

NOTE

A NATIONAL AMBER ALERT PLAN: SAVING AMERICA'S CHILDREN

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Perhaps we cannot prevent this world from being a world in which children are tortured. But we can reduce the number of tortured children. And if you don't help us, who else in the world can help us do this?¹

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¹ Albert Camus, *RESISTANCE, REBELLION, AND DEATH* (Justin O'Brien, trans. 1961), reprinted in *RESPECTFULLY QUOTED: A DICTIONARY OF QUOTATIONS* 73 (Platt ed., 1993).

I. Introduction

Kidnapping² is a serious crime, punishable on both the state and federal level.³ Stranger kidnapping, in particular, raises the greatest amount of fear because kidnap at the hands of a stranger is the most life threatening and traumatic for child and family.⁴ Law enforcement officials agree that the crime of stranger kidnapping is one of the most serious crimes and, in turn, spare no expense when investigating this crime.⁵ The AMBER Alert Plan aides law enforcement agencies by allowing broadcasters to activate urgent bulletins that instantly inform the entire community, thereby enlisting their assistance in the search for the missing child in hopes of recovery within the first, most crucial, hours.⁶

In the past, "Congress and the U.S. Supreme Court characterized most missing children cases as 'domestic matters' strictly within the province of the states to resolve through their police powers, the power of *parens patriae*."⁷ As such, kidnapping was beyond the scope of federal regulation.⁸ However, the increasing number of stranger

² R. PERKINS & K. BOYCE, CRIMINAL LAW, (3d ed. 1982). At common law, kidnapping was "the forcible abduction or stealing away of a man, woman or child from his own country and sending him to another." *Id.* Current federal law states that, "whoever unlawfully seizes, confines, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person" is guilty of kidnap. 18 U.S.C. § 1201 (2003). This definition "makes unlawful more than strict kidnapping as defined at common law." *Id.* See also *United States v. Perkins*, 6 M.J. 602 (1978) (stating "18 U.S.C. § 1201 makes unlawful act where perpetrator forced his way into victim's automobile and compelled her, at knife-point, to drive to secluded area where rape ensued").

³ 18 U.S.C § 1201 (2003).

⁴ J. Diamond, *Kidnapping: A Modern Definition*, 13 AM. J. CRIM. L. 1, 25 (1983). See also www.missingkids.org, [hereinafter Missing Kids Website]. "In seventy-five percent of abduction homicides, the child is dead within the first three hours." *Id.*

⁵ MARTIN L. FORST, MISSING CHILDREN: THE LAW ENFORCEMENT RESPONSE 6 (Martin L. Forst ed., 1990).

⁶ See Missing Kids Website, *supra* note 4. The AMBER Plan is a joint effort between law-enforcement and the media to activate alerts through bulletins posted and announced on highway signs, television, and radio in serious child-abduction cases. *Id.* Broadcasters use the Emergency Alert System (EAS), to disseminate a description of the missing child as well as the suspected abductor. *Id.* The goal of the AMBER Alert Plan is to instantly inform the community of the abduction. *Id.* Once the community is informed, citizens are able to assist in the search for the missing child. *Id.*

⁷ MARTHA-ELIN BLOMQUIST, MISSING CHILDREN: THE LAW ENFORCEMENT RESPONSE 24 (Martin L. Forst ed., 1990). *Parens patriae* translates to "[p]arent of the country," it is the principle that the state must care for those who cannot take care of themselves, such as minors. BLACK'S LAW DICTIONARY 769 (abridged 6th ed. 1991).

⁸ See Blomquist, *supra* note 7, at 24.

kidnappings has led the federal government to take a more active role in the recovery of missing children.⁹ Specifically, Congress has taken the lead in addressing this problem by passing the National AMBER Alert Network Act of 2003 (hereinafter “NAANA”).¹⁰ NAANA is a grant program that enhances the AMBER Alert communications network of each state by enabling states to develop a regional network of alerts and improving notification systems along highways.¹¹

Opponents to NAANA consider the law unnecessary.¹² Yet, how can a law that saves the lives of innocent children be unnecessary? Even when “one child’s life is at stake, the problem is extremely serious.”¹³ This note presents an analysis of the Legislature’s past efforts in assisting in the search for missing children and considers whether NAANA is consistent with these efforts to further aid the missing child epidemic.

II. Federal Response To Kidnapping

In enacting criminal abduction statutes, state and local authorities acknowledge that there is a need for direction from the federal government in order to properly carry out investigations in kidnapping cases.¹⁴ However, the traditional scope of cooperation between state and federal government focuses on the “investigation and apprehension of individuals suspected of kidnab.”¹⁵ Little law enforcement attention has been given to the children as victims of stranger kidnappings and their recovery.¹⁶ Not until stranger kidnapping was given significant media attention did the focus turn to the victims of stranger kidnappings and the agencies that help to recover them.¹⁷ While considered a serious

⁹ *Id.*

¹⁰ See *infra* notes 84-116 and accompanying text.

¹¹ See *infra* note 81, at §§ 2-4.

¹² Pam Belluck, *Missing-Child System Faces Risk of Overuse*, N.Y. TIMES, Aug. 16, 2002, at A12.

¹³ Forst, *supra* note 5, at 7.

¹⁴ NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, MISSING AND ABDUCTED CHILDREN 6 (2000). The AMBER Plan necessitates regional coordination. *Id.* It is commonplace that kidnappers, in carrying out the crime, cross state lines, especially as they flee crime scenes. *Id.* See also 42 U.S.C. § 5771(5). Congress recognized that in numerous cases, neither parents nor local law enforcement have the resources or expertise to conduct expansive search efforts, especially when the kidnapper escapes to another jurisdiction. *Id.*

¹⁵ Diamond, *supra* note 4, at 25.

¹⁶ *Id.*

¹⁷ Forst, *supra* note 5, at 3.

crime, kidnapping compared to other serious crimes, such as criminal homicide, is infrequent, resulting in a change in the officer's investigation.¹⁸ The current missing children epidemic has changed the perception of stranger kidnapping as an infrequent crime, thereby increasing the nation's concern over missing children.¹⁹ The legislation that has been shaped as a result of this epidemic illustrates public concern.²⁰ In keeping with these concerns, NAANA delineates a very structured course of action that gives "law enforcement personnel . . . specific mandates for action and guidelines for allocating resources" in hopes of recovering abducted children before they are harmed.²¹

A. *Past National Efforts and Federal Legislation*

Since 1932, the federal government has taken considerable steps to ensure the safety of children by assisting local governments in the search for missing children.²²

The first such enactment was the Federal Kidnapping Act (hereinafter "FKA").²³ The purpose of the FKA was to outlaw interstate kidnappings.²⁴ The statute authorizes federal intervention when

¹⁸ *Id.* at 7. "For example, there are approximately 20,000 criminal homicides and 90,000 reported rapes per year in the United States. . . [and] 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." *Id.*

¹⁹ See Blomquist, *supra* note 7, at 23.

²⁰ See *id.*

²¹ *Id.*

²² NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *supra* note 14, at 3.

²³ 18 U.S.C. 1201 (1932) [hereinafter FKA]. Section 1201 states in part:

§ 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person shall be punished by imprisonment for any terms of years or for life and, if death of any person results, shall be punished by death or life imprisonment . . .

(g) Special rule for certain offenses involving children.

(1) To whom applicable. If—

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender

(i) has attained such age;

the sentence under this section for such offense shall be subject to paragraph (2) of this subsection. (sentencing guidelines).

Id.

²⁴ *Id.* at Interpretive Notes and Decisions (I)(3).

interstate travel is suspected in a kidnapping case.²⁵ Until 1932, kidnapping was only prosecutable as a state offense.²⁶ The FKA was enacted following the kidnapping of Charles Lindbergh²⁷ to assist states in combating the growing occurrence of kidnappings by prohibiting the use of the channels of interstate commerce to facilitate the crime of kidnapping.²⁸

In addition to the FKA, the Federal Bureau of Investigation established the Missing Persons File, which allows police officers in every state to verify and cross-reference reports of missing children.²⁹ The Missing Persons File “provide[s] a centralized computerized system to help law enforcement agencies locate individuals” who are missing.³⁰ However, while local law enforcement agencies are required to enter information into the Missing Persons File, they “are not required to cross-check cases with the Unidentified Persons File” when investigating a missing child case.³¹ Without this crucial connection between the Missing Persons File and the investigation of missing children the search will remain incomplete and unsuccessful.³²

Recognizing the need for comprehensive investigations, Congress passed the Missing Children Act (hereinafter “MCA”)³³ which requires

²⁵ *Id.*

²⁶ *Id.*

²⁷ See JIM FISHER, *THE LINDBERGH CASE* 7-13, 107 (1987). On March 1, 1932, twenty-month old Charles A. Lindbergh was snatched from his home in Hopewell, New Jersey. *Id.* The baby had been removed from his crib. *Id.* Ten months later the child’s body was found in the woods of Mount Rose, New Jersey. *Id.* Upon examination, the coroner determined that the child’s death had occurred two months earlier. *Id.* This was the first time that a federal agency had acted under the FKA. *Id.*

²⁸ FKA § 1201, at Interpretive Notes and Decisions (1)(3). See also Britenae M. Coates, *The Fourth Circuit’s New Interpretation of the Federal Kidnapping Act in United States v. Wills and the Resulting Expansion of Federal Jurisdiction*, 80 N. C. L. REV. 2041, 2044 n.16 (2002).

²⁹ See National Crime Information Center (NCIC), available at <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>.

³⁰ *Id.*

³¹ Congressman Rick A. Lazio, *Improving Reporting on Missing Persons*, available at www.outpostforhope.org/did_you_know/klaas_article.htm.

³² See *id.*

³³ 28 U.S.C. § 534 (1982) [hereinafter MCA]. Section 534 provides:

(a) The Attorney General shall-

(1) acquire, collect, classify, and preserve identification, criminal identification, crime, and other records;

(2) acquire, collect, classify, and preserve any information which would assist in the identification of any deceased individual who has not been identified

law enforcement to catalog information about missing children in its national database and investigate every missing child case with complete dedication and intensity.³⁴ The MCA was enacted as a response to the murder of Adam Walsh.³⁵ This tragedy directed America's attention to the need for additional resources to help investigate missing children cases.³⁶ After several parents of missing children testified before Congress, each detailing their experiences, President Reagan, along with Congress, responded once again by authorizing a fifty-seven million dollar program dedicated to the establishment and continuance of a National Resource Center on Missing Children and a missing children emergency hotline.³⁷

By 1985, more than 100 agencies and community organizations

after the discovery of such deceased individual;

(3) acquire, collect, classify, and preserve any information which would assist in the location of any missing person (including an unemancipated person as defined by the laws of the place of residence of such person) and provide confirmation as to any entry for such a person to the parent, legal guardian, or next of kin of that person (and the Attorney General may acquire, collect, classify, and preserve such information from such parent, guardian, or next of kin);

(4) exchange such records and information with, and for the official use of, authorized officials of the Federal Government, the States, cities, and penal and other institutions.

Id. (emphasis added).

³⁴ *Id.* See also Keith S. Hampton, *Children in the War on Crime: Texas Sex Offender Mania and the Outcasts of Reform*, 42 S. TEX. L. REV. 781, 782 (2001).

³⁵ *Adam Walsh Case 10 Years Ago Sparked Nationwide Movement*, HOUS. CHRON., June 11, 1991 at 6. See also Keith S. Hampton, *Children in the War on Crime: Texas Sex Offender Mania and the Outcasts of Reform*, 42 S. TEX. L. REV. 781, 782 (2001).

On July 27, 1981, six-year-old Adam Walsh disappeared from a Hollywood, Florida, Sears Roebuck store, presumably abducted by a stranger. Before the end of the day, fifty police officers and one hundred volunteers searched the town, with help from helicopters and police boats in the canals, in one of the largest searches in Florida history. A reward of \$120,000 was offered for the safe return of the boy. About two weeks later, the boy's severed head was discovered in a Florida canal 125 miles away. The parents...launched a national crusade to 'make the country safe for these little people.'

Id.

³⁶ Michelle Patterson Ludwig, *When Older Children Disappear – Do Investigative Policies and Procedures Change?*, 22 J. JUV. L. 83, 87-88 (2001).

³⁷ *The Congressional Checkoff*, WASH. POST, June 11, 1984, available at 1984 WL 2033570. See also Keith S. Hampton, *Children in the War on Crime: Texas Sex Offender Mania and the Outcasts of Reform*, 42 S. TEX. L. REV. 781, 782 (2001). The National Resource Center would unify the several centers established in dedication to missing children. *Id.* For example, John Walsh established four Adam Walsh Child Resource Centers, dedicated to finding missing children throughout the United States. *Id.*

had been formed to help in the search for missing children.³⁸ One such agency, the National Child Safety Council, held a highly successful campaign displaying the faces of missing children on milk cartons,³⁹ flyers in federal buildings⁴⁰ and elsewhere⁴¹ in hopes of drawing attention to the growing problem of missing children.⁴² In more recent developments, community organizations have begun to encourage parents to protect their children by using radio transponders⁴³ out of fear that finding a child who has “simply vanished” is at times impossible.⁴⁴ The transponders keep track of the child’s whereabouts.⁴⁵ This technology enables those searching for missing children to pinpoint the child’s location using orbital satellites.⁴⁶ The transponder device “can

³⁸ John Gill, *Missing-Kids’ Groups Foster Fear Rather Than Facts*, NEWSDAY, Apr. 11, 1989, at 65.

³⁹ Kathleen A. Hughes, *Hope is Riding on Milk Cartons*, N.Y. TIMES, Feb. 24, 1985, at 11.

The . . . major milk distributors have joined a national campaign to circulate pictures of missing children, some of whom, authorities believe, may have been abducted . . . [m]ore than 600 dairies across the country are participating in the program, which is sponsored by the National Child Safety Council.

Id.

⁴⁰ See, e.g., N.Y. Dep’t of Taxation and Fin., Publication 40 (2002).

⁴¹ See Rosalie R. Radomsky, *Grocery Bags Aid Search for Children*, N.Y. TIMES, June 2, 1985, at 2. By 1985, grocery bags were being used to display the faces of missing children along with toll tickets, milk cartons, posters, videotapes and television commercials. *Id.* This commitment was part of a nationwide effort to find over 1.8 million children, all who had disappeared at the hands of a kidnapper. *Id.* See also *CBS Public Service Ads to Seek Missing Children*, N.Y. TIMES, July 18, 1985, at C22. CBS began to broadcast nightly announcements during prime time in order to help find missing children. *Id.*

⁴² Harriet Van Horne, *Adam’s Family in the Aftermath of Tragedy*, NEWSDAY, Sept. 28, 1986 at 6, available at 1986 WL 2391516.

⁴³ Sabra Chartrand, *A Tracking Device That Can be Fitted in a Child’s Backpack or a Ball Cap*, N.Y. TIMES, Aug. 5, 2002, at C4.

Jennifer Durst, a single mother from Oyster Bay, N.Y., and two partners have patented a lightweight, portable G.P.S. transceiver that she says is designed to be “form fitted into a backpack, a baseball hat, or a belt,” for example. . . [t]he device weighs about seven ounces (hopefully to become smaller as technology advances.) It runs on a rechargeable battery and picks up its G.P.S. signals with a flat patch like antenna. The system is not available yet, however once on the market it would cost about three hundred dollars, plus a monthly subscription fee.

Id.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* The inventor originally designed the device that taps the global positioning satellite system in order to find her runaway dog. *Id.* Now she has won numerous patents

be programmed with boundaries, and if those boundaries are exceeded, the device sends a message directly to a cellphone, pager . . . traditional phone or even an e-mail address."⁴⁷ Messages are continuously updated with the child's current geographic location.⁴⁸

The response to the missing children epidemic has been incredible.⁴⁹ Yet, despite the combined efforts of national and state governments along with non-profit community organizations, America's children keep disappearing.⁵⁰

B. *Current Legislation: The National AMBER Alert Network Act of 2003*

On January 13, 1996, in the Dallas/Fort Worth area of Texas, nine-year-old Amber Hagerman was dragged off her bicycle and thrown into the front seat of a pickup truck.⁵¹ Her assailant sped off at high speed.⁵² After hearing Amber scream, a neighbor called the police but could not accurately describe the suspect except to say that the suspect's vehicle was a black pick-up truck.⁵³ While the police investigated the crime, local radio and television stations aired updates of the events

and is using the device to help in the effort to prevent child abductions. Sabra Chartrand, *A Tracking Device That Can be Fitted in a Child's Backpack or a Ball Cap*, N.Y. TIMES, Aug. 5, 2002, at C4.

⁴⁷ *Id.*

A parent would program the perimeter of the yard or neighborhood into Ms. Durst's gadget. Th[e] coordinates could be changed or updated at anytime. If the child went for a walk with a parent, the adult could use a password to suspend the boundaries. When the person wearing the gadget leaves the specified perimeter, an alert is sent to a designated two-way radio device. Location information follows in the form of text, figures, graphics or numbers, and is updated every few seconds, in effect following a person down a street, through a neighborhood or around an amusement park. If the tracking system is removed for any reason, an alert and last known location are transmitted. There is also a model that incorporates a 'panic button' so someone in distress can send their own alarm about their location.

Id.

⁴⁸ *Id.*

⁴⁹ See Reagan Decries Peril to Youth, SAN DIEGO UNION-TRIB., June 14, 1984, at A12.

⁵⁰ *Id.* Nearly two million children are reported missing annually; more alarming, however, is that between 20,000 and 50,000 are not found and returned home by the end of the year. *Id.*

⁵¹ See *About Amber Hagerman*, available at www.amber-plan.net/about_amber.htm [hereinafter *Amber Plan Website*]

⁵² *Id.*

⁵³ *Id.*

surrounding the kidnapping during their regular programming.⁵⁴ Four days later, a “security guard found Amber’s nude body face-down in a creek about four miles from the parking lot where she was abducted.”⁵⁵ Evidence showed that Amber had been brutally murdered.⁵⁶ Amber’s kidnapping remains unsolved;⁵⁷ her murderer has never been apprehended.⁵⁸

Shortly after Amber’s kidnapping, a concerned citizen called a local Dallas radio station and suggested that when a kidnapping occurs, local radio stations should repeat all available information concerning the kidnapping in news bulletins as is done for severe weather warnings.⁵⁹ This idea was presented to the Association of Radio Managers, which included all of the general managers of the major radio stations in the Dallas/Fort Worth area.⁶⁰ All agreed that the program proposed would be a great service and could help save children’s lives.⁶¹ In July 1997, the Dallas AMBER Plan was established as a legacy to Amber Hagerman.⁶² Soon the State of Texas adopted the AMBER Plan (“America’s Missing: Broadcast Emergency Response”) in response to the various kidnappings that occurred in Texas within the past couple of years.⁶³

The AMBER Alert Plan mobilizes communities when a child is reported missing.⁶⁴ The system is set up to notify the public *quickly*

⁵⁴ *Id.*

⁵⁵ *Body of Kidnapped Texas Girl is Found*, N.Y. TIMES, Jan. 19, 2002, at A18.

⁵⁶ Amber Plan Website, *supra* note 51.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Amber Plan Website, *supra* note 51.

⁶³ Hampton, *supra* note 34, at 782.

On September 4, 1993, Richard and Diana Estell took their seven-year-old daughter, Ashley, to a park in Plano, Texas to watch their son’s soccer game. Ashley suddenly vanished. After her parents reported Ashley’s disappearance to the authorities, the Plano Police and fire departments set up a command post and searched the area with helicopters, while the city’s Emergency Medical Response Team went door-to-door in search of the child. After a massive search by more than 500 volunteers, some of whom were from other cities and towns, Ashley’s lifeless body was discovered near a dirt road about six miles from the park – she had been strangled.

Id.

⁶⁴ Missing Kids Website, *supra* note 4.

when a child has been abducted.⁶⁵ While it relies on conventional media such as television and radio, messages are also broadcasted on electronic freeway signs and delivered to toll booth operators as well as lottery ticket terminals.⁶⁶ Broadcasters use the Emergency Alert System ("EAS")⁶⁷ to air a description of the missing child and suspected abductor as soon as a law enforcement agency is notified of the abduction so long as the case meets the AMBER Plan's criteria for triggering an alert.⁶⁸

The AMBER Alert Plan has four criteria, all of which must be met before an alert can be triggered.⁶⁹ First, the abducted child must be seventeen years of age or younger.⁷⁰ Second, the law enforcement agency must believe that the missing child has been abducted and is in danger of serious bodily harm or death.⁷¹ Third, the law enforcement agency must have conducted an investigation thus verifying the abduction and ruling out alternative explanations.⁷² Lastly, there must be sufficient information available to disseminate to the public that could assist in locating the child, suspect, or suspect's vehicle.⁷³

The AMBER Alert Plan is important because it focuses on the abducted child and leads to his or her safe recovery, rather than imposing criminal sanctions on the abductors if and when they are ever captured.⁷⁴ Our criminal laws are comprehensive and completely adequate to punish offenders.⁷⁵ Traditionally, the main concern within law enforcement is with the criminal act rather than recovery. The AMBER Alert Plan defines a course of action where abductors are apprehended before they have an opportunity to cause further harm to

⁶⁵ Rebecca Fairley Raney, *Abduction-Notification System Can Now Send Online Alerts*, N.Y. TIMES, Sept. 26, 2002, at G3.

⁶⁶ *Id.*

⁶⁷ The technology used by the AMBER Alert Plan is the Emergency Alert System (EAS), developed after the Emergency Broadcast System which was established during the Cold War and "was known by its 'This is only a test' warning message." Patrick Thibodeau, *Outdated Technology Hampers National Amber Alert System; Pending Bills Don't Include Funding for Revamp of Network*, COMPUTERWORLD, Mar. 17, 2003, at 16.

⁶⁸ Raney, *supra* note 65, at G3.

⁶⁹ Missing Kids Website, *supra* note 4.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See Missing Kids Website, *supra* note 4.

children.⁷⁶ In October 2000, the U.S. House of Representatives adopted House Resolution 605, which encouraged communities nationwide to implement a system similar to the Dallas AMBER Plan citing the National Center for Missing Children in crediting AMBER Alert with saving 22 abducted children.⁷⁷

In October 2002, America Online ("AOL"), the largest internet service provider, partnered with AMBER Alert to transmit information regarding the abducted child on the computer screens, pagers, and cell phones of their twenty-six million subscribers.⁷⁸ The warnings that are issued across the system reach only those AOL users who request them.⁷⁹ AOL is also considering sending alerts on Instant Messenger.⁸⁰ By sending alerts on AOL, states are able to communicate with each other and inform the entire nation of the abduction while enlisting their help.⁸¹ However, this is not enough.⁸²

In order for the system to be effective, it is necessary to create a nationwide AMBER Alert network that coordinates regional systems when issuing alerts.⁸³ On September 3, 2002, Senator Kay Bailey Hutchinson (R-TX) introduced bipartisan legislation that would establish nationwide coordination for AMBER Alert and its

⁷⁶ See *id.*

⁷⁷ See Jim Avila, *Danger of Amber Alert Overuse*, available at www.msnbc.com/news/796412.asp.

⁷⁸ *AOL to Deliver AMBER Alerts Online*, N.Y. TIMES, Oct. 2, 2002.

⁷⁹ *Id.* Several states already use the internet as a vehicle to transmit AMBER Alerts. *Id.* These announcements are nationwide and are able to reach people through the "AOL service on their computer, desktop, cell phone or pager." *Id.* The millions of members already connected to AOL register to participate in the efforts by entering their zip code. *Id.* This enables them to receive alerts in all of the states, counties, and cities that participate in the program. *Id.* Frequent travelers and those who live near state borders are able to enter multiple zip codes in order to receive alerts from various states. *Id.* The National Center for Missing and Exploited Children endorses the partnership with AOL because it is entirely voluntary and is only directed towards specific AOL members who would receive alerts reasonably within their locale. *Id.* In other words, AOL would not spam the country with AMBER Alerts thereby restricting use and maintaining effectiveness. *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² See Missing Kids Website, *supra* note 4.

⁸³ Pam Belluck, *supra* note 12, at A12. A nationwide AMBER Alert system would effectively make the system much more efficient. *Id.* It would enable officials to track a child who is abducted even when the abductor crosses state lines. *Id.* For example, if a child is "abducted in Dallas, in two hours they could be in Oklahoma, Arkansas, or Louisiana." *Id.* This is the case in many states. *Id.* Therefore, the need for implementing AMBER Alert in contiguous states is obvious. *Id.*

communication network.⁸⁴ The National AMBER Alert Network Act of 2002 (NAANA)⁸⁵ was proposed to ensure that every community across the country has an AMBER Alert system that is coordinated with a national alert system.⁸⁶ Proponents of a national AMBER Alert system explain that it is “a common-sense, neighborhood-watch-style program with a proven record of helping save children’s lives, but it only works in communities where it exists.”⁸⁷ Protecting America’s children is a national priority; therefore, creating a national network for the operation of the AMBER Alert Plan is a necessity.⁸⁸

In October 2002, President George W. Bush, a supporter of a national network, announced that “the federal government would help turn the now-patchwork use of AMBER Alerts into a coordinated nationwide network, with \$10 million for training and equipment upgrades.”⁸⁹ Furthermore, President Bush said that the Justice Department would be playing a large role in creating the national network by establishing national standards for alerts and appointing a federal AMBER Alert coordinator.⁹⁰

Specifically, the national network would operate under the National AMBER Alert Coordinator of the Department of Justice.⁹¹ The Director would aid local governments with the implementation of local

⁸⁴ See 2002 Bill Tracking S. 2896; 107 Bill Tracking S. 2896 [hereinafter NAANA].

⁸⁵ *Id.* Section 1 states: “This Act may be cited as the National AMBER Alert Network Act of 2002.” *Id.*

⁸⁶ *Id.* “To enhance the operation of the AMBER Alert communications network in order to facilitate the recovery of abducted children, to provide for enhanced notification on highways of alerts and information on such children, and for other purposes.” *Id.*

⁸⁷ Press Release, Martin Frost, available at www.house.gov/frost/MISSING.htm. In support of AMBER Alert, Ernie Allen, President and CEO of the National Center for Missing and Exploited Children, declared:

Over this summer we have witnessed the effectiveness of the AMBER Alert Program. Our goal is to see that every state have this important program in place, and we’re confident that the Frost-Dunn AMBER Alert Act will encourage communities to do so. We’re grateful to Representatives Martin Frost and Jennifer Dunn for once again taking the lead on an important child safety issue.” Ernie Allen, the President and CEO of the National Center for Missing and Exploited Children.

Id.

⁸⁸ *Id.*

⁸⁹ See Jennifer Loven, *White House wants Justice Department officials to coordinate Amber Alert Systems*, available at www.nctimes.net/news/2002/20021003/61650.html (Oct. 3, 2002).

⁹⁰ *Id.*

⁹¹ NAANA, *supra* note 84.

AMBER Plans, facilitate coordination between such state and local AMBER Plans, as well as assemble regional synchronization between AMBER Alerts.⁹² Under the proposed federal program, national criteria would be implemented in order to establish uniform use among the states.⁹³ The national network would also provide much needed funding

⁹² *Id.* See also Legislative Bulletin, available at www.house.gov. Specifically, the AMBER Alert Provisions require the Attorney General to appoint an officer from the Department of Justice as the coordinator of the National AMBER Alert communications network to “(1) eliminate the gaps in the network; (2) work with States to encourage development of additional elements; (3) work with States to ensure regional coordination; and (4) serves as the nationwide point of contact for the development of the network and regional coordination for alerts.” *Id.* The coordinator would also notify the FBI whenever a child is abducted and an alert is issued on the nationwide network. *Id.* The bill also established a set of minimum standards before an alert is issued. *Id.* The minimum standards are voluntary as established by the bill, “though it specifies that the Coordinator is not to interfere with the current local or state system of voluntary coordination. *Id.*

⁹³ NAANA, *supra* note 84. NAANA states:

SEC. 3. MINIMUM STANDARDS FOR ISSUANCE AND DISSEMINATION OF ALERTS THROUGH AMBER ALERT COMMUNICATIONS NETWORK.

Establishment of Minimum Standards. Subject to subsection (b), the AMBER Alert Coordinator of the Department of Justice shall establish minimum standards for-

the issuance of alerts through the AMBER Alert communications network; and the extent of the dissemination of alerts issued through the network.

Limitations.

The minimum standards established under subsection (a) shall be adoptable on a voluntary basis only.

The minimum standards shall, to the maximum extent practicable (as determined by the Coordinator in consultation with State and local law enforcement agencies), provide that the dissemination of alert through the AMBER Alert communications network be limited to the geographic areas most likely to facilitate the recovery of the abducted child concerned.

In carrying out activities under subsection (a), the Coordinator may not interfere with the current system of voluntary coordination between local broadcasters and State and local law enforcement agencies for purposes of the AMBER Alert communications network.

Cooperation and Consultation.

The Coordinator shall cooperate with the Secretary of Transportation and the Federal Communications Commission in carrying out activities under this subsection.

The Coordinator shall also cooperate with local broadcasters and State and local law enforcement agencies in establishing minimum standards under this section.

The Coordinator shall also consult with the National Center for Missing and Exploited Children and other private sector entities and organizations (including non-profit organizations) having an expertise in matters relating to the minimum standards to be established under this section in establishing the minimum standards.

to local governments in order to update technology, provide uniform training by way of law enforcement programs and equipment.⁹⁴ In particular, NAANA funding would be granted to develop and enhance the communications systems on interstate highways,⁹⁵ as well as provide resources to local communities to either implement AMBER systems or enhance already existing systems.⁹⁶

Id.

⁹⁴ *Id.* Funding would include a matching grant program through the Department of Transportation for highway signs and use. *Id.* The bill “[a]uthorizes \$20 million for grants to States to pay up to 50% of the costs for the development and enhancement of communications along highways for [the] recovery of abducted children.” *Id.* This particular program would be carried out by the Secretary of Transportation. *Id.* Finally, the bill also grants \$5 million to States “to pay up to 50% of the costs of activities in support of AMBER Alert communications plans, including the development of education and training programs.” *Id.* The Attorney General would oversee education and training programs. *Id.*

⁹⁵ *Id.* SEC. 4. GRANT PROGRAM FOR NOTIFICATION AND COMMUNICATIONS SYSTEMS ALONG HIGHWAYS FOR RECOVERY OF ABDUCTED CHILDREN.

Program Required. The Secretary of Transportation shall carry out a program to provide grants to States for the development or enhancement of notification or communications systems along highways for alerts and other information for the recovery of abducted children.

Activities. Activities funded by grants under the program under subsection (a) may include-

The development or enhancement of electronic message boards along highways and the placement of additional signage along highways; and

The development or enhancement of other means of disseminating along highways alerts and other information for the recovery of abducted children.

Federal Share. The Federal share of the cost of any activities funded by a grant under the program under subsection (a) may not exceed 50 percent.

Distributions of Grant Amounts on Geographic Basis. The Secretary shall, to the maximum extent practicable, ensure the distribution of grants under the program under subsection (a) on an equitable basis throughout the various regions of the United States.

Administration. The Secretary shall prescribe requirements, for grants under the program under subsection (a).

Authorization of Appropriations.

There is authorized to be appropriated for the Department of Transportation for fiscal year 2003 such sums as may be necessary to carry out this section.

Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

Id.

⁹⁶ *Id.* SEC. 5. GRANT PROGRAM FOR SUPPORT OF AMBER ALERT COMMUNICATIONS PLANS.

Program Required. The Attorney General shall carry out a program to provide grants to States for the development or enhancement of programs and activities for the support of AMBER Alert communications plans.

Activities. Activities funded by grants under the program under subsection (a)

Unfortunately, Congress did not pass the National AMBER Alert Network Act Bill.⁹⁷ Early in October 2002, the Senate passed the National AMBER Alert Network Act as a stand-alone bill.⁹⁸ However, when the stand-alone AMBER bill reached the House several child protection provisions were attached to the bill.⁹⁹ Proponents of these provisions saw the AMBER bill as the perfect opportunity to pass controversial legislation.¹⁰⁰ Unfortunately, these provisions delayed the passage of the bill until it ultimately died because of Senate objections to the additional provisions, thus hindering the implementation of the National AMBER Alert Network Act.¹⁰¹

include-

The development and implementation of education and training programs, and associated materials, relating to AMBER Alert communications plans;

The development and implantation of law enforcement programs, and associated equipment, relating to AMBER Alert communications plans; and

Such other activities as the Attorney General considers appropriate for supporting the AMBER Alert communications program.

Federal Share. The Federal share of the cost of any activities funded by a grant under the program under subsection (a) may not exceed 50 percent.

Distribution of Grant Amounts on Geographic Basis. The Attorney General shall, to the maximum extent practicable, ensure the distribution of grants under the program under subsection (a) on an equitable basis throughout the various regions of the United States.

Administration. The Attorney General shall prescribe requirement, including application requirements, for grants under the program under subsection (a).

Authorization of Appropriations.

There is authorized to be appropriated for the Department of Justice for fiscal year 2003 such sums as may be necessary to carry out this section.

Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) shall remain available until expended.

Id.

⁹⁷ CONG. GLOBE, 107th Cong., 2d Sess. 1849 (2002).

⁹⁸ Lee Davidson, *Still a Deadlock on AMBER Alert bill*, DESERET NEWS, Mar. 14, 2003, at A04.

⁹⁹ *Id.*

¹⁰⁰ *Id.* These provisions,

provide for a 20-year mandatory minimum sentence of imprisonment for abductions of a child . . . lifetime supervision of child abductors and sex offenders, mandatory life imprisonment for second-time offenders, removal of statutes of limitations for child abductions and sex offenses, denial of pretrial release for those who rape or kidnap children, allowance for local law enforcement agencies to receive funding to establish Sex Offender Apprehension Programs and doubling the authorization for the National Center for Missing and Exploited Children to \$20 million per year.

Id.

¹⁰¹ *Id.* Bipartisan legislation was drafted in the Senate that would establish a national

The rescue of Elizabeth Smart brought much needed national attention and unrelenting support for a national Amber Alert system.”¹⁰² Just a few hours after Elizabeth had returned home, her father, Ed Smart, a long time proponent of the AMBER Alert system, spoke to the media and urged the importance of a national AMBER Alert system.¹⁰³ Despite Mr. Smart’s emotional pleas to Congress, the House Republicans continued to hold the AMBER Alert bill hostage until the House approved their entire “child protection package.”¹⁰⁴ This “package” contained several controversial provisions that have themselves been stalled in Congress for years.¹⁰⁵ Although AMBER Alert legislation did not make it through the 107th Congress before recessing, supporters of the Act remained confident of a momentous result despite House actions in 2002.¹⁰⁶

AMBER Alert System. *Id.* The bill quickly passed in the Senate, but was stalled in the House. *Id.* Unfortunately, House Congressional leaders saw the favored bill as an opportunity to pass legislation that they had unsuccessfully been advocating for years and added several controversial “child protection” provisions to the AMBER bill, an action that is sure to “make it impossible to pass this legislation prior to adjournment because some members of the Senate do not support them. *Id.* In fact, several of the provisions have been pending in the Senate for over four years without action.” *Id.* Most supporters of the National AMBER Alert Network Act label the actions of the House as “unfortunate and unnecessary.” *Id.* Delay and ultimate demise is the likely result of such actions. *Id.*

¹⁰² See *infra* Part IV.

¹⁰³ See Jennifer Cottrill, *Missing Kids Need AMBER Alert: A Grateful Father Wants to Help Other Missing Kids*, available at www.wchstv.com (last visited Feb. 13, 2003) (on file with author). See also *Smart Family Pushes Amber alert*, available at www.cnn.com/2003/US/West/03/12/Smart.family.reax (Mar. 12, 2003). “‘All of the children out there deserve to come home to their parents, the way Elizabeth has come back to us,’ Smart said fighting back tears. And I just hope and pray that Congress will quickly pass the Amber alert so those children will have a better chance.” *Id.*

¹⁰⁴ See Christopher Smith, *Amber Bill Version Stalls in House; Smarts’ Letter Urges Passage*, SALT LAKE TRIB., Mar. 19, 2003, at A14. The House Republicans voted to block the passage of the stand-alone AMBER Alert bill in favor of including it within the “Child Abduction Prevention Act,” a more comprehensive criminal act. *Id.* Republicans assert that the package as a whole is a better statute that complements the AMBER system because it is just as important to punish the abductor as it is to find the child. *Id.*

¹⁰⁵ F. James Sensenbrenner, Chairman House of Representatives, *House Overwhelmingly Passes Comprehensive Child Abduction Prevention Legislation*, available at www.house.gov/judiciary/news100802.htm (Oct. 8, 2002). One such provision is a revision of the Child Pornography Prevention Act of 1996 that was found to unconstitutionally abridge the freedom of speech by the U.S. Supreme Court last year in *Ashcroft v. Free Speech Coalition*, 122 S. Ct. 1389 (2002).

¹⁰⁶ See *Remarks of The Honorable Deborah J. Daniels Assistant Attorney General Office of Justice Programs at the American Legislative Exchange Council’s 2002 States and Nation Policy Summit Meeting*, available at www.ojp.usdoj.gov/aag/speeches/amerlegislative.htm (last visited Feb. 13, 2003). See also

In October 2002, federal government began to carry out its purpose without the legislation.¹⁰⁷ President Bush directed the Justice Department to implement the main provisions of the stand alone AMBER Legislation.¹⁰⁸ The Honorable Deborah J. Daniels, Assistant Attorney General was appointed as the National AMBER Alert Coordinator.¹⁰⁹ Daniels began her commission by reviewing which states already had programs in place and which states needed help.¹¹⁰ Daniels also assessed the type of training, technical assistance, and equipment that will be needed and also determined which current state

Letter from Ed Smart to U.S. House of Representatives (Mar. 26, 2003), *available at* Democratic Congressional Campaign Committee website. The letter reads:

Dear Member of the House of Representatives:

We want to begin by thanking all of you who have worked so hard on child safety legislation, especially efforts to pass the life-saving National Amber Alert Network Act (S.121, H.R. 412). Chairman Sensenbrenner's efforts on this issue are greatly appreciated and his bill contains several worthy measures. But there is no reason the House can't vote on his bill while also passing the National Amber Alert Network Act that has been delayed for over six months.

So we urge Members of the House who want to strengthen the Amber Alert to vote NO on the previous question today. That is the only way for the House to pass the National Amber Alert to help protect America's children immediately. Our children can't afford to wait another day for the National Amber Alert bill so we urge the House not to waste this opportunity to act on the legislation that has already passed the Senate twice.

The Amber bill will make an immediate difference in recovering children safely so there is no reason not to send it to President Bush now. We look forward to working with Members of the House and Senate to enact other important child protection measures in the future.

Ed Smart

Lois Smart

Elizabeth Smart

Letter from Ed Smart to U.S. House of Representatives (Mar. 26, 2003), *available at* Democratic Congressional Campaign Committee website.

¹⁰⁷ See www.ojp.usdoj.gov.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

As the National AMBER Alert Coordinator, I have directed to serve as a nationwide point of contact to assist state and local officials with developing and enhancing AMBER plans, and to promote statewide and regional coordination among plans. My staff and I are already taking action on a number of fronts. For example, we're working with the National Center for Missing and Exploited Children to review the current state of the AMBER Alert system.

Id.

¹¹⁰ *Id.*

program could potentially serve as a model.¹¹¹

The Justice Department (hereinafter “DOJ”) also began preparations.¹¹² The DOJ developed the criteria for issuing and disseminating AMBER Alerts that will be used on a nationwide level.¹¹³ This ensures that the AMBER Alert system is uniformly reserved for rare instances of serious child abductions.¹¹⁴ In addition, the Department of Transportation developed the program by which funding will be provided to “support AMBER Alert training and education programs; upgrade emergency alert systems; and facilitate the use of electronic highway message board systems as part of the AMBER Alert plans.”¹¹⁵

NAANA was reintroduced as The National AMBER Alert Network Act of 2003 by U.S. Representatives Martin Frost (D-TX) and Jennifer Dunn (R-WA) on January 15, 2003 and unanimously passed six days later.¹¹⁶ President Bush signed the Act into law on April 30, 2003, thus codifying the national coordination of state and local AMBER Alert programs.

III. Opposition to the Amber Alert Plan

A. General Opposition

Critics suggest that recent estimates have exaggerated the numbers of missing children abducted by strangers or have failed to distinguish among victims of kidnap, those children taken by a parent, relative, or legal guardian from those abducted by totally unrelated persons.¹¹⁷ They urge that the exaggeration is based upon a few sensationalized cases that received extraordinary media attention and that the number of children actually kidnapped by strangers is relatively small.¹¹⁸ Alternatively, advocates of missing children assert that “more than 1.5 million

¹¹¹ *Id.*

¹¹² See www.ojp.usdoj.gov

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Press Release, National Center for Missing & Exploited Children, National Center for Missing & Exploited Children Calls for Quick Passage of the National AMBER Alert Network Act of 2003 (Feb. 5, 2003), available at http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=1173.

¹¹⁷ Diamond, *supra* note 4, at 25.

¹¹⁸ Forst, *supra* note 5, at 3.

children are reported missing every year.”¹¹⁹ This disparity soon brought disputes as to the correct figure.¹²⁰

In 1985, the Denver Post reported that the number of missing children was only 330,000 and that most of these “missing” children were actually runaways.¹²¹ As for the number of children killed by their abductors, the Post reported this figure to be less than one thousand.¹²² By 1986, most considered the statistics of missing children to be overstatements.¹²³ A recent study by the Family Studies Laboratory of New Hampshire estimates that anywhere between fifty-two and one hundred fifty-eight children are abducted and killed each year.¹²⁴

In 1990, the Justice Department also conducted a study and documented its findings in a report entitled, “Missing, Abducted, Runaway, and Thrownaway Children in America.”¹²⁵ The reported number by the DOJ estimated that 357,000 children are abducted every year, and only about 200-300 are taken by strangers.¹²⁶ Although the recently reported figures differ from those asserted by advocates in the past, a danger still remains.¹²⁷ Parents continue to fear for the safety of their children and are not consoled by the naysayers’ assertion that only hundreds of children are abducted and killed rather than thousands.¹²⁸

B. *Specific Opposition to the AMBER Alert Plan*

In the midst of AMBER Alert’s success and the excitement that

¹¹⁹ Hampton, *supra* note 34, at 784.

¹²⁰ *Id.* at 786.

¹²¹ Jay Grelen, *Sorting out Myth, Mystery of ‘81 Slaying, ‘Cold-Case Squad’ Investigates Landmark Florida Abduction*, ROCKY MTN. NEWS (Denver), May 15, 1995, at 22A, available at 1995 WL 3192093.

¹²² *Id.*

¹²³ Hampton, *supra* note 34, at 786.

¹²⁴ Gill, *supra* note 38, at 65.

¹²⁵ Lee Michael Katz, *Many More Kids Abducted by Families Than Strangers*, GANNETT NEWS SERVICE, May 3, 1990. See also DOJ, *Missing, Abducted, Runaway, and Thrownaway Children in America, First Report: Numbers and Characteristics, National Incidence Studies* (1990).

¹²⁶ *Id.*

¹²⁷ Hampton, *supra* note 34, at 784. Child advocates maintain that, “this country is littered with mutilated, decapitated, raped, and strangled children.” *Id.* One such agency, Child Find of America, reports that “as many as five thousand children are kidnapped and murdered each year.” *Id.* [John] Walsh stated in an interview that “some 10,000 children are murdered each year and the bodies of between 1200 and 1500 lie in unmarked graves.” *Id.*

¹²⁸ See Missing Kids Website, *supra* note 4.

surrounds it, lawmakers are cautioned about the dangerousness of false alarms, overuse, and apathy.¹²⁹ Sheriff Dee Anderson of Fort Worth, Texas, where the AMBER Alert was created, is highly concerned about the problem of abuse. He insists that unless the Plan is used for the most serious child abduction cases, it will not be as effective as intended.¹³⁰ The AMBER Alert system was designed to be a “special call for help” when a child is abducted and suspected of being in imminent danger and thus, “too rare to ignore.”¹³¹ Overuse will turn AMBER Alert into the “new millennium milk carton.”¹³²

In theory, the AMBER Alert plan generates a quicker and more comprehensive investigation, which leads to a greater chance that the missing child will be found.¹³³ However, in practice, the way the system is implemented raises many concerns.¹³⁴ The greatest concern is centered around the question: what criteria must be met before an alert is launched in the system?¹³⁵ It is recognized that hasty decisions on the

¹²⁹ Jim Avila, *Danger of AMBER Alert Overuse*, available at www.msnbc.com (Aug. 19, 2002).

In Kansas City, there was a heartbreaking plea for help. Police issued an AMBER Alert for a 14-year old who turned out to be a runaway. The week before, there was an AMBER Alert for a missing 2-year-old, found four hours later napping in mom's closet. Police Chief Ron Miller says he knows the danger of overuse, but when in doubt, he sounds the AMBER Alert.

Id.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Belluck, *supra* note 12, at A12.

¹³⁴ *Id.*

¹³⁵ *Id.* The National AMBER Alert Network would establish national criteria based upon the different criteria already used in various states.

The original criteria for activation of the AMBER Plan defined “abduction” as an incident involving a child under 18, unwillingly removed from their environment without permission from the child’s legal guardian or representative. The intent of the AMBER plan was to be used for abductions involving strangers. However, this criteria did not take into account the possible involvement of babysitters and others.

Since the inception of the AMBER Plan, several police representatives have voiced a concern to safeguard the continued success of this alert system. Although each case has its own set of circumstances, law enforcement agencies must follow the abduction criteria as closely as possible. After weeks of discussion, a special committee made up of police and broadcast representatives from the Arlington, Texas, area came up with new guidelines to activate the AMBER Alert Notification Plan in Illinois, law enforcement agencies must ensure the following two criteria are met:

1. The child be under the age of 16 or has a proven mental or physical

part of law enforcement officials may produce false alarms.¹³⁶ Frequent false alarms promote public apathy.¹³⁷ Public apathy will dull the community's reaction to the alerts, hindering AMBER Alert's main purpose of "snapping" a community into action.¹³⁸ This problem can be analogized to the faces of missing children.¹³⁹ Photos of missing children do not appear on the sides of milk cartons anymore.¹⁴⁰ This is because, as the public grew used to the photos, the campaign lost its effectiveness.¹⁴¹ Similarly, frequent alarms on the AMBER Alert system will produce apathy in the public and the system will lose its effectiveness.¹⁴²

Supporters of the AMBER Alert plan stress that it is important to limit the system's use to extreme cases where the criteria established has been met.¹⁴³ Specifically, it must be established that the child is in immediate danger posed by an abductor and that there is enough information to disseminate about the case so as to make community involvement effective.¹⁴⁴ Yet, this creates tension between the need to activate alerts quickly versus the amount of time demanded by law enforcement in order to determine whether the case warrants an alert.¹⁴⁵

disability, and

2. Police must believe the child is in danger of serious bodily harm or death.

If both criteria are not met, the AMBER Alert Notification Plan should not be activated. Both law enforcement and broadcasters have agreed that the Plan should not be used for runaways. Also, while each case must be judged individually, most "child custody" situations do not meet the criteria.

Id.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

"It's not intended to be a fix-all for abducted children," said State Assemblyman George Runner of California, who championed the AMBER Alert in the state, and is now sponsoring a bill to spell out criteria for its use. "It was just intended to be another tool. The fear that we would have is that it not become another word synonymous with 'missing child,' and that it not become cliché like a face on a milk carton."

Id.

¹³⁹ Belluck, *supra* note 12, at A12.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ Belluck, *supra* note 12, at A12. "Several law enforcement agencies say they are

Thus, the critical question becomes, "what should the criteria be for determining reliable information?"¹⁴⁶ The answer to this lies in implementing a national alert network.¹⁴⁷

The last concern held by opponents to the National AMBER Alert Network is that, generally, "responses to crime are too often implemented amid a state of panic and are poorly designed as a result."¹⁴⁸ Challengers of the bill argue that the AMBER Alert system was not designed with calm deliberation; rather they assert that the system does not provide for greater communication between law enforcement, but instead encourages vigilantism and therefore has no value.¹⁴⁹ This concern is completely unfounded. While there are valid concerns surrounding a National AMBER Alert Network, legislators have monitored the system's success on the state level before determining that federal legislation is necessary.¹⁵⁰ The National

learning to stick to rigid guidelines. Many agencies, for example, will not typically use the alerts for what appear to be kidnappings related to family custody battles." *Id.*

¹⁴⁶ James Alan Fox, *AMBER Alert's Dangers*, N.Y. TIMES, Aug. 17, 2002, at A11.

¹⁴⁷ See NAANA, *supra* note 84. Implementing a national system observed by the Attorney General will aid in setting national standards and thus eliminating random alerts that do not fulfill the alert requirements. *Id.*

¹⁴⁸ Fox, *supra* note 146. Opponents contrast the need for AMBER Alert with that of stricter helmet laws and conclude that the former is not necessary:

While even one incident is too many, the widespread perception that the problem is rampant doesn't align with the facts. With an average of about 100 child abductions by strangers each year, the chances of any youngster's being kidnapped are about one in a million. Every year more children die from bicycle accidents than are abducted and murdered, as was Amber Hagerman. Stricter laws about bicycle helmets would undoubtedly save more lives than a nationwide AMBER Alert system.

Id.

¹⁴⁹ *Id.* Several questions arise when the concern of vigilantism is considered. *Id.* Such questions include:

Who might get hurt in the process of hurriedly chasing down inaccurate leads and wrong suspects? What might happen, for example, if an incorrect license plate of a suspected abductor is displayed on electronic highway signs? Might some poor motorist be pulled over by authorities or, worse, chased down by a group of vigilantes?

Id.

¹⁵⁰ Rep. Martin Frost, *AMBER Alert Works*, N.Y. TIMES, Aug. 23, 2002, at A16. In response to opposition, Frost responded in an editorial to the New York Times:

In five years in North Texas, parts of which I represent in Congress, about 50 alerts have been issued. They have helped recover at least 14 children, and we've had no reported incidents of vigilantism. The alert is not a hastily dreamed up response to media hysteria. It is a common-sense, neighborhood-watch-style program that has saved children's lives. I am working on

AMBER Alert Network Plan cannot properly be called a hasty decision by Congress.¹⁵¹ Much attention has been given to the severity of child abductions; the National AMBER Alert Network Act is a sensible planned response that is the result of analyzing the language of disparate state and local plans and their effectiveness.¹⁵²

Among the states that use the AMBER Alert system, all profess that the alerts have been successful.¹⁵³ Preventing overuse is simply accomplished by requiring police to follow strict guidelines before triggering an alert.¹⁵⁴ National standards set by the Attorney General could easily accomplish this task.¹⁵⁵

The AMBER Alert plan "saves lives without any cost to society."¹⁵⁶ Experience demonstrates that finding the child within the first three hours of the abduction is crucial in saving the child's life.¹⁵⁷ Clearly, the AMBER Alert plan is an intelligent response to this discovery.¹⁵⁸ While

legislation that would bring the program to every community nationwide.

Id.

¹⁵¹ *Id.*

¹⁵² See, e.g., CAL. GOV. CODE § 8594. Section 8594 states:

(a) If an abduction has been reported to a law enforcement agency and the agency determines that a child 17 years of age or younger, or an individual with a proven mental or physical disability, has been abducted and is in imminent danger of serious bodily injury or death, and there is information available that, if disseminated to the general public, could assist in the safe recovery of the victim, the agency, through a person authorized to activate the Emergency Alert System, shall, absent extenuating investigative needs, request activation of the Emergency Alert System within the appropriate local area. Law enforcement agencies shall only request activation of the Emergency Alert System for an abduction if these requirements are met. The Emergency Alert System is not intended to be used for abductions resulting from custody disputes that are not believed to endanger the life or physical health of the child.

Id.

¹⁵³ Belluck, *supra* note 12, at A12. In the Dallas-Fort Worth Area, where the system was pioneered, the AMBER alert system has been sounded 55 times in response to child abductions. *Id.* The system has been credited with the rescue of ten children. *Id.*

¹⁵⁴ Frost, *supra* note 150. Overuse, as well as misuse, is easily preventable. *Id.* Currently, only law enforcement officials are given the authority to decide when alerts are to be issued in a case. *Id.* Police are given strict guidelines to apply in making their decision. *Id.* Correspondingly, police committees meet quarterly to determine whether the guidelines are proving useful and also to decide whether adjustments are needed. *Id.*

¹⁵⁵ See NAANA, *supra* note 84.

¹⁵⁶ Frost, *supra* note 150.

¹⁵⁷ Rik Davis, *When a Child is Missing, Sound the Alarm*, N.Y. TIMES, Aug. 20, 2002, at A18.

¹⁵⁸ *Id.*

there are legitimate concerns regarding false alarms, public apathy, and vigilantism, the past six years have not evidenced such a negative implication.¹⁵⁹ Instead, the past six years have shown that it works well in every state and local community where it has been implemented.¹⁶⁰

IV. Advocating for the Amber Alert Plan

A. Statistics Prove that a National Network is Needed

According to the Department of Justice, seventy-five percent of kidnapped children are murdered within the first three hours of the abduction.¹⁶¹ Similarly, the FBI's Crime Information Center shows that juveniles make up eighty-five to ninety percent of the persons reported missing to law enforcement agencies.¹⁶² In most cases of child abductions the children are categorized as endangered because the abduction is clearly involuntary.¹⁶³ Law enforcement officials realize that the faster the child is found, the greater the chance he or she will be unharmed. Accordingly, the public plays an integral part in this rescue effort.¹⁶⁴

Although the United States Department of Justice report reveals that kidnapping makes up less than two percent of crimes against juveniles,¹⁶⁵ the real number that comprises this two percent is actually quite high and remains hidden by the seemingly nominal "2%" veil.¹⁶⁶ According to the Missing Persons File, the occurrences of missing children have dropped.¹⁶⁷ Perhaps this is due to the proactive efforts of Congress.¹⁶⁸ However, the battle is not over until the number is zero; there is no question that the AMBER Plan can go long ways towards

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ STATE OF ILLINOIS AMBER ALERT NOTIFICATION PLAN, Public Act 92-0259

¹⁶² See Missing Kids Website, *supra* note 4.

¹⁶³ *Id.*

¹⁶⁴ Press Release, Press Release of the Governor, Owens Signs "Amber Alert" Bill (Apr. 1, 2002), available at www.state.co.us/owenspress/04-01-02a.htm.

¹⁶⁵ See Missing Kids Website, *supra* note 4.

¹⁶⁶ CAL. GOV'T. CODE § 8594, Electronic Update Section 1(a). The California Missing Persons system continuously shows that there are 695 children abducted by strangers who have not been found. In Los Angeles alone, there were 84 child abduction cases. *Id.*

¹⁶⁷ See Missing Kids Website, *supra* note 4.

¹⁶⁸ Federal Bureau of Investigation, National Crime Information Center (NCIC), Missing Person File.

accomplishing this since it has already been credited with saving the lives of fifty-two children since its inception in 1997.¹⁶⁹

B. *The Elizabeth Smart Case Confirms the Network's Success*

Congress's past efforts focus on laws of punishment.¹⁷⁰ The National AMBER Alert Network Act is not a criminal statute; it is a law that is concerned with children as victims of kidnap and their safe rescue from abduction.¹⁷¹ While some opponents suggest that because there is only an average of 100 kidnappings per year this crime is not something that should cause concern, parents and legislators do not agree and are united in their averment that it is of grave concern.¹⁷²

Utah Congressman Chris Cannon stated in a news conference that "children who are abducted . . . deserve nothing less than the strongest protections available under law."¹⁷³ Congressman Cannon was speaking with regard to Elizabeth Smart who was returned to her Utah home after nine months of captivity.¹⁷⁴ On June 6th, 2002, 14-year old Elizabeth Smart was taken from her bedroom at gunpoint while her 9-year old sister, Mary Katherine, watched.¹⁷⁵ The abductor commanded Mary Katherine to remain silent warning her that disobedience would result in harm to Elizabeth.¹⁷⁶ Police, friends, and volunteers scoured the area and posted a \$10,000 reward for information regarding Elizabeth's abduction.¹⁷⁷ It was not until October, four months later, that Mary Katherine was able to identify Elizabeth's abductor as Brian Mitchell, a homeless man who had worked as a handyman at the Smart house.¹⁷⁸ Mary Katherine helped police composite a sketch of Mitchell; however, the department objected to the family's request to release the sketch to

¹⁶⁹ See Rep. Martin Frost & Ed Smart, *National Amber Alerts Can Help Save Children*, N.Y. TIMES, March 27, 2003, at A22.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² Davis, *supra* note 157.

¹⁷³ Christopher Smith, *Amber Bill Version Stalls in House; Smarts' Letter Urges Passage*, SALT LAKE TRIB., Mar. 19, 2003, at A14, available at 2003 WL 3677173.

¹⁷⁴ *Id.*

¹⁷⁵ Nick Madigan, *Girl Abducted From Bedroom in her Salt Lake City Home*, N.Y. TIMES, June 6, 2002, at A18.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Nick Madigan, *End of an abduction: The Investigation; Questioning of the Police Over Search for Teenager*, N.Y. TIMES, Mar. 14, 2003, at A20.

the public.¹⁷⁹ As a result, the Smart family solicited help from the television program "America's Most Wanted," who aired the sketch on national television. Subsequently, several tips from viewers led to the arrest of Mitchell and the safe return home of Elizabeth.¹⁸⁰ Elizabeth's father, Ed Smart, has been a passionate advocate of the National AMBER Alert System from the day Elizabeth was abducted through her return.¹⁸¹ Smart has appeared at Capitol press conferences urging Congress to pass the AMBER legislation.¹⁸² Recently, Smart addressed a letter to the House concerning their current actions regarding the AMBER bill.¹⁸³ Smart believed, as did many legislatures, that proper media attention would have brought his daughter home sooner, and thus, continued to fight for the implementation of a National AMBER Alert Network until the passage of the national legislation in October 2002.¹⁸⁴

V. Conclusion

All of the evidence presented, reports and statistics alike, show that kidnap is a serious crime. Historically, Congress has allowed the federal government to take part in the effort to rescue our nation's children. In 2003, it was time for Congress to act again in order to protect children from being raped, tortured, or worse yet, murdered. The National AMBER Alert Network Act of 2003 was the next step in Congress's continued commitment to children. The plan will successfully aid law enforcement agencies by allowing broadcasters to activate urgent bulletins that instantly inform the entire community, thereby enlisting the assistance of the community in the search for the missing child and thus promoting recovery within the most crucial hours. Accordingly, Congress' actions shows our nation's ability to act quickly and assume a steadfast position in the fight to recover children before irreversible harm is done.

It is clear, from all of the data, that the NAANA is the swiftest

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ See "Can't Wait Another Day," *After Abducted Daughter Found, Angry Dad Pleads for National Amber Alert*, available at www.abcnews.com (Mar. 13, 2003) (on file with author).

¹⁸² Lee Davidson, *Smart Marches for Amber Alert*, *DESERET NEWS*, Feb. 5, 2003, at B03.

¹⁸³ See *infra* Part III.B.

¹⁸⁴ Davidson, *supra* note 182.

response to kidnapping and therefore could not wait any longer. It is the necessary legislative response to the kidnapping epidemic that has plagued our nation, just as previous efforts were in their time. In passing this legislation, America has given meaning to the death of Amber Hagerman. Delaying the AMBER bill's enactment minimized her tragedy and encouraged the abductor's insatiable desire to harm children. There are dangers posed by the system. However, the enactment of federal regulations will ameliorate many of the problems by instituting a uniform system that promotes regional coordination.

While opponents urged lawmakers to consider the need for legislation in light of the statistics that show a decline in the number of occurrences, parents across the nation prevailed in their efforts to convince lawmakers to reject this argument. There is no indication that homicide laws are unnecessary simply because the murder rate is down. Similarly, the few hundred abducted children taken from their homes annually need the National AMBER Alert Network Act.

Without the AMBER Plan, families will continue to be devastated by the tragedy that befalls them all too often. Elizabeth Smart's parents question whether NAANA would have brought Elizabeth home sooner. Without NAANA the question has the potential to be graver; without NAANA parents will be forced to wonder if their child's life could have been saved by such a simple, yet effective, system just as Amber Hagerman's mother does everyday.