

West Virginia

CHAPTER 49 CHILD WELFARE ARTICLE 9 MISSING CHILDREN INFORMATION ACT

W. Va. Code § 49-9-1 (2005)

§ 49-9-1 Short title

This article may be cited as the "**Missing Children** Information Act."

§ 49-9-2 Definitions

As used in this article:

- (a) "**Child**" means an individual under the age of eighteen years who is not emancipated;
- (b) "Clearinghouse" means the West Virginia **missing children** information clearinghouse;
- (c) "Custodian" means a parent, guardian, custodian or other **person** who exercises legal physical control, care or custody of a **child**;
- (d) "**Missing child**" means a **child** whose whereabouts are unknown to the **child's** custodian and the circumstances of whose absence indicate that:
 - (1) The **child** did not leave the care and control of the custodian voluntarily and the taking of the child was not authorized by law; or
 - (2) The **child** voluntarily left the care and control of his or her custodian without the custodian's consent and without intent to return;
- (e) "**Missing child** report" means information that is:
 - (1) Given to a law-enforcement agency on a form used for sending information to the national crime information center; and
 - (2) About a **child** whose whereabouts are unknown to the reporter and who is alleged in the form submitted by the reporter to be **missing**;
- (f) "Possible match" means the similarities between an unidentified body of a **child** and a **missing child** that would lead one to believe they are the same **child**;
- (g) "Reporter" means the **person** who reports a **missing child**; and
- (h) "State agency" means an agency of the state, political subdivision of the state or public postsecondary educational institution.

§ 49-9-3 Clearinghouse function

- (a) The **missing children** information clearinghouse is established under the West Virginia state police. The state police:
 - (1) Shall provide for the administration of the clearinghouse; and
 - (2) May promulgate rules in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to carry out the provisions of this article.
- (b) The clearinghouse is a central repository of information on **missing children** and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

(1) Establish a system of intrastate communication of information relating to **missing children**;

(2) Provide a centralized file for the exchange of information on **missing children** and unidentified bodies of **children** within the state;

(3) Communicate with the national crime information center for the exchange of information on **missing children** suspected of interstate travel;

(4) Collect, process, maintain and disseminate accurate and complete information on **missing children**;

(5) Provide a statewide toll-free telephone line for the reporting of **missing children** and for receiving information on **missing children**;

(6) Disseminate to custodians, law-enforcement agencies, the state department of education, the governor's cabinet on **children** and families and the general public information that explains how to prevent **child** abduction and what to do if a **child** becomes **missing**;

(7) Compile statistics relating to the incidence of **missing children** within the state;

(8) Provide training materials and technical assistance to law-enforcement agencies and social services agencies pertaining to **missing children**; and

(9) Establish a media protocol for disseminating information pertaining to **missing children**.

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of **missing children**.

(e) The state police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

§ 49-9-4 State department of education; **missing children** program

(a) The state department of education shall develop and administer a program for the location of **missing children** who may be enrolled in the West Virginia school system, including private schools, and for the reporting of **children** who may be **missing** or who may be unlawfully removed from schools.

(b) The program shall include the use of information received from the clearinghouse and shall be coordinated with the operations of the clearinghouse.

(c) The state board of education may promulgate rules in accordance with the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code for the operation of the program and shall require the participation of all school districts and state-accredited private schools in this state.

§ 49-9-5 Information to clearinghouse

Every law-enforcement agency in West Virginia shall provide to the clearinghouse any information the law-enforcement agency has that would assist in locating or identifying a **missing child**.

§ 49-9-6 Custodian request for information

- (a) Upon written request made to a law-enforcement agency by the custodian of a **missing child**, the law-enforcement agency shall request from the clearinghouse information concerning the **child** that may aid the custodian in locating or identifying the child.
- (b) A law-enforcement agency to which a request has been made pursuant to subsection (a) of this section shall report to the custodian on the results of its inquiry within fourteen calendar days after the day the written request is received by the law-enforcement agency.

§ 49-9-7 **Missing child** report forms

- (a) The clearinghouse shall distribute **missing child** report forms to law-enforcement agencies in the state.
- (b) A **missing child** report may be made to a law-enforcement agency in **person** or by telephone or other indirect method of communication and the **person** taking the report may enter the information on the form for the reporter. A **missing child** report form may be completed by the reporter and delivered to a law-enforcement office.
- (c) A copy of the **missing child** report form shall be filed with the clearinghouse.

§ 49-9-8 Law-enforcement requirements; **missing child** reports; unidentified bodies

- (a) A law-enforcement agency, upon receiving a **missing child** report, shall:
 - (1) Immediately start an investigation to determine the present location of the **child** if it determines that the **child** is in danger; and
 - (2) Enter the name of the **missing child** into the clearinghouse and the national crime information center **missing person** file if the **child** meets the center's criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics and a description of the clothing worn when the **missing child** was last seen.
- (b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry.
- (c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

§ 49-9-9 Release of dental records; immunity

- (a) At the time a **missing child** report is made, the law-enforcement agency to which the **missing child** report is given may, when feasible and appropriate, provide a dental record release form to

the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the **missing child**. The law-enforcement agency shall endorse the dental record release form with a notation that a **missing child** report has been made in compliance with the provisions of this article. When the dental record release form is properly completed by the parent, custodian, health care surrogate or other legal entity authorized to release the dental records of the **missing child** and contains the endorsement, the form is sufficient to permit a dentist or physician in this state to release dental records relating to the **missing child** to the law-enforcement agency.

(b) A circuit court judge may for good cause shown authorize the release of dental records of a **missing child** to a law-enforcement agency.

(c) A law-enforcement agency which receives dental records under the provisions of subsections (a) or (b) of this section shall send the dental records to the clearinghouse.

(d) A dentist or physician who releases dental records to a person presenting a proper release executed or ordered pursuant to this section is immune from civil liability or criminal prosecution for the release of the dental records.

§ 49-9-11 Interagency cooperation

(a) State agencies and public and private schools shall cooperate with a law-enforcement agency that is investigating a **missing child** report and shall furnish any information, including confidential information, that will assist the law-enforcement agency in completing the investigation.

(b) Information provided by a state agency or a public or private school may not be released to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules of the West Virginia state police.

§ 49-9-12 Confidentiality of records

(a) The state police shall promulgate rules according to the provisions of article three [§§ 29A-3-1 et seq.], chapter twenty-nine-a of this code to provide for the classification of information and records as confidential that:

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a **missing child** or an unidentified body, if the state police, in consultation with the law-enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to **missing children** and unidentified bodies and the state police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the state police determines might interfere with an investigation or otherwise harm a **child** or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the **missing child**.

§ 49-9-13 Attorney general to require compliance

The attorney general shall require each law-enforcement agency to comply with the provisions of the **Missing Children** Information Act and may seek writs of mandamus or other appropriate remedies to enforce the provisions of this article.

§ 49-9-14 Agencies that receive report

(a) Upon completion of the **missing child** report the law-enforcement agency shall immediately forward the contents of the report to the **missing children** information clearinghouse and the national crime information center's **missing person** file: Provided, That if an information entry into the national crime information center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(b) Within fifteen days after completion of the report, if the child is less than thirteen years of age the law-enforcement agency may, when appropriate, forward the contents of the report to the last:

- (1) Child care center or child care home in which the child was enrolled; or
- (2) School the **child** attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a **missing child** shall:

- (1) Update the initial report filed by the agency that received notification of the **missing child** upon the discovery of new information concerning the investigation;
- (2) Forward the updated report to the appropriate agencies and organizations;
- (3) Search the national crime information center's wanted person file for reports of arrest warrants issued for **persons** who allegedly abducted or unlawfully retained **children** and compare these reports to the **missing child's** national crime information center's **missing person** file; and
- (4) Notify all law-enforcement agencies involved in the investigation, the **missing children** information clearinghouse, and the national crime information center when the **missing child** is located.

CHAPTER 15. PUBLIC SAFETY
ARTICLE 3A. AMBER ALERT PLAN

§ 15-3A-1. Short title.

This article shall be known and may be cited as "Amber's Plan".

§ 15-3A-2. Findings and determinations relative to "Amber's Plan".

(a) The Legislature finds and determines that:

(1) Public alerts can be one of the most effective tools in combating child abductions;

(2) Law-enforcement officers and other professionals specializing in the field of abducted and missing children agree that the most critical moments in the search for an abducted child are the first few hours immediately following the abduction, asserting that if a child is not found within two to four hours, it is unlikely that child will be found alive;

(3) The rapid dissemination of information, including a description of the abducted child, details of the abduction, abductor and vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(4) Alerted to an abduction, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering the child; and

(5) The most effective method of immediately notifying the public of a child abduction is through the broadcast media.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover abducted children, it is altogether fitting and proper, and within the public interest, to establish such a program for West Virginia.

§ 15-3A-3. Establishment of "Amber's Plan".

(a) The secretary of the department of military affairs and public safety shall establish "Amber's Plan", a program authorizing the broadcast media, upon notice from the state police, to transmit an emergency alert to inform the public of a child abduction. The program shall be a voluntary, cooperative effort between state and local law-enforcement agencies and the broadcast media.

(b) The secretary shall notify the broadcast media serving the state of West Virginia of the establishment of "Amber's Plan" and invite their voluntary participation.

§ 15-3A-4. Activation of Amber Alert.

The following criteria shall be met before the state police activate the Amber Alert:

(1) The child is believed to be abducted;

(2) The child is seventeen years of age or younger;

(3) The child may be in danger of death or serious bodily injury; and

(5) There is sufficient information available to indicate that an Amber Alert would assist in locating the child.

§ 15-3A-5. Notice to participating media; broadcast of alert.

(a) The participating media shall voluntarily agree, upon notice from the state police, to transmit emergency alerts to inform the public of a child abduction that has occurred within their broadcast service regions.

(b) The alerts shall be read after a distinctive sound tone and a statement notifying that the broadcast is an abducted child alert. The alerts shall be broadcast as often as possible, pursuant to guidelines established by the West Virginia Broadcasters' Association, for the first three hours. After the initial three hours, the alert shall be rebroadcast at such intervals as the investigating authority, the state police and the participating media deem appropriate.

(c) The alerts shall include a description of the child, such details of the abduction and abductor as may be known, and such other information as the state police may deem pertinent and appropriate. The state police shall in a timely manner update the broadcast media with new information when appropriate concerning the abduction.

(d) The alerts also shall provide information concerning how those members of the public who have information relating to the abduction may contact the state police or other appropriate law-enforcement agency.

(e) Concurrent with the notice provided to the broadcast media, the state police shall also notify the department of transportation, the division of highways and the West Virginia turnpike commission of the "Amber Alert" so that the department and the affected authorities may, if possible, through the use of their variable message signs, inform the motoring public that an "Amber Alert" is in progress and may provide information relating to the abduction and how motorists may report any information they have to the state police or other appropriate law-enforcement agency.

(f) The alerts shall terminate upon notice from the state police.

(g) The secretary, with the assistance of the participating broadcast media, shall develop and undertake a campaign to inform law-enforcement agencies about "Amber's Plan" and the emergency alert program established under this article.

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