WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

HOUSE BILL No. 2093

Douglas, Staton, Mahan,
(Hutchins and Martin)

Passed April 12, 1997

In Effect Ninety Days From Passage
AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the establishment of the missing children information clearinghouse; definitions; duties of the state police; duties of the department of education; duties of law-enforcement agencies; request for information by custodian; missing child reports; procedures upon receipt of missing child report; law-enforcement requirements upon receipt of information about unidentified bodies of children; release of dental records; immunity from civil liability or criminal prosecution for release of records; cross-checking and matching of information; cooperation required of state agencies and schools; confidentiality of information and records; duties of attorney general to enforce provisions; duty of law-enforcement agencies to forward contents of completed report; duties of law-enforcement agencies to update information and provide notice; creation of a clearinghouse advisory council as a public corporation and
governmental instrumentality; membership of the council; appointment; terms of office; compensation and expenses; quorum; appointment of chairman; council to be subject to open governmental meetings act; designation of state police employee as executive director of council; authority to contract for research and administrative services; advisory services to the Legislature; annual report required; comprehensive strategic plan and recommendations required; advisory services to the state police; cooperation and coordination with other agencies; authority to seek funding from public and private sources; initial comprehensive plan to be presented by the first day of July, one thousand nine hundred ninety-eight; contents of initial plan; authority to enter into public-private partnerships; approval of majority required; council members not prohibited from sitting on certain boards; application of governmental ethics act to council members; authority of council to solicit and accept gifts, grants, bequests and devises; and deposit of same into state treasury special account.

Be it enacted by the Legislature of West Virginia:

That chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article nine, to read as follows:

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

§49-9-1. Short title.

This article may be cited as the “Missing Children Information Act.”


As used in this article:

(a) “Child” means an individual under the age of eighteen years who is not emancipated;

(b) “Clearinghouse” means the West Virginia missing children information clearinghouse:
6 (e) "Custodian" means a parent, guardian, custodian
7 or other person who exercises legal physical control, care
8 or custody of a child;
9
10 (d) "Missing child" means a child whose whereabouts
11 are unknown to the child's custodian and the
12 circumstances of whose absence indicate that:
13
14 (1) The child did not leave the care and control of the
15 custodian voluntarily and the taking of the child was not
16 authorized by law; or
17
18 (2) The child voluntarily left the care and control of
19 his or her custodian without the custodian's consent and
20 without intent to return;
21
22 (e) "Missing child report" means information that is:
23
24 (1) Given to a law-enforcement agency on a form
25 used for sending information to the national crime
26 information center; and
27
28 (2) About a child whose whereabouts are unknown to
29 the reporter and who is alleged in the form submitted by
30 the reporter to be missing;
31
32 (f) "Possible match" means the similarities between
33 an unidentified body of a child and a missing child that
34 would lead one to believe they are the same child;
35
36 (g) "Reporter" means the person who reports a
37 missing child; and
38
39 (h) "State agency" means an agency of the state,
40 political subdivision of the state or public postsecondary
41 educational institution.


(a) The missing children information clearinghouse is
2 established under the West Virginia state police. The state
3 police:
4
5 (1) Shall provide for the administration of the
6 clearinghouse; and
(2) May promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

(b) The clearinghouse is a central repository of information on missing children and shall be used by all law-enforcement agencies in this state.

(c) The clearinghouse shall:

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

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

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

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

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

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

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

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

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

(d) The clearinghouse shall print and distribute posters, flyers and other forms of information containing descriptions of missing children.
(e) The state police may accept public or private grants, gifts and donations to assist in carrying out the provisions of this article.

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

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

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

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

§49-9-5. Information to clearinghouse.

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

§49-9-6. Custodian request for information.

(a) Upon written request made to a law-enforcement agency by the custodian of a missing child, the law-enforcement agency shall request from the clearinghouse information concerning the child that may aid the custodian in locating or identifying the child.

(b) A law-enforcement agency to which a request has been made pursuant to subsection (a) of this section shall report to the custodian on the results of its inquiry within fourteen calendar days after the day the written request is received by the law-enforcement agency.

(a) The clearinghouse shall distribute missing child report forms to law-enforcement agencies in the state.

(b) A missing child report may be made to a law-enforcement agency in person or by telephone or other indirect method of communication and the person taking the report may enter the information on the form for the reporter. A missing child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the missing child report form shall be filed with the clearinghouse.

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

(a) A law-enforcement agency, upon receiving a missing child report, shall:

(1) Immediately start an investigation to determine the present location of the child if it determines that the child is in danger; and

(2) Enter the name of the missing child into the clearinghouse and the national crime information center missing person file if the child meets the center's criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics and a description of the clothing worn when the missing child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the national crime information center file as a supplement to the original entry.

(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the national crime information center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the national crime information
center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.


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

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

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

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


(a) The clearinghouse shall, in accordance with national crime information center policies and procedures, cross-check and attempt to match unidentified bodies with descriptions of missing children. When the clearinghouse
discovers a possible match between an unidentified body
and a missing child description, the clearinghouse shall
notify the appropriate law-enforcement agencies.

(b) A law-enforcement agency that receives notice of a
possible match shall make arrangements for positive
identification. If a positive identification is made, the law-
enforcement agency shall complete and close the
investigation with notification to the clearinghouse.

§49-9-11. Interagency cooperation.

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

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

§49-9-12. Confidentiality of records.

(a) The state police shall promulgate rules according
to the provisions of article three, chapter twenty-nine-a of
this code to provide for the classification of information
and records as confidential that:

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

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

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

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

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


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


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

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

(1) Child care center or child care home in which the child was enrolled; or

(2) School the child attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a missing child shall:
(1) Update the initial report filed by the agency that received notification of the missing child upon the discovery of new information concerning the investigation;

(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the national crime information center's wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child's national crime information center's missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the national crime information center when the missing child is located.

§49-9-15. Clearinghouse advisory council; members, appointments and expenses; appointment, duties and compensation of director.

(a) There is hereby created a clearinghouse advisory council, which is a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of eleven members, who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Four members to be appointed by the governor, with the advice and consent of the Senate, with not more than two belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, run-away or exploitation of children or locating missing children;

(2) One person to be appointed by the governor, with the advice and consent of the Senate, from a list of two persons recommended by the speaker of the House of Delegates;
(3) One member to be appointed by the governor, with the advice and consent of the Senate, from a list of two persons recommended by the president of the Senate;

(4) The secretary of the department of health and human resources or his or her designee;

(5) The superintendent of the West Virginia state police or his or her designee;

(6) The state superintendent of schools or his or her designee;

(7) The director of the criminal justice and highway safety division or his or her designee; and

(8) The executive director of the governor's cabinet on children and families.

(b) Not later than the first day of June, one thousand nine hundred ninety-seven, the governor shall appoint the six appointed council members for staggered terms. The terms of the board members first taking office on or after the effective date of this legislation shall expire as designated by the governor at the time of their appointment, one at the end of the year, two at the end of the second year, and two at the end of the third year. As the original appointments expire, each subsequent appointment shall be for a full three year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. A member is eligible for only one successive reappointment. In cases of any vacancy in the office of a member, such vacancy shall be filled by the governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties. A majority of serving members constitutes a quorum for the purpose of conducting business. The chairman of the council shall be designated by the
governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, run-away or exploitation of children or locating missing children. The term of the chairman shall run concurrently with his or her term of office as a member of the council. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to article nine-a, chapter six of this code.

(d) The employee of the West Virginia state police who is primarily responsible for the clearinghouse established by section three of this article shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director.

(e) The expenses of the council members and the executive director shall be reimbursed from funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection (b), section seventeen of this article.

(f) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support. The executive director of the council shall be available to the governor and to the speaker of the House of Delegates and the president of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(g) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the governor and to the Legislature's joint committee on government and finance on or before the fifteenth day of December of each year.

(a) The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children and to locate missing children; advise the West Virginia state police regarding operation of the clearinghouse and its other responsibilities under this article; and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, contracts, matching funds and procurement arrangements from the state and federal government, private industry and other agencies in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster efforts to prevent the abduction, run-away and exploitation of children and to locate missing children shall be developed and provided to the governor, the speaker of the House of Delegates and the president of the Senate no later than the first day of July, one thousand nine hundred ninety-eight, and shall include, but not be limited to, the following:

1. Findings and determinations regarding the extent of the problem in this state related to (i) abducted children; (ii) runaway children; and (iii) exploited children;

2. Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, run-away or exploitation of children and to locate missing children and assessing the strengths and weaknesses of those systems and the clearinghouse;

3. The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited child is a person under the age of eighteen years who has been (i) used in the production of pornography; (ii) subjected to sexual exploitation or sexual offenses under article eight-b, chapter sixty-one of the code; or (iii) employed or exhibited in any injurious, immoral or dangerous business or occupation in violation
of the provisions of sections five through eight, article eight, chapter sixty-one of this code;

(4) Recommendations of legislative changes required to improve the effectiveness of the clearinghouse and other efforts to prevent abduction, run-away or exploitation of children and to locate missing children. Those recommendations shall consider the following:

(i) Interaction of the clearinghouse with child custody proceedings;

(ii) Involvement of hospitals, child care centers and other private agencies in efforts to prevent child abduction, run-away or exploitation and to locate missing children;

(iii) Publication of a directory of and periodic reports regarding missing children;

(iv) Required reporting by public and private agencies and penalties for failure to report and false reporting;

(v) Removal of names from the list of missing children;

(vi) Creating of an advocate for missing and exploited children;

(vii) State funding for the clearinghouse and efforts to prevent the abduction, run-away and exploitation of children and to locate missing children;

(viii) Mandated involvement of state agencies, such as publication of information regarding missing children in existing state publications and coordination with the state registrar of vital statistics under section twelve-b, article five, chapter sixteen of this code;

(ix) Expanded requirement for boards of education to notify the clearinghouse in addition to local law enforcement agencies under section five-c, article two, chapter eighteen of this code or/ if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;
(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the state board of education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children; and

(11) Programs for voluntary fingerprinting.

§49-9-17. Public-private partnerships; funding.

(a) In furtherance of its mission, the clearinghouse council is authorized to enter into contracts or joint venture agreements with federal and state agencies; with nonprofit corporations organized pursuant to the corporate laws of this state or other jurisdictions that are qualified under section 501(c)(3) of the Internal Revenue Code; and with other organizations that conduct research, make grants, improve educational programs and work for the prevention of missing or exploited children and to locate missing children. All contracts and joint venture agreements must be approved by a majority vote of the council. The council may also enter into such contractual agreements for consideration or recompense to it even though such entities are funded from sources other than the state. Members of the council are not prohibited from sitting on the boards of directors of any contracting private nonprofit corporation, foundation or firm: Provided, That members of the council shall not be
exempt from any of the provisions of chapter six-b of this code.

(b) The council shall solicit and is authorized to receive and accept gifts or grants from private foundations, corporations, individuals, devises and bequests or from other lawful sources. Such funds shall be paid into a special account in the state treasury for the use and benefit of the council.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the day of , 1997.

Governor