated in the 108<sup>th</sup> Congress by Senators Kay Bailey Hutchison and Diane Feinstein with the introduction and unanimous Senate passage of S. 121, the National AMBER Alert Network Act of 2003. The House took action on the issue when Representative F. James Sensenbrenner introduced H.R. 1104, the Child Abduction Prevention Act. This bill, which included law enforcement provisions related to the sexual exploitation of missing and exploited children as well as AMBER Alert provisions, passed the House, amended (by a vote of 410-14). The House struck the language of a related Senate-passed bill, S. 151, the Prosecuting Remedies and Tools Against the Exploitation of Children (PROTECT) Act, and inserted the language of H.R. 1104, as amended and passed by the House. The language of S. 151, which was initially introduced by Senator Orrin Hatch, amended Title 18 of the U.S. Code that relates to sexual exploitation of children,<sup>66</sup> and the measure was signed into law (P.L. 108-21) by the President on April 30, 2003.

P.L. 108-21, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act, not only provides \$20 million for state grants to develop and/or enhance AMBER Alert plans, but reauthorizes NCMEC by doubling its annual grant from \$10 to \$20 million, requires the designated authority for a public building to create procedures to locate a child missing in such a building, as well as includes law enforcement and federal criminal code provisions related to missing and exploited children. Provisions are discussed below that are referred to in the Act as Title III — Public Outreach, Subtitle A — AMBER Alert; Subtitle B — National Center for Missing and Exploited Children; and Subtitle D — Missing Children Procedures in Public Buildings.

As previously mentioned, the Runaway, Homeless, and Missing Children Protection Act (P.L. 108-96) was enacted to reauthorize and amend the entire Missing Children's Assistance Act (MCAA) of 1984. This measure also reauthorized the Runaway and Homeless Youth Act (RHYA). For discussions about RHYA, see CRS Report RL31933, *The Runaway and Homeless Youth Program: Administration, Funding, and Legislative Actions*.

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<sup>65</sup> Discussed with a spokesman at OJJDP in a telephone conversation on Oct. 24, 2002.

<sup>66</sup> For an analysis of the original version of S. 151, see CRS Report RL31744, *Child Pornography Produced Without an Actual Child: Constitutionality of 108<sup>th</sup> Congress Legislation*. Also, for a comparison of S. 151 with H.R. 1161, the Child Obscenity and Pornography Prevention Act of 2003, which contains similar provisions, see CRS Report RS21463, *Child Pornography: Side-by-Side Comparison on Senate and House Bills*.

**P.L. 108-21, Title III — Public Outreach, Subtitle A — AMBER Alert**

Title III, Public Outreach, Subtitle A, AMBER Alert, directs the Attorney General to assign a DOJ officer as the AMBER Alert Coordinator of the Department, whose duties include: (1) seeking to eliminate gaps in the AMBER Alert communications network, including gaps in interstate travel; (2) working with states to encourage the development of local AMBER plans in the network; (3) working with states to ensure appropriate regional coordination of various components of the network; and (4) acting as the nationwide contact point for developing the network, and for regional coordination of child abduction alerts through the network. To perform these duties, the Coordinator was directed to notify and consult with the FBI Director concerning each abducted child for which an AMBER Alert is issued; and cooperate with the Secretary of Transportation (hereinafter, the Secretary) and the FCC in implementing such actions. Also, the AMBER Alert Coordinator was required to submit a report to Congress no later than March 1, 2005, on the Coordinator's activities, and the effectiveness and status of AMBER Alert plans of each state that has implemented such a plan. The Coordinator was to consult with the Secretary of Transportation when preparing the report. The report is in progress and will soon be released to Congress.<sup>67</sup>

The AMBER Alert Coordinator is directed to create minimum standards regarding issuing alerts through the AMBER system; and to determine the extent to which such alerts should be disseminated and issued through the network. Limitations regarding minimum standards include: (1) that such standards should be adopted only on a voluntary basis; (2) to the maximum extent practicable (as determined by the Coordinator after consulting with state and local law enforcement agencies), such standards should stipulate that appropriate information related to the needs of an abducted child, including health care needs, are disseminated to the appropriate law enforcement, public health, and other public officials; (3) to the maximum extent practicable (as determined by the Coordinator after consulting with state and local law enforcement agencies), such standards should stipulate that AMBER Alert announcements be limited to the geographic areas that will most likely facilitate recovering an abducted child; and (4) when establishing minimum standards, the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and state and local law enforcement agencies regarding such alerts. When carrying out duties regarding minimum standards, the Coordinator is instructed to cooperate with the Secretary and the FCC; and to cooperate with local broadcasters and state and local law enforcement agencies when creating such standards.

Along with requiring the Secretary to provide grants to states for developing and enhancing highway notification or communications systems for alerts and other information related to the recovery of abducted children, the measure allows the Secretary to make grants to states for developing a state program for using changeable message signs or other motorist information systems to notify motorists about abducted children. It requires that the state program provide for planning, coordinating, and designing systems, protocols, and message sets that support the

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<sup>67</sup> Discussed in a telephone conversation with a OJP spokesman on April 27, 2005.

coordination and communication necessary to alert motorists about abducted children.

States may use a grant to (1) develop basic policies and procedures for using changeable message signs or other motorist information systems to alert drivers about child abductions; (2) develop policies on content and format of alert messages to be communicated on changeable message signs or other traveler information systems; (3) coordinate state, regional, and local plans for using changeable message signs or other transportation related issues; (4) plan secure and reliable communications systems and protocols among public safety and transportation agencies or change existing communications systems to support notifying motorists about child abductions; (5) plan and design improved communications systems to alert motorists, including the ability to issue wide area alerts to motorists; (6) plan systems and protocols to encourage ways to efficiently notify motorists about child abductions during off-hours; and (7) provide training and guidance to transportation authorities to ease the appropriate use of changeable message signs and other traveler information systems for notifying motorists about abducted children.

The Secretary may award a grant to a state for implementing a program using changeable message signs or other such information systems to alert motorists about abducted children. To be eligible for a grant, the Secretary must determine that the state has developed such a state program. Also, a state may use a grant to support implementing systems that use changeable message signs or other motorist information systems to alert motorists about abducted children. Such support may include purchasing and installing changeable message signs or other motorist information systems to alert motorists about abducted children. The federal share for the cost for these activities funded by a grant may not exceed 80%. The Secretary must, to the maximum extent possible, ensure that grants are equitably distributed among states that apply for a grant within the prescribed time period. Furthermore, the Secretary must set requirements for receiving grants. The term "state" is defined as the 50 states, the District of Columbia, or Puerto Rico. The legislation authorized \$20 million for FY2004 grants only. The Secretary was required to conduct a study examining state barriers to adopting and implementing state programs for using highway communications systems for alerts and other information for recovering abducted children. In addition, the Secretary was required to submit a report to Congress no later than one year after the Act became law on the results of the study with any recommendations deemed appropriate. DOT transmitted the report to Congress on January 12, 2005.<sup>68</sup>

For FY2004, DOT received the authorized \$20 million<sup>69</sup> for the grant program to be used until the funds were expended. Consequently, DOT implemented a grant program offering \$400,000 to each state for creating and devising some type of method to notify motorists whenever AMBER Alerts were issued. Thus far, \$6.8

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<sup>68</sup> This information was discussed in a telephone conversation with a DOT spokesman on April 28, 2005.

<sup>69</sup> This figure was subject to the 0.59% reduction, which brought funding to around \$19 million. This information was discussed in a telephone conversation with a DOT spokesman on April 28, 2005.

million have been expended to 17 states for such grants. At the time of this writing, applications were still being accepted and will be available until all funds are disbursed.

The Attorney General is required to implement a state grant program for developing or enhancing programs and activities to support AMBER Alert communications plans. Grant activities may include (1) developing and implementing education and training programs, and associated materials related to AMBER Alert plans; (2) developing and implementing law enforcement programs, and associated equipment for AMBER Alert plans; (3) developing and implementing new technologies to improve AMBER Alert communications as a grant activity; and (4) such other activities the Attorney General deems appropriate to support the AMBER Alert program. The federal share for such a grant may not exceed 50%. To the maximum extent possible, the Attorney General should ensure that grants are equitably distributed throughout the various regions in the nation. Also, the Attorney General should define grant requirements, including application rules for obtaining a grant. The Act authorized \$5 million to be appropriated to DOJ for such grants for FY2004 only, and an additional \$5 million to develop and implement new technologies to improve AMBER Alert communications for FY2004 only. In FY2004, Congress appropriated \$3.95 million for the AMBER Alert plan.<sup>70</sup>

The DOJ grant program, however, was never implemented because the Department did not believe that the \$3.95 million grant funding level was sufficient to use for the entire nation. Instead, DOJ used the funds for training and technical assistance to states provided through the Fox Valley Technical College of Appleton, Wisconsin. Fox Valley partnered with NCMEC and OJJDP to provide such assistance to state and local agencies preparing to address missing and exploited children, child abuse and neglect, and child fatalities cases.<sup>71</sup>

The final section of Subtitle A stipulates that NCMEC (including any of its officers, employees or agents) will not be liable for damages in any civil action for defaming, libeling, slandering, or harming a reputation that might arise out of any action or communication connected with any clearinghouse, hotline or any such complaint intake or forwarding program, or connected with activity that is totally or partially funded by the United States in cooperation with or directed by a federal law enforcement agency. This limitation, however does not apply if such a plaintiff proves that NCMEC (including its officers, employees or agents) acted with malice, or provided information or took action for a purpose that is unrelated to an activity mandated by federal law.

## **Subtitle B — National Center for Missing and Exploited Children**

Subtitle B amends section 404(b)(2) of the Missing Children's Assistance Act (42 U.S.C. § 5773(b)(2) [Annual Grant to National Center for Missing and Exploited Children], to authorize \$20 million for each of fiscal years 2004 through 2005. P.L.

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<sup>70</sup> This figure reflects an across-the-board rescission of 0.59%.

<sup>71</sup> Discussed in a telephone conversation with a OJP spokesman on April 27, 2005.



108-96, the Runaway, Homeless, and Missing Children Protection Act continued NEMEC's authorization by extending funding years through FY2008. See CRS Report RS21365, *The Missing Children's Assistance Act (MCAA): Appropriations and Reauthorization* for a discussion about the reauthorization of MCAA and NCMEC.

Subtitle B also amends section 3056 of Title 18 of the U.S. Code by authorizing Secret Service agents, under the direction of the Secretary of Homeland Security, to provide forensic and investigative assistance in support of any missing or exploited children investigation, if requested by any state or local law enforcement agency or by NCMEC.

Section 404 (b)(1) of MCAA is amended by authorizing the OJJDP Administrator to use NCMEC grant money to coordinate the operation of a cyber tipline by providing online users an effective method of reporting Internet-related child sexual exploitation. It should be noted that a Cyber Tipline already is funded through NCMEC for such a purpose. This S. 151 provision, however, made the tipline a mandatory provision of MCAA.

## **Subtitle D — Missing Children Procedures in Public Buildings**

This subtitle is referred to as the "Code Adam Act."

**Definitions.** Definitions that apply to this provision are as follows: (1) "Child" means a person who is 17 years of age or younger; (2) "Code Adam Alert" means a set of procedures used in public buildings to alert employees and other building occupants that a child is missing; (3) "Designated authority," with respect to a public building that is owned or leased by an Executive agency, except as otherwise indicated, means Administrator of General Services; the Board of Trustees of the John F. Kennedy Center for Performing Arts; the Board of Regents of the Smithsonian Institution (for buildings under the jurisdiction, custody, and control of the Smithsonian Institution), the head of an Executive Agency (for another public building for which an Executive agency has jurisdiction, custody, and control over the building by law); the Marshall of the Supreme Court, with respect to the Supreme Court Building; the Director of the Administrative Office of the U.S. Courts, with respect to the Thurgood Marshall Federal Judiciary Building; and the General Services Administration in consultation with the U.S. Marshals Service, with respect to all other public buildings owned or leased by an establishment in the judicial branch of government; and the Capitol Police Board, with respect to a public building that is owned or leased by the legislative branch of government; (4) "Executive agency" means the same as such term under Title 5, Section 105 of the U.S. Code; (5) "Federal agency" means any Executive agency or any establishment within the legislative or judicial branches of government; and (6) "Public building" means any building or a portion of a building that is owned or leased by a federal agency.

### **Procedures in Public Buildings Regarding a Missing or Lost Child.**

The designated authority for a public building must create procedures for locating a child that is missing in the building no later than 180 days after the date that this Act becomes law. Established procedures must provide for at a minimum — (1) notifying security personnel that a child is missing; (2) obtaining a detailed

description of the child, including name, age, color of eyes and hair, height, weight, clothing, and shoes; (3) issuing a Code Adam Alert and providing a description of the child by communicating in a fast and effective manner; (4) establishing a central point of contact; (5) monitoring all points of departure from the building while a Code Adam is in effect; (6) conducting a thorough search of the building; (7) contacting local law enforcement; and (8) documenting the incident.

## **Legislative Actions in the 109<sup>th</sup> Congress**

On January 4, 2005, H.R. 96, “The Tory Jo’s Loophole AMBER Response Act” (identical to S. 133, introduced by Senator Talent on January 24, 2005), was introduced by Representative Sam Graves and referred to the House Judiciary Committee. This bill amends Title III, Subtitle A, Section 302 of the PROTECT Act by altering the minimum standards for issuing and disseminating AMBER Alerts through the AMBER Alert communications network. It would allow local law enforcement officers to issue and provide for disseminating an AMBER Alert to facilitate the recovery of an abducted newborn. H.R. 96 also would amend Title III, Subtitle A by adding a new Section 306 (Definition) describing the term “child” to mean “an individual under 18 years of age;” or “a newborn.”

On January 6, 2005, H.R. 252, the “Infant Protection and Baby Switching Prevention Act of 2005,” was introduced by Representative Jackson-Lee. The bill was later referred to the House Ways and Means Subcommittee on Health, the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, and the House Energy and Commerce Subcommittee on Health. The proposal would amend Title 18 (Medicare) of the Social Security Act to require certain hospitals that are reimbursed under Medicare and provide neonatal and infant care, to have security procedures in effect that would reduce the likelihood that an infant patient would be abducted or switched. Such procedures should include ways to identify all infant hospital patients to ensure that it would be evident if infants were missing. Also, the bill would establish civil penalties if hospitals failed to have such security procedures in place. No further action has occurred on the legislation.

Representative Brown-Waite introduced H.R. 528, the “Audrey Nerenberg Act,” on February 2, 2005. The bill would amend MCAA to extend its applicability to persons determined by an appropriate medical authority to have a mental capacity of under 18 years of age. The bill was referred to the House Education and the Workforce Subcommittee on Select Education. No further action has occurred.

H.R. 1223, the “Protecting Our Children From Violence Act of 2005,” was introduced by Representative Foley on March 10, 2005, directing the Attorney General to ensure that appropriate state social services officials have the authority to access the FBI’s NCIC databases and the Interstate Identification Index to check child abuse cases and cases of missing children. The bill was referred to the House Judiciary Committee. No further action has occurred.

## Concluding Observations

Both NISMART studies indicated that family abductions outnumber nonfamily and/or stereotypical kidnappings, which were considered to be very rare. OJJDP found that the family abduction problem has not been adequately addressed by the criminal justice system, including international abduction cases. Policymakers, *NISMART-2* analysts suggested, need to design effective programs and develop suitable interventions to help reduce child abduction problems.

Because of the high-profile cases reported in the media about the abduction of several children in Summer 2002, urgent action to help recover missing children unharmed appeared to be a matter of priority for Congress and the Bush Administration. The reported success of local and regional AMBER Alert plans were used as arguments for expanding the system nationally and for building upon the successful recovery of abducted children. Although an attempt to initiate nationwide plans through legislative action stalled in the 107<sup>th</sup> Congress, the Administration moved forward with its own National AMBER Alert Plan so that a system would be in place in case another child was abducted. In the 108<sup>th</sup> Congress, legislation was considered, passed, and signed into law by the President to expand such plans throughout the nation.

Some questions remain, however, about responding to the problem of abducted children. These questions include:

- What can be done to help reduce and/or prevent family abductions (which appear to be the majority of abduction cases) particularly of younger children, and to address issues related to their safety? and
- How can law enforcement responses to family abductions be enhanced?