

MISSING CHILDREN RECORD FLAGGING ACT

I. Introduction

More than 354,100 children were abducted by parents or other family members in the United States in 1988. Most of these children were two to eleven years of age. In approximately half of these cases, the left-behind parent did not know the child's location. To assist in locating parentally abducted children, a number of states have enacted "flagging" statutes requiring that law enforcement be notified whenever a request for a missing child's school record or birth certificate, or both, is made. Some states also require that day care records be flagged.

Locating and recovering a parentally abducted child is generally a difficult and frustrating process. "Flagging" statutes can greatly aid location efforts by requiring certain information, e.g., requests for missing children's birth certificates and school and day care records, to be shared with law enforcement. As the New York State Senate noted in passing a school record flagging provision:

[T]he abductor frequently attempts to obtain a birth certificate or school records from the child's former locality in order to enroll the child in school or day care. Flagging records can provide a useful lead to the child's location without imposing any burden on the record-keeping agency.

A study regarding obstacles to the recovery and return of parentally abducted children recommended that states pass record-flagging statutes in order to facilitate location and recovery of an abducted child. Moreover, the National Center for Missing and Exploited Children also has recommended that flagging statutes be enacted.

States are encouraged to enact the sample statute or, if a flagging statute has already been enacted, to review the guidelines, sample statute and commentary for amendments that will produce a more effective flagging system. The guidelines, which are presented in Section II, set forth the major issues to consider in drafting or revising a flagging statute. The sample flagging statute found in section III incorporates the guidelines to establish an effective framework for flagging missing children's birth certificates, and school and day care records. The sample statute covers details not highlighted in the guidelines; a discussion of these details is included in the commentary to the sample statute found in section IV.

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Records to Be Flagged: Birth Certificates, School Records and Day Care Records

For maximum effectiveness, the statute should require flagging a missing child's birth certificate, school records and day care records. Since research indicates that children aged two to eleven are the primary victims of family abductions, flagging school and day care records is critical. Moreover, since birth certificates are often necessary to obtain passports and to enroll in school, flagging birth certificates of missing children is very important.

Provisions that require the flagging of all of these records are included in the sample statute that follows. States may wish to enact these requirements separately (e.g., in statutory provisions affecting the Department of Vital Statistics (for birth certificate flagging), or those on Education (for school record flagging) or those involving Child or Day Care (for day care record flagging).

Directives to Law Enforcement, Schools, Day Care Facilities, Other Agencies

The statute should clearly delineate the responsibilities of law enforcement, schools, day care facilities and agencies maintaining birth certificates.

fl Law Enforcement. Law enforcement should be directed to notify the specific entities holding the missing child's records (e.g., agencies maintaining birth certificates, schools, day care facilities) immediately after receiving a report about a missing child who attended or was enrolled in day care or school in the state or who was born in the state.

fl Schools, Day Care, Birth Certificate Agencies. The agencies maintaining birth certificates ("Birth Certificate Agencies") and schools and day care facilities having records pertaining to the missing child must be directed to flag those records upon receiving notification from law enforcement.

fl Missing and Exploited Children Clearinghouse. The role that the state's missing and exploited children clearinghouse plays in flagging notification should be clearly set forth. In the sample statute that follows, the clearinghouse functions as a safety net, having authority to notify entities to flag records with respect to a missing child should law enforcement fail to do so. Although most states have a missing and exploited children clearinghouse as part of a law enforcement agency, the specific functions of the clearinghouses vary from state to state. Thus, a state may determine that its missing and exploited children clearinghouse should have primary record flagging responsibilities (e.g., providing notification to schools and others to flag missing child's records).

Information to Be Provided to Law Enforcement by Schools, etc.

fl Type of Information. Schools, day care facilities, and agencies maintaining birth records which receive requests for information should be required to report relevant information such as the requesting person's name, description, address, telephone number, and relationship to the child, as well as the name, address, date of birth and social security number of the child. In addition, if possible, obtaining a copy of a driver's license or other photographic identification of the requesting party should be required. The sample statute (part 4(2)) requires this information and documentation.

fl Not Alerting Requesting Parties of Missing Child Status. The agencies maintaining birth certificates, schools, and day care facilities must be required to flag missing children's records and respond to requests involving missing children without alerting those requesting information or records that the records have been flagged or that law enforcement will be notified of the request. A proviso to this effect can be included in the flagging statute or included in regulations implementing the flagging statute.

Statute Must Contemplate Mobility

In today's mobile society, it is not unusual for a child to be born in one state and to move one or more times, attending schools or day care facilities in different states. This is particularly true where a child is abducted by a parent or other family member. Thus, an effective flagging statute must take this movement into account and foster cooperation among the states.

The following sample statute takes this mobility into account in several ways:

fl The definition of "missing child" is not limited to a child who is reported missing in that state and specifically includes a child who is reported as missing by any state law enforcement agency or missing and exploited children clearinghouse or has been entered as missing into the National Crime Information Center (NCIC) computer. (See Sample Flagging Statute, section 1(8).)

fl Upon receiving a report of a missing child (from within the state or from another state's law enforcement agency or clearinghouse or the NCIC), law enforcement within the state is required to immediately notify the relevant entities within the state to flag the missing child's records, and these entities are required to do so. (See Sample Flagging Statute, section 3(1).)

fl If the missing child report was received from someone within the state, but the child was born in or attended school or day care in other states, the state law enforcement agency is required to notify law enforcement in the other states and request that it contact the schools, day care facilities, agencies maintaining birth certificates in those states to flag the missing child's records. (See Sample Flagging Statute, section 3(b). If the other state has a similar flagging statute, those entities would be required to flag the requested records.)

Records Required for School Enrollment

Many schools require that previous school records be obtained as well as proof of the student's identity and age (e.g. birth certificate) when a child registers for the first time at a school. In a number of states this requirement is pursuant to a statutory mandate, which often is part of a missing children's record flagging statute. Such a requirement assists in making school record flagging more effective. The sample flagging statute that follows includes such a provision, with additional details to close off possible loopholes (e.g., schools to obtain verification of prior records when the parent has provided copies of such records, schools to notify law enforcement when a parent cannot or will not provide prior school information or birth certificate).

States also should consider expanding the use of flagging to locate abducted children by having day care facilities require copies of birth certificates or other reliable identification when a child is first enrolled.

Non-Liability for Compliance with Statute

States should encourage compliance with flagging statutes by providing that actions taken in good faith under the flagging statute are immune from liability. The sample statute that follows includes such a provision. (See Sample Flagging Statute, section 5). MISSING CHILDREN RECORD FLAGGING ACT

Section 1. Definitions

For the purposes of this Act:

- (1) "Act" means the Missing Children Record Flagging Act.
- (2) "Birth certificate agency" and "agency" means the state agency maintaining birth certificates, [insert the name of the state agency that maintains birth certificates, e.g., Bureau of Vital Statistics] and any county agency recording and maintaining birth certificates.
- (3) "Child" means any person under the age of 18.
- (4) "Clearinghouse" means the state missing and exploited children clearinghouse.
- (5) "Day care facility" means any licensed day care facility within the state, whether public, private or parochial.
- (6) "Flagged record" means any school or day care facility record, or birth certificate, regarding a missing child.
- (7) "Law enforcement" refers to [insert names of state and local law enforcement agencies], which receive and investigate missing child reports.
- (8) "Missing child" refers to a child whose whereabouts cannot be determined by a person responsible for the child's care, including any child who has been taken, enticed or concealed in derogation of the custody rights, including visitation rights, of a parent, guardian, or other person whether these rights arise by custody order, agreement of the parties, or operation of law. "Missing child" includes a child reported as missing to any state or local law enforcement agency or missing and exploited children clearinghouse or who has been entered as missing into the National Crime Information Center (NCIC) computer.
- (9) "School" means any public, private, parochial or home school within the state.

Section 2. Schools to Require Proof of Student Identity and Age

(1) Public and Private School Systems. Upon enrollment of a student for the first time in a school, the school of enrollment shall:

- (a) request information from the person enrolling the child as to the previous schools attended by the child;
- (b) request the school records for the child from any and all previous schools attended by the child, and if the parent or person enrolling the child provides copies of previous school records, shall request verification from the prior school of the child's name, address,

birth date, grade(s) attended and month(s) and year(s) attended; and notify the person enrolling the student that within thirty days (ninety days, if the student was not born in this country), he or she must provide either (I) a certified copy of the student's birth certificate or (ii) other reliable proof of the student's identity and age accompanied by a signed statement explaining the inability to produce a copy of the birth certificate.

(2) Home Schools. The parent or guardian of a child who is receiving his or her education in a home school shall, not later than October 1 of the first year of the child's attendance at the home school, provide to the State Department of Education either:

- (a) a certified copy of the child's birth certificate, or
- (b) other proof of the child's identity and age accompanied by a signed statement explaining the inability to produce a certified copy of the birth certificate.

(3) Non-Compliance. If the parent, guardian, or person enrolling the child in school does not provide valid, prior school information or documentation as requested by this Section, the school (for lack of information under subsections 2(1)(a) or 2(1)(c)) or the State Department of Education (for lack of information under subsection 2(2)) shall so notify law enforcement within 30 days. Upon receipt of such notification, law enforcement shall immediately check the NCIC to determine if such child has been reported as missing. If so, law enforcement shall immediately notify law enforcement agencies in other states that the missing child has been located.

Section 3. Law Enforcement/Clearinghouse to Notify Schools, Day Care Facilities, Agencies to Flag Missing Children's Records

(1) When a report concerning a missing child is received from within or without this State, law enforcement shall immediately notify any and all schools and/or day care facilities that the child attended or in which the child was enrolled as well as all birth certificate agencies (if the child was born in the state) that such child is missing, and the school, day care facility or agency shall flag that child's records in accordance with this Act and any regulations promulgated hereunder. Law enforcement also shall alert the clearinghouse that the notification required under this section has been made. In the event that law enforcement does not provide the notification required hereunder within fifteen days, the clearinghouse is directed to provide such notification to the appropriate schools, day care facilities and birth certificate agencies.

(2) If a missing child, who was the subject of a missing child report by someone in this state, was born in or attended or was enrolled in a school or licensed day care facility in another state, law enforcement also shall notify law enforcement or the missing and exploited children clearinghouse in the appropriate states regarding such missing child and request such law enforcement agency or clearinghouse to contact the state and county agencies maintaining birth certificates as well as any schools or licensed day care facilities which the missing child attended or in which the missing child was enrolled to flag the missing child's records.

Section 4. System for Flagging Records

(1) Schools/Day Care Facilities/Agencies Shall Flag Records. Upon notification by law enforcement or the clearinghouse regarding a missing child, any school and/or day care facility in which the missing child is currently or was previously enrolled and any birth certifi-

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agency shall maintain the school or day care records and birth certificate in its possession in such a manner that immediately upon receipt of a request regarding a missing child's school or day care record or birth certificate, the school, day care facility or agency shall notify law enforcement or the clearinghouse that a request for a flagged record has been made.

(2) Information to Convey to Law Enforcement

(a) When a request concerning a flagged record is made in person, the school, day care facility, or agency shall NOT advise the requesting party that the request concerns a missing child, and shall:

(I) require the person requesting the flagged record to complete a form requesting such person's name, address, telephone number, social security number and relationship to the child whose birth certificate is being requested, and the name, address, birth date and social security number of the child whose flagged record is being requested;

(ii) if possible, obtain a copy of the driver's license of the requesting party or other photographic identification;

(iii) inform the requesting party that a copy of a certificate will be mailed to him or her;

(iv) immediately after providing the information under subsection (2)(a)(iii)

notify law enforcement that a request has been made concerning a flagged record, including a physical description of the requesting party, the identity, address of the requesting party, and a copy of the requesting party's driver's license or other photographic identification. After such notification, the school, day care facility, or agency shall mail a copy of the requested record to the requesting party no sooner than 21 days later.

(b) When a request concerning a flagged record is made in writing, the school, day care facility, or agency shall immediately notify law enforcement that a request has been made concerning a flagged record and provide a copy of the written request. After such notification, the school, day care facility, or agency shall mail a copy of the requested record to the requesting party no sooner than 21 days later.

(3) Removal of Flag. Upon recovery of a missing child, law enforcement shall so notify any school, day care facility, and/or birth certificate agency that has maintained flagged records. Law enforcement shall also alert the clearinghouse that such notification has been made. In the event that such notification is not made within 30 days of the missing child's recovery, the clearinghouse is authorized to notify any school, day care facility, and/or birth certificate agency that has maintained flagged records that the missing child has been recovered. Upon notification by law enforcement or the clearinghouse that a missing child has been recovered, any school, day care facility, and/or birth certificate agency that has maintained flagged records shall remove the flag from the records. If a school, day care facility and/or birth certificate agency has reason to believe that a missing child may have been recovered, it may request confirmation that the missing child has been recovered from law enforcement or the clearinghouse. If after 45 days from the initial request for confirmation, no response is received, then the school, day care facility and/or birth certificate agency may remove the flag from the record and so inform law enforcement or the clearinghouse.

Section 5. Immunity from Liability

Any law enforcement agency, clearinghouse, school, day care facility or birth certificate agency and any person acting on behalf of any such entity shall be immune from civil and criminal liability for any acts taken in good faith pursuant to this Act.

Commentary to the Sample Flagging Statute

Comments to Section 1: Definitions

1. "Child" is defined to include all those under the age of 18 because most states define child in this way.
2. A definition for "clearinghouse" -- the state missing and exploited children clearinghouse -- is set forth because most states have such a clearinghouse. States not having such a clearinghouse are encouraged to consider creating one. Clearinghouses can serve an important function in coordinating efforts to locate missing and exploited children.
3. "Day care facility" is defined to include all licensed day care facilities. As the National Center for Missing and Exploited Children has pointed out, "[m]any children who are missing due to parental abduction are enrolled in schools and day care centers in new localities, frequently under their legal names." Only licensed facilities were included in the definition in recognition of the practical inability to regulate daycare facilities that do not fall within the state licensing laws. However, to ensure that the broadest feasible definition is used, individual states seeking to adopt flagging statutes are urged to review their licensing/regulatory framework and appropriately substitute the proper terminology to encompass the greatest number of day care facilities, including any family day care homes, that may be regulated.
4. "Missing child" is defined to include a child who is missing and whose whereabouts cannot be determined as well as a child "who has been taken, enticed, kept, or concealed in derogation of the custodial rights, including visitation rights, of a parent, guardian, or other person whether these rights arise by custody order, agreement of the parties or operation of law." Thus, records will be flagged for a child who has been abducted by a parent or other family member, even when the left-behind parent does not have sole custody, but enjoys joint custody or visitation rights. Further, records will be flagged if a child is abducted before there is a custody or visitation decree.

Comment to Section 2: Schools to Require Proof of Student Identity and Age

1. Subsection 2(1)(a) requires schools to request records from the schools previously attended by the child, or if the parent provides the new/current school with records from the prior school, requires the school to request verification of their authenticity from the prior school. This requirement is included to ensure that prior schools that have flagged a missing child's records are contacted even if the abducting parent provides the records to the new/current school. The prior school would then notify law enforcement that a request concerning a flagged record has been made.

Subsection 2(1)(c) requires schools to notify a person enrolling a child in school that he or she must provide a certified copy of the student's birth certificate, or other proof of the student's identity and age as well as a statement explaining why a copy of the birth certificate could not be provided. This subpart recognizes that there are legitimate instances where a birth certificate cannot be produced; however, schools should scrutinize any document(s) proffered as "other proof as to student's identity" to ensure that such documents in fact constitute proof as to identity and age. Passports would appear to be proof. This provision makes the use of aliases more difficult and, consequently, can facilitate identifying a missing child.

2. Subsection 2(2) requires the parent or guardian of a child in a home school to provide to the Department of Education a certified copy of the child's birth certificate or other reliable proof as to the child's identity and age accompanied by a signed statement explaining why the birth certificate could not be produced. By requiring parents or guardians to provide proof as to their child's age and identity, regardless of whether the child attends a public, private or home school, the state is seeking to increase the likelihood that a missing child who is attending such a school is located.

3. If the state does not already do so, it is encouraged to keep a register of children attending school in the state (whether public, private or home). Such a register would facilitate the location of missing children.

Comment to Section 3: Law Enforcement/Clearinghouse to Notify Schools, Agencies to Flag Missing Children's Records

Subsection 3(1) requires the state law enforcement agency to notify the schools and licensed day care facilities that the child attended as well as the state agency maintaining birth certificates to flag records pertaining to the missing child. The state missing and exploited children clearinghouse generally acts as a safety net, having authority to notify entities to flag records should law enforcement fail to do so. In any given state, however, the primary responsibility for record flagging could be shifted to the clearinghouse. The statute would have to be altered accordingly. Pursuant to subsection 3(2), law enforcement may contact law enforcement or the clearinghouse in another state for assistance in flagging a missing child's records.

Comment to Section 4: System for Flagging Records

1. This section requires schools, licensed day care facilities and birth certificate agencies to maintain their records so as to ensure that they can immediately notify law enforcement or the missing and exploited children clearinghouse, as the state enacting the law determines, whenever a request is made about a missing child's records.
2. This section details the information that schools, day care facilities and birth certificate agencies should obtain from the party requesting a missing child's records and be provided to the law enforcement agency. It would be advisable that regulations implementing this section to specify that this notification to law enforcement be made outside the presence of the requesting party so as to reduce the risk that the requesting party will flee with the missing child.
3. This section requires that flags shall be removed from a child's records when law enforcement or the state missing and exploited children clearinghouse, as the state enacting the law determines, notifies the school, licensed day care facility, or birth certificate agencies that the child has been recovered.

Comment to Section 5: Immunity from Liability

This section provides immunity from civil and criminal liability to certain entities and persons (any law enforcement agency, missing and exploited children clearinghouse, school, day care facility, birth certificate agencies as well as any person acting on behalf of such an entity) for acts which occur as a result of the requirements of the Act.

ENDNOTES