

# **MISSING CHILDREN**

**The Law Enforcement Response**

*Edited by*

**MARTIN L. FORST**

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**MARTIN L. FORST**

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# **MISSING CHILDREN**



## Chapter 1

# MISSING CHILDREN AND LAW ENFORCEMENT: AN INTRODUCTION

MARTIN FORST

Over the past decade, increasing attention has been paid to the problem of missing children and homeless youth. In large part, this heightened interest is the result of a few sensational cases that received extraordinary media attention. Media attention, in turn, brought social and political attention, particularly to the victims of stranger and parental abductions, but also to the agencies that handle missing children cases.

Many interrelated issues regarding missing children were raised in the 1980s. Policymakers began to ask such questions as: What are the different types of missing children cases? How many missing children are there within each case type every year? How do public agencies in general and law enforcement in particular handle reports of missing children? How *should* law enforcement agencies handle the various types of cases?

These and other questions have become the subject of research and debate among legislators, other public officials and academicians. The federal government recently took the lead in addressing the problem of missing children by committing new levels of resources to the recovery of these cases. In 1984, for example, Congress enacted the Missing Children's Assistance Act. Among its findings, Congress recognized that "in many cases, parents and local law enforcement officials have neither the resources nor the expertise to mount expanded search efforts" (42 U.S.C. Section 5771(5)). This Act created the U.S. Attorney General's Advisory Board on Missing Children, which has helped **redefine** the problem of missing children from being treated as a social problem to a law enforcement problem. As a result, law enforcement agencies throughout the country have been forced to reexamine their role and responsibilities in dealing with various types of missing children cases.



For better or worse, in the past ten years law enforcement agencies have come under criticism—particularly by parents—for the way they handle missing children cases. Not surprisingly, for many parents whose children are missing, law enforcement agencies cannot do enough, no matter how seriously they take the case, no matter how hard they try to make a recovery. Various groups have raised questions concerning the adequacies of law enforcement policies and procedures regarding missing children cases. Parents have lobbied legislators to create new laws requiring law enforcement agencies to engage in specified actions in dealing with a reported missing child.

As a result of these efforts and the realization that few reliable data existed on the actual practices followed by law enforcement agencies in handling such cases, in 1986 the U.S. Department of Justice, through the Office of Juvenile Justice and Delinquency Prevention, funded a national study of law enforcement policies and practices regarding missing children and homeless youth. That study, of which I was the Codirector, explored in detail how law enforcement agencies were organized to handle missing children cases, how they actually handled them, and how these practices could be improved. During the course of the study, I met many knowledgeable and dedicated people who worked on innovative programs. These programs appeared to be delivering much needed services to missing children and their families. The programs also suggested ways in which the effectiveness of law enforcement agencies handling such cases could be improved. This book, *Missing Children: The Law Enforcement Response*, is at least in part a byproduct of that research project and my encounters with the professionals I met during that three-year study. The contributing authors in this volume make up some of those professionals and experts on missing children.

This book has several related purposes. First, it provides basic information about the evolving legal framework in which law enforcement agencies must now operate in handling various types of missing children cases. One of the conclusions of the national law enforcement study was that officers need further training and education regarding these types of cases. Second, it presents some of the issues being debated at the state and national level. It is through an understanding of these issues that more rational law enforcement policies and procedures can be formulated. And third, it describes some innovative programs that have proven effective around the country. It is hoped that some of these programs can be replicated in other jurisdictions to improve the quality of law enforce-

ment (and other governmental) services for missing children and their families.

### **MISSING CHILDREN CASE TYPES**

“Missing children” is actually a generic term, with no uniform or standardized legal meaning. In reality, missing children and homeless youth encompass a wide variety of formal legal classifications as well as informal categories. Both the formal and informal categories of missing children evoke varied attitudes and reactions among law enforcement officers.

The first formal legal classification is kidnapping, often called stranger abduction. In every state kidnapping is a crime, punishable by imprisonment. Kidnapping, particularly stranger kidnapping, has a relatively clear legal meaning, having developed in Anglo-American law over hundreds of years. Needless to say, this is the type of case that arouses the greatest fears and anxieties in the hearts of parents, and also the swiftest response on the part of law enforcement agencies.

A newer legal category of abduction is what is often termed “parental abduction” in the legal literature. This type of case is also known as “custodial interference” or “child stealing” in some states. This category of offense, which has developed only over the past fifteen years, does not have the same clear meaning as kidnapping; both the definition of parental abduction and the penalties vary significantly from jurisdiction to jurisdiction. The one similarity among all jurisdictions is that the legal definition seems to be unusually vague, thus making it difficult for law enforcement officers to know just when and under what circumstances to enforce the law.

Another category of “missing” child is the runaway. Running away from home by a juvenile is not a crime. This behavior is proscribed by the juvenile or children’s code, and is considered a “status offense.” As a status offense, running away can bring a youth under the jurisdiction of the juvenile or family court. Not all states, however, specifically list running away as a status offense. Some jurisdictions use related terms, such as a juvenile who is “incorrigible” or “beyond the control of the parent or guardian” or “children in need of supervision.” It is standard practice in these jurisdictions, however, to treat running away from home as coming within the scope of these more general terms. Because running away can cause a youth to come within the jurisdiction of the

juvenile court, law enforcement officers are authorized to apprehend runaways (although the amount of time they can be detained varies).

The term “missing” juvenile or “unknown missing” is not a specific legal category. It is not against the law to be missing, either as a juvenile or as an adult. Yet every law enforcement agency has some administrative or organizational unit designated to look for “missing” persons. A few states have begun to enact specific missing children statutes, specifying law enforcement duties in such cases. For example, Montana’s 1985 missing children law assigns law enforcement agencies various responsibilities, including the following:

Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

- (1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;
- (2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and
- (3) immediately enter the missing child report into the national crime information center computer system.

However, it is often not clear in some states what statutory authority exists for law enforcement to perform these functions. The most likely legal provision is some form of civil authority to apprehend persons (adults or juveniles) who constitute a danger to themselves, to others, or are gravely disabled. It appears that departments in many jurisdictions look for missing persons out of a tradition of public service rather than due to any specific statutory mandate. In this sense, then, their mission and legal duties in some missing children cases are statutorily ambiguous.

## **PERCEPTIONS OF THE MISSING CHILDREN PROBLEM**

To refer to the “problem” of missing children is an oversimplification. The “problem” is actually a variety of problems—some larger or smaller in scope and some easier or more difficult to confront.

How law enforcement officers perceive the seriousness of the missing children problem depends on the type of case, as well as the frame of reference or point of comparison used. Stranger kidnappings present a good example. On the one hand, all law enforcement officers believe that stranger kidnapping is one of the most serious crimes that can be committed. No resources are spared to investigate this type of crime.

When even one child's life is at stake, the problem is extremely serious. On the other hand, when this crime is compared to other serious crimes, many officers have a different perception. For example, there are approximately 20,000 criminal homicides and 90,000 reported rapes per year in the United States. Although accurate figures are not available at this point, it appears that there may be as few as a couple hundred stranger kidnappings per year. Compared to criminal homicide and other major felonies, stranger kidnappings of juveniles constitute a relatively infrequent crime.

Parental abductions are generally viewed by law enforcement personnel as far less serious than stranger abductions. The only exception to this rule would be when there is strong evidence that the parental abductor is likely to physically or sexually abuse the abducted child. Such cases, fortunately, appear to be comparatively rare. Therefore as a general rule, parental abduction cases are not viewed as a serious problem by most law enforcement personnel. While parental abductions appear to be on the increase, most likely due to the climbing divorce rate, they remain relatively uncommon. Compared to burglaries and larcenies, parental abductions are extremely rare. In addition, the perception remains among law enforcement officers that a parental abduction constitutes a "civil matter," which further suggests that parental abductions are not taken as seriously as other "crimes," although in many state codes this offense is classified as a felony.

The greatest difference of opinion among law enforcement officers concerning the problem of missing children relates to runaway youth. Generally speaking, most officers, especially those who do not specialize in juvenile work, believe that runaways are not a particularly serious problem. There are at least two bases for this attitude. The first concerns a comparison with other forms of behavior that law enforcement officers encounter. Particularly in large cities, officers confront serious crimes on a daily basis—crimes of violence, such as assault and rape, as well as property crimes such as burglary and grand larceny. Compared to these criminal acts, running away from home, especially by teenagers, is viewed as a relatively minor problem. However, many patrol officers do express concern that runaways may be forced by economic circumstances to commit criminal acts to survive on the streets. But once they do, in the eyes of most officers they are no longer simply runaways—they are now violators of the criminal law.

The second basis for this attitude is related to the fact that running

away from home is not a criminal offense—it is a status offense or no offense at all. Most law enforcement officers see themselves primarily as crime fighters. They want to arrest burglars and muggers. To the extent that running away is not a crime, it is, almost by definition, not a serious form of deviant behavior—at least not a form of behavior about which officers feel they should be particularly concerned. Running away is viewed by the average field officer as a social problem—to be addressed by the child's parents, a social service agency, or perhaps even the juvenile court probation officer. Such behavior per se is not viewed by most police officers as a serious law enforcement problem.

It is important to emphasize that attitudes about the various types of missing children differ among law enforcement officers. Officers who specialize in juvenile work, for example, are much more likely to believe that runaways represent a source of concern. Out-of-jurisdiction runaways in particular are viewed as a problem because there are so many of them in large cities and so few resources to handle them. Local social service agencies would like to help these youths, but they simply do not have the funds to do so. Moreover, there are relatively few private facilities to care for such minors. In the absence of social services to address their basic needs, runaways often become involved in illegal activities—either as the victim or the victimizer—in order to survive. This, unfortunately, means that such youth may be exploited or become involved in crimes such as prostitution, selling drugs, or theft. A scenario frequently cited by juvenile specialists is for a youth to start out in prostitution, be taken home by an unscrupulous adult, given affection as well as drugs, and end up in child pornography. There are no accurate data on how often this happens, but it is clear that it happens all too often.

Having a better understanding of the dangers and pressures runaways face, the juvenile specialist's vision is somewhat different from that of the generalist patrol officer. The juvenile specialist does not dwell only on the one big tragedy that makes the headlines—the stranger kidnapping. He or she sees hundreds or even thousands of little tragedies—tragedies of child abuse and neglect, child prostitution and pornography, drug abuse, and unwanted children. In short, the juvenile specialist sees wasted lives, which are tragedies for all society.

Runaways are also viewed as a problem for the future—for the juvenile specialist believes that the chronic runaway of today has a good chance of becoming the adult criminal of tomorrow. It makes more

sense, in the specialist's eyes, to deal directly with the runaway youth's family and personal problems before they mushroom into criminal behavior that must be dealt with by imprisonment at a later time. Moreover, not only can running away and those activities associated with street life lead to future law enforcement problems, they can also lead to serious future health care problems for the runaway as well as for his or her associates. Mounting evidence suggests, for example, that runaways who engage in unsafe acts of prostitution are more likely to contract—and transmit—the AIDS virus.

This “broader” view of the missing children phenomenon is beginning to encompass parental abduction cases as well. While the juvenile specialist realizes that few children are physically abused by their parent during an abduction, they are coming to understand, through experience and training, that parental abduction can leave long-lasting emotional scars on the young victims. For this reason alone, juvenile specialists are beginning to view parental abduction cases as a serious crime problem.

### **VARIATIONS IN LAW ENFORCEMENT POLICIES AND PROCEDURES**

Law enforcement policies and procedures differ, sometimes markedly, regarding the handling of various types of missing children cases. Almost all large law enforcement agencies have some type of formal, written policies related to the procedures to be used in handling a report of a missing child. It is important to emphasize, however, that many departments, usually those smaller in size, do not have any formal policies regarding the handling of missing children cases.

Formal policies have different names in different departments. In some departments, the formal policies are placed in Policies and Procedures Manuals. A number of departments use Operations (OPS) Manuals. Others use military terminology and call their policies “General Orders.” Some departments place all formal policies into one Manual. Other departments, particularly the larger departments with extensive policies, divide the policies and place them into manuals for each functional unit of the department, for example, a separate communications, patrol, and investigations manual.

Many departmental policies relating to missing children have existed for a number of years. Some of the larger departments have had policies dating back 25 or 30 years. However, within the past few years, numerous

departments have also begun to revise their policies. There are a few interrelated reasons for the recent revisions. One is the general trend in all administrative agencies, particularly law enforcement agencies, to formalize policies and procedures by putting them in writing—to ensure uniform and consistent actions by law enforcement officers. Another motivating factor is the widespread social concern shown in recent years toward the plight of missing children (or at least some types of missing children). Related to this is the fact that many states have recently passed legislation mandating local law enforcement agencies to institute specified procedures in missing children cases. For example, many states now require the entry of a missing juvenile's name into the National Crime Information Center (NCIC) Missing Persons file within a specified period of time. Such legislation is likely to be reflected in recent revisions of Policies and Procedures Manuals. A final reason that has prompted policy revision is the “big case” that sometimes occurs in a jurisdiction (or neighboring jurisdiction), when law enforcement officials make mistakes or omissions due to the lack of specified formal procedures. Public and local political pressure, combined with agency embarrassment, have motivated some departments to develop or refine their policies regarding the appropriate handling of missing children cases.

The length and specificity of departmental policies vary greatly. Although almost every department has at least something written on missing children, some department policies, particularly in smaller departments, have minimal content. In general, the level of detail in a police department's Policy Manual is roughly correlated with the size of the department. Thus, the larger the department, the lengthier and more thorough the policy statements. The content of the policies varies greatly in the degree of specificity and organization. The substantive areas covered in the policies also vary. Some departments have policies that relate both to “missing persons” and “runaways.” Other departments have separate sections for each type of case; still others have runaways subsumed under the more general heading of “missing persons” or “juveniles.”

The definition of “missing person” differs in degree of specificity, although most departments have a rather general definition. One department uses the following definition: “A missing person is generally regarded as a person whose whereabouts are unknown (by close family members, friends, or associates) and whose safety and welfare cannot be confirmed.” Many other departments have similarly vague or all-encompassing

definitions, which could include runaways, lost youth, or victims of foul play. A few jurisdictions have more limited definitions. The extreme degree of specificity is exemplified by a large west coast city which defines a “missing person” as a person who is “missing under circumstances which indicate that he/she may be a suicide or a victim of a crime or a victim of an accident.” Thus, the Missing Persons Unit in this department only handles very specific types of cases. This department has a different unit and set of policies for dealing with youth who “voluntarily” leave home—that is, runaways.

Most departments have age as a criterion for action in their formal policies on missing persons. However, in most instances, the age breakdown is simply between adults and “juveniles,” with somewhat different procedures for each group. In these departments, a missing juvenile, however, is simply defined with reference to each state’s general law of majority or juvenile court jurisdiction, so that a person under a certain age (normally 17 or 18) is by definition a juvenile.

Some departments make distinctions within the “juvenile” category, but the distinctions are often vague. One department’s policies state: “In cases involving a young child, . . .” and another department’s contain the words: “In the case of a small children, . . .” Neither department specifies the meaning of “young” or “small,” so that substantial discretion is left to the individual officer in the field as to what procedures to use. Some departments, by contrast, have specific age considerations, often based on the state’s statutory provisions. A few jurisdictions, for example, mandate specific law enforcement actions for youth of “tender age,” although jurisdictions define tender age differently (e.g., below the age of 10 or below the age of 13). Similarly, California passed a requirement in 1986 that all law enforcement agencies enter into the NCIC system the names of missing juveniles under the age of 12 within four hours of the time the initial report is taken.

Considerable variance exists in formal written policies concerning communication procedures. Some jurisdictions have extensive written policies. In most jurisdictions, however, formal policies grant considerable latitude to the communications staff when handling missing juvenile calls. Most of the communications staff handle these calls primarily based on their intuition, experience, or “common sense.” Because of this, there may be substantial disparity in how different call takers and dispatchers handle similar cases.

Departments also vary significantly in the degree of specificity regard-



ing initial investigative procedures and report taking. Some departments, generally the smaller ones, simply indicate that a report should be taken and an investigation completed; no further guidelines are provided. One department, for example, states in its Policy Manual that the responding patrol officer is to "Initiate immediate steps to locate and check the well being of any person missing when extenuating circumstances are present." This is the department's entire policy on initial investigations, and it does not indicate exactly what steps the officer should take to locate the person. Moreover, the policy states only that the officer is to "Fill out an incident report and other reports as may be necessary." Again, little specific guidance is given the officer. The larger departments, by contrast, tend to provide fairly detailed instructions to officers, specifying all information to be collected and recorded in the missing persons report.

#### **NCIC REPORTING REQUIREMENTS**

In about half of the states, law enforcement personnel have a legal mandate to enter names of missing juveniles into the National Crime Information Center (NCIC) Missing Persons file. Of those states that do not have a reporting requirement, the subject of NCIC is normally never mentioned in the statutes. Texas is one exception. In 1987, the Texas legislature passed a law that provides that local law enforcement agencies "may" enter a missing child's name into the NCIC system.

Of those states that have statutory requirements to report to NCIC, the laws differ somewhat in content, mainly in the time allotted to law enforcement agencies to make the necessary NCIC entry. The time range is quite large. Montana, for example, passed a NCIC entry law in 1985 which provides that the entry shall be made "immediately" upon taking the report of a missing child. Several states' statutes provide that NCIC entry shall be made "as soon as possible." Some states specify a maximum number of hours. South Dakota's law, for example, provides that the entry shall be made within 12 hours after taking the report, and Washington state's law allows 24 hours before the entry must be made. Other states mandate NCIC entry, but do not specify a time period for entry. A few states make the time for entry contingent upon the age of the missing child. California law, for example, requires the entry to be completed within four hours after a report is taken, but only if the child is under the age of 12.

## WAITING PERIOD

One area of law enforcement policy and practice that has been subject to considerable criticism concerns a waiting period to take a report on or start an investigation of a missing child. Many departments still have a formal or an informal waiting period for some types of missing children cases. Normally, the waiting period pertains to older, repeat runaways. (A waiting period never applies to abduction cases.) There is usually no formal, written policy for such a waiting period. The policy is typically informal, and therefore considerable discretion is given to members of the department, from call takers and dispatchers, to patrol officers, to investigators.

In some instances, the informal policies are relatively clear, even though they are unwritten. For example, some departments will not take a missing persons report if the juvenile is 16 years of age or older and has been reported missing at least once before. Instead, the call taker in these departments will tell the parent to wait 48 hours and if the child has not come home in that period of time, the parent is instructed to call the department again, at which time a report would be taken. In the meantime, the department does nothing to recover the child.

In some instances, the practices are quite standardized, although they have not been formalized into official policy. Many departments, for example, have a procedure called "Attempt to Locate" or "ATL." This means that the call taker, upon receiving a call from a parent about a missing child, notifies specified patrol units (or all patrol units in a smaller town) to be on the lookout for the designated child. However, a formal incident or missing persons report is not taken at the initial call. The formal report is taken only after some specified period of time, for example 48 hours, if the child is not found by that time. In this instance, the only thing that is done to recover the child is to have officers "keep their eyes open."

The general belief underlying these formal or informal policies is that most runaways, particularly older and repeat runaways, will return home on their own within a couple of days. It therefore follows, using this logic, that it would be a waste of time and personnel to take a report and start an investigation on such cases, only to have the juvenile voluntarily return shortly thereafter.

Considerable evidence exists to support this line of reasoning. Most older, repeat runaways do in fact return home on their own within a

short period of time. Thus the waiting period policy is based on the most likely scenario; most of these juveniles will return on their own most of the time.

The problem for law enforcement agencies is that the most common scenario does not always happen, and sometimes a runaway finds himself in danger. In some cases, fortunately a small proportion, what was assumed to be a case of a runaway child could actually be an abduction or some other harmful event. In these instances nonresponsiveness by police departments to the report of the missing child may contribute to the child's jeopardy. If the department had taken the effort to look for the child, he or she might have been saved from victimization or injury.

Law enforcement agencies have been subject to a great deal of criticism for waiting period policies or practices. Parents view this type of policy as forestalling action when it is perhaps most needed. If the law enforcement agency does not take a report, does not look for the juvenile, and does not put his or her name in the NCIC system, there is no way for other jurisdictions to know if the child is missing, and no effort is then made to find the juvenile.

## **ISSUES FOR LAW ENFORCEMENT AND SOCIAL POLICY**

Determining the proper response to reports of missing children raises a variety of issues of direct relevance to law enforcement. It is through an exploration of some of these issues that law enforcement agencies can begin to set rational and standardized policies for the various types of missing children cases, providing better services to these children and their families. The issues that follow are only a few of those that will be debated in law enforcement and public policy circles in the years to come. There are no easy answers, and in times of tight budgets and scarce resources, some of the issues may seem insoluble.

## **DECISION RULES, POLICY, AND AGENCY ACTION**

The decision rules law enforcement agencies use both to formally classify cases and guide agency action raise a variety of important issues. Case classification is important initially because different types of cases are, in most agencies, investigated by different units. For example, in many departments a runaway case is investigated by a juvenile bureau and a "missing" juvenile is investigated by a missing persons unit. Of greater importance is the categorization of stranger kidnap cases, since

these cases are often investigated by some other specialized unit, in part to provide greater investigative expertise and intensity.

One critical issue is how law enforcement officers determine if a case should be classified as a stranger kidnapping or an unknown missing child. The general decision rule is that in the absence of clear and convincing evidence of a stranger kidnapping, the case is classified as an unknown missing child. The criteria for clear and convincing evidence are rather rigid. There must be an eye-witness to the abduction or some other obvious indicator such as, as one investigator put it, “blood all over the floor.”

This decision rule is very restrictive and may lead to situations in which “true” kidnap cases are not vigorously investigated because the initial classification is not correct. One example of this restrictive decision rule is found in a case that took place in a west coast city. A three-year-old girl was playing in her front yard while her mother was taking a nap. When the mother awoke and went outside, the girl had disappeared. The mother called the police who responded immediately. Backup units were summoned and a thorough search was conducted. One of the girl’s shoes was found on the sidewalk in front of her house. Some neighbors who were interviewed by the police claimed they had seen strangers driving on the street, but no one had seen a car stop near the child’s house and no one had seen the child being pulled into a car. The police eventually classified the case as an “unknown missing,” since there were no witnesses to any crime. Although this case was investigated thoroughly, there are suggestions that it was not investigated as aggressively as it would have been if it had been classified as a stranger abduction.

The rationale for this decision rule appears clear—it is inefficient and extremely expensive to investigate all cases as if they were stranger kidnappings. While this decision rule is the most cost-effective for law enforcement agencies, it is unclear whether it is the best for the investigation and recovery of missing children. Because of the potential human cost of mistakenly classifying a true kidnap as some less serious category of “missing” child, it is important to explore alternative decision rules. In the criminal justice system, for example, the decision rule regarding the conviction of defendants is to provide procedures to ensure that a particular type of mistake is not made. This decision rule is designed to prevent harm to innocent persons. Perhaps law enforcement could use a similar decision rule in missing children cases. In other words, perhaps law enforcement agencies should assume a child is a victim of a stranger