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S. 321: The Missing Children Act—Legislation by Hysteria

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S. 321: THE MISSING CHILDREN ACT—LEGISLATION BY HYSTERIA

I. INTRODUCTION

On January 7, 1985, Ohio Governor Richard F. Celeste signed a comprehensive child protection bill entitled Missing Children, Amended Substitute Senate Bill 321.¹ S. 321 encompasses a broad range of highly political public child-safety issues including child abuse, neglect, prostitution, runaways, and parental kidnapping. Its primary focus, however, is as its title states, "Missing Children".² S. 321 amends fifteen existing sections of the Ohio Revised Code and enacts twelve new sections. The bill creates a civil action for interference with a possessory interest in a child³ and also establishes the criminal offense of child enticement.⁴ Additionally, S. 321 outlines guidelines for law enforcement, human services, and educational agencies with respect to individual missing child reports and to missing children generally.⁵

By enacting S. 321, Ohio joined the legislative bandwagon led by Florida,⁶ Kentucky,⁷ and New Jersey⁸ in satisfying the public and me-

1. Act of January 7, 1985, 1984 Ohio Legis. Serv. 5-811 (Baldwin) (codified as amended in scattered sections of tits. 1, 21, 23, 29, 33, and 51 OHIO REV. CODE ANN. (Page 1985 & Supp. 1985)).

2. The term "missing children," as used in this article, unless otherwise indicated, will refer to the definition established in the Missing Children's Assistance Act of 1983, Pub. L. No. 98-473, 98 Stat. 2125 (codified as amended at 42 U.S.C.A. §§ 5771-77 (West Supp. 1985)). According to this definition, those considered as missing children are persons under the age of eighteen who are likely to have been abducted or sexually exploited. *Id.* § 5772.

3. OHIO REV. CODE ANN. § 2307.50 (Page Supp. 1985). See *infra* text accompanying notes 113-14.

4. OHIO REV. CODE ANN. § 2905.05. See *infra* text accompanying note 110.

5. OHIO REV. CODE ANN. §§ 2901.30, 2901.31, 3301.25. See *infra* text accompanying notes 69-79.

6. Florida has enacted numerous child abuse, neglect, and abduction laws in the past four years: Act of Mar. 29, 1982, ch. 62, 1982 Fla. Sess. Law Serv. 339 (West); Act of May 16, 1983, ch. 32, 1983 Fla. Sess. Law Serv. 242 (West); Act of June 6, 1983, ch. 75, 1983 Fla. Sess. Law Serv. 589 (West); Act of June 23, 1983, ch. 211, 1983 Fla. Sess. Law Serv. 1913 (West); Act of June 18, 1984, ch. 238, 1984 Fla. Sess. Law Serv. 700 (West); and Act of June 18, 1985, ch. 224, 1985 Fla. Sess. Law Serv. 502 (West).

7. Kentucky has been active in investigating exploited and missing children since 1979 when a task force was established to look into these concerns. *Missing Children's Assistance Act, 1983: Hearings on S. 2014 Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary*, 98th Cong., 2d Sess. 35 (1984) (statement of Judge Mitch McConnell, Chairman of the Kentucky Task Force on Exploited and Missing Children) [hereinafter cited as *S. 2014 Hearings*]. Kentucky passed a comprehensive missing children act in 1984, based on the findings of this task force. Act of July 13, 1984, ch. 382, 1984 Ky. Rev. Stat. & R. Serv. 1019 (Baldwin).

8. New Jersey has also been actively involved in passing missing children legislation: Act of Dec. 13, 1982, ch. 199, 1982 N.J. Sess. Law Serv. 860 (West); Act of Jan. 12, 1984, ch. 467,

dia concern for the nation's missing children. Since Florida passed the initial legislation in 1983,⁹ numerous states have followed suit by passing similar or identical laws. This legislative flurry to enact missing children laws stemmed from the highly publicized disappearances of Adam Walsh of Florida in 1981¹⁰ and Etan Patz of New York in 1979.¹¹ Television movies based on the disappearances of these children¹² brought national attention to the plight of missing children and eventually led to the enactment of the federal Missing Children Act of 1982.¹³

This legislation note will outline the history of the missing children laws at both the federal and state levels and compare these laws with S. 321. Additionally, the legislative history of S. 321, the reasons for its enactment, and the changes it has made in Ohio law will be examined. Finally, this note will compare the costs and benefits of the missing children provisions of S. 321 and determine what, if any, effect this bill will have in resolving the missing children problem.

II. BACKGROUND

The abduction and murder of six-year-old Adam Walsh focused national attention on the "problem"¹⁴ of missing children. Concerned

1983 N.J. Sess. Law Serv. 2639 (West); Act of Dec. 28, 1984, ch. 228, 1984 N.J. Sess. Law Serv. 403 (West); J.R. 9, 201st Leg. 1st Sess., 1984 N.J. Laws A-1; J.R. 4, 202d Leg. 1st Sess., 1985 N.J. Laws A-1.

9. Act of May 16, 1983, ch. 32, 1983 Fla. Sess. Law Serv. 242 (West).

10. Six-year-old Adam Walsh disappeared on July 27, 1981, from a Hollywood, Florida, shopping center while shopping with his mother. A massive manhunt ensued during the following two weeks, and on Aug. 11, 1981, the decapitated head of Adam was found in a canal 150 miles away. *Exploited and Missing Children, 1982: Hearings on S. 1701 Before the Subcomm. on Juvenile Justice of the Senate Comm. on the Judiciary*, 97th Cong., 2d Sess. 63-64 (1982) (statement of John Walsh) [hereinafter cited as *S. 1701 Hearings*].

11. Etan Patz, also six years old at the time of his disappearance on May 25, 1979, has never been found. *S. 2014 Hearings, supra* note 7, at 80.

Other headline stories which have focused on missing and murdered children include the John Wayne Gacy murders of 28 young boys from 1972 to 1978, and the Atlanta, Georgia, murders in 1979 to 1980, of 27 young black children. *S. 1701 Hearings, supra* note 10, at 65.

12. "Adam" was originally broadcast on Oct. 10, 1983. *S. 2014 Hearings, supra* note 7, at 127. It was subsequently rebroadcast on April 30, 1984, and on April 29, 1985. Hickey, *The Center of the Search*, Miami Herald, Apr. 29, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:DI3-14) [hereinafter cited as Hickey 1]. "Without A Trace" was a television movie based on the disappearance of Etan Patz. See *S. 2014 Hearings, supra* note 7, at 134; (citing Japenga, *New Awareness of Missing Children*, L.A. Times, Aug. 31, 1983, Part V (page number omitted in original)).

13. Missing Children Act of 1982, Pub. L. No. 97-292, 96 Stat. 1259 (codified at 28 U.S.C.A. § 534 (West Supp. 1985)). S. 1701 received endorsements from the American Bar Association, the District Attorneys' Association, the National Association of Chiefs of Police, the National Association of Counties, the legislatures of numerous states, including Florida and New York, and the support of 67 members of the Senate. *S. 1701 Hearings, supra* note 10, at 57.

14. Though abduction of children by strangers has been called a national tragedy, it is the

with the lack of police resources, coordination between state and county law enforcement agencies, and the absence of missing children laws in the United States, John Walsh, Adam's father, began an intense lobbying effort in Florida directed towards passage of a missing children law.¹⁵ His testimony before the Florida legislature, supported by testimony from the Florida Sheriff's Association and the Chiefs of Police, resulted in the enactment of House Bill 71.¹⁶ H. 71 provided that a police agency would act immediately on any missing child report filed with that agency.¹⁷ Though Florida is credited with passing the nation's first missing children law in H. 71, this initial legislation had little practical effect in aiding the missing children cause.¹⁸ Its major effect was to provide an impetus for the United States Senate hearings on Senate Bill 1701, which culminated in the enactment of the Missing Children Act of 1982.¹⁹

position of this note that such a problem does not exist. *See infra* text accompanying notes 132-37.

15. *S. 1701 Hearings, supra* note 10, at 64. Walsh's lobbying efforts actually began during the time he was searching for his son. At that time, he appeared on local news broadcasts and on a national broadcast of Good Morning America on Aug. 11, 1981. *Id.*

Walsh and his wife, Reve, received over 22,000 sympathy letters, donations, and cards after their son's death. Their anger and grief led them to establish the Adam Walsh Outreach Center for Missing Children (later renamed as the Adam Walsh Child Resource Center). *Id.*

Also, during the eight months between Aug. 11, 1981 (the date Adam's head was found), and April 1, 1982 (when John Walsh testified before the subcommittee hearings for S. 1701), Walsh had utilized all forms of the media in his lobbying efforts. He appeared twice on Good Morning America, on the Phil Donahue show entitled "Missing Kids," on WTBS (Turner Broadcasting System), and on numerous news segments. *S. 1701 Hearings, supra* note 10, at 67. Further, hundreds of newspaper and magazine articles were published focusing on missing children (examples of which are cited throughout this note).

Walsh testified before various state legislatures, including Florida's, and traveled to New York, Illinois, Indiana, Kentucky, Georgia, California, and Louisiana to interview police agencies concerning missing child reports. *Id.*

In a 1985 news article, Walsh was quoted as stating, "I've done 455 television shows in the last three years . . . For the last three months, I've been going state to state, governor to governor because the real battle now is on a state level." Hickey, *John Walsh's Crusade Expands Across America*, Miami Herald, Apr. 29, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:D1) [hereinafter cited as Hickey 2].

Perhaps the most important event which propelled the concern of missing children into national prominence was the airing of the television movie "Adam." *See supra* note 12.

16. Act of May 16, 1983, ch. 32, Fla. Sess. Law Serv. 242 (West).

17. *Id.* Additionally, Walsh claims to have helped establish a system within the state of Florida for dissemination of coroner's information about unidentified deceased persons. *S. 1701 Hearings, supra* note 10, at 69. This, however, is not part of H. 71 or any of the subsequent enactments of the Florida legislature.

18. *S. 1701 Hearings, supra* note 10, at 68. H. 71 was the first step by the Florida legislature in a series of provisions relating to missing children. *See supra* note 6. H. 71 required immediate notification to all on-duty law enforcement officers of the existence of a missing child report. Further, the report had to be filed by a parent or guardian. Act of May 16, 1983, ch. 32, 1983 Fla. Sess. Law Serv. 242 (West).

19. Missing Children Act of 1982, Pub. L. No. 97-292, 96 Stat. 1259 (codified at 28 U.S.C.A. § 534 (West Supp. 1985)). According to Walsh, the Florida legislature "passed a bill

A. A National Perspective

S. 1701 was introduced and sponsored by Florida's representative to the U.S. Senate, Senator Paula Hawkins.²⁰ Senator Hawkins' proposal required the U.S. Attorney General to establish a national clearinghouse of information on missing children and unidentified deceased persons.²¹ The Attorney General's duties, however, were limited to acquiring, collecting, and classifying information received from federal, state, and local officials.²² S. 1701 did not elucidate how the information was to be acquired, nor did it provide for mandatory reporting by state and local law enforcement agencies. Further, no directions were given as to what to do with the information once it was entered into the clearinghouse computer. The Attorney General was required only to accept and classify whatever information was tendered.²³

Similarly, S. 1701 failed to establish active involvement of the Federal Bureau of Investigation (FBI).²⁴ S. 1701 specified that the

entitled 'The Adam Walsh Memorial' which urges the Congress of the United States and in particular, the President to support the Missing Children Act and for its [sic] speedy passage." *S. 1701 Hearings, supra* note 10, at 79.

Further, Walsh enlisted the aid of Florida Sen. Paula Hawkins, who sponsored S. 1701. Walsh and Hawkins worked closely with each other to assure passage of S. 1701 and to raise national public awareness of the plight of missing children. *Id.* at 59. Their success with both has been self-evident. *See supra* note 15. Also, following a meeting of the National Crime Information Computer (NCIC) Advisory Board in Miami, Fla., the Board recommended passage of S. 1701 and the establishment of a national clearinghouse for unidentified deceased persons. *S. 1701 Hearings, supra* note 10, at 80-81.

20. CONG. INDEX (CCH) ¶ 14,225 (1981-82). Additional cosponsors included Senators Denton, Pell, Specter, Symms, and Thurmond. *Id.* S. 1701 was subsequently amended and attached to House of Representatives Bill 6976. *Id.* ¶ 34,532. The language contained in H.R. 6976 was adopted in the Missing Children Act of 1982.

21. *S. 1701 Hearings, supra* note 10, at 61-62. S. 1701 defined missing persons as those under a proven physical or mental disability making the person a danger to himself or to others and those in the company of another under circumstances showing that the disappearance was involuntary. *Id.* S. 1701 designates that the applicable age of minors covered by the bill shall be established by each state. *Id.* No definition of missing children, however, was included within the Missing Children Act of 1982.

The Missing Children's Assistance Act of 1983 defined missing children as minors believed to have been abducted or sexually exploited. Missing Children's Assistance Act of 1984, Pub. L. No. 98-473, 98 Stat. 2125 (codified as amended at 42 U.S.C.A. §§ 5771-77 (West Supp. 1985)).

22. *S. 1701 Hearings, supra* note 10, at 61.

23. *Id.* at 61-62.

24. A major complaint that Walsh vocalized publicly and in the S. 1701 hearings concerned the role of the FBI. During the search for Adam in August, 1981, Sen. Hawkins intervened on behalf of the Walsh family requesting the services of the FBI. *S. 1701 Hearings, supra* note 10, at 67. Because there was no ransom note, nor any evidence of kidnapping or travel of the child across state lines, the FBI declined to enter the case. *Id.* The FBI policy, then and now, is to look at the age of the child, the circumstances of the disappearance, and any indications showing an abduction has occurred. If warranted, a preliminary investigation is conducted, and if the evidence establishes that there has been an abduction, a full field investigation is undertaken. *S. 2014 Hear-*

FBI's role was limited to acting as an intermediary between local police agencies and the Attorney General for entering a missing child report into the National Crime Information Center (NCIC).²⁵ The NCIC computer, operated by the FBI since 1967, classifies and files police reports into various categories and serves primarily as a storage receptacle of information on a national basis.²⁶ S. 1701 did not change any procedures for active involvement of the FBI in a reported missing child case, nor did it make significant changes in the NCIC computer files for missing persons.²⁷

Numerous supporters of S. 1701 endorsed the bill and lobbied for its passage.²⁸ The only opposition to S. 1701 came, oddly enough, from the Department of Justice.²⁹ During the course of the Senate hearings, however, the Justice Department withdrew its opposition and endorsed the legislation.

One of the key witnesses in the federal hearings, as in the Florida state hearings, was John Walsh. In both his testimony and his prepared

Investigative Division, Federal Bureau of Investigation). The FBI does not have a requirement that there must be a request for ransom, or that interstate travel occur, before the agency will become involved, although Revell conceded that practice does not always follow policy. *Id.*

Walsh's grievances include that the FBI's priorities are mixed up, *id.* at 67, 77; that the FBI arbitrarily decides when to enter a missing child case, *id.* at 77; and that "public opinion has not been strong enough to force the FBI back into what [it] was originally intended and formed to do." *Id.* at 78.

25. *1701 Hearings, supra* note 10, at 90-91. Despite Walsh's remarks about the FBI, S. 1701 had virtually no impact on the FBI's involvement in missing children cases. S. 1701 merely required the FBI to enter any information tendered by local law enforcement agencies into the NCIC computer. 28 U.S.C.A. § 534(a)(3) (West Supp. 1985).

26. *S. 2014 Hearings, supra* note 7, at 86. There are nine categories of files within the NCIC computer. *S. 1701 Hearings, supra* note 10, at 89. The Missing Persons' file was established in 1975. *Id.* FBI statistics estimate that 85% of all missing persons entries pertain to minors. *S. 2014 Hearings, supra* note 7, at 93. Ninety-eight percent of missing children entries into the NCIC are runaways; the vast majority of these children return home within 60 days. *Id.*

The FBI's documented stranger-abduction statistics evidence that there were only 35 cases of this nature in 1981, 49 in 1982, and 67 in 1983. *Id.* at 94. Walsh believes that the lower numbers are not an accurate reflection of the problem because "the NCIC is underutilized and . . . many police agencies don't even know that it exists." *S. 1701 Hearings, supra* note 10, at 82.

27. *S. 2014 Hearings, supra* note 7, at 92. The Missing Children Act of 1982 resulted in the division of the missing persons file into four categories: disability, endangered, involuntary, and juvenile. *Id.*

28. *See supra* note 13.

29. *S. 1701 Hearings, supra* note 10, at 80. The Justice Department originally opposed S. 1701 on three grounds: (1) it wanted to study the State of Colorado Pilot Project for identification of unknown deceased persons for a minimum of two years, *id.*; (2) it objected to the codification of the classification of missing children and persons that was taken out of existing statutes, *id.* at 81; and (3) it objected to the proposed system because it would allow for parents, legal guardians, or next of kin to go directly to the FBI instead of to the local police. *Id.* at 82. Sen. Hawkins amended the provision relating to the third objection and devised a procedure where parents must first go to the local police, and the local police would then give the data to the FBI for entry into

statement, Walsh repeated an oft-quoted figure that "50,000 children disappear annually, and are abducted for reasons of foul play."³⁰ Numerous other proponents of missing children legislation, including the nation's oldest and most reputable private missing children organization, Child Find, Inc.,³¹ have cited the figure of 50,000 as representing the number of children abducted yearly by strangers for reasons of foul play. The magnitude of this figure was a motivating factor behind the unanimous Senate approval of S. 1701 and the increased public concern for abducted and murdered children.³² In response to the public's concern for missing children, the federal Missing Children Act of 1982 was passed by both houses of Congress and was signed into law by President Ronald Reagan on October 12, 1982.³³

Subsequent to the enactment of the federal Missing Children Act of 1982, numerous states passed similar missing children legislation requiring that all missing children reports, filed with any state or local police agency, be entered into the NCIC computer.³⁴ This mandatory

30. *Id.* at 65. Walsh claims to have arrived at these statistics after "contacting and speaking with many of the 20 or so individual missing children agencies throughout the country." *Id.* Further, he refers to the "concrete facts that [he has] amassed," and to the help he received from the American Bar Association, the National Conference of Christians and Jews, and the National Association of District Attorneys in preparing his facts. *Id.* at 80. He acknowledged in a newspaper interview, however, that "there is no single, absolutely legitimate source for exact numbers," while maintaining that 50,000 children are taken by strangers annually. Griego & Kilzer, *Officials: Tallies of Missing Youths Are Exaggerated*, Omaha World-Herald, May 12, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:E1-2).

31. Griego & Kilzer, *supra* note 30. Child Find is a private nonprofit organization based in New York. It was founded by Gloria Yerkovich, whose daughter was taken by her father and never returned. S. 2014 Hearings, *supra* note 7, at 56, 59. Child Find acts mainly as a referral service for locating missing children. *Id.* at 59. In 1984, Child Find was investigated by the New York State Attorney General for claims of misrepresentation and financial kickbacks for referring parents to private investigators. Albrecht, *At Last, A Voice Is Raised On Behalf of Missing Children*, Clev. Plain Dealer, Aug. 12, 1984 (available on NEWSBANK, INC., Microfiche No. 36:C6-7). The kickback charges could not be supported by evidence, but the Attorney General found that Child Find's promotional material was misleading; as a result, Child Find agreed to change its format. *Id.* See also Lynch, *Some Child-Search Units Spark Ethical Questions*, Clev. Plain Dealer, Nov. 26, 1984 (available on NEWSBANK, INC., Microfiche No. WEL 56:C13).

Although Child Find originally supported the figure of 50,000 stranger abductions per year, it later reversed itself and claimed that the actual number was less than 600. Griego & Kilzer, *supra* note 30. See also *Fear Fuels Abducted Child Data*, Milwaukee J., May 19, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:E13).

32. S. 2014 Hearings, *supra* note 7, at 80. After Walsh testified at the S. 1701 hearings on April 1, 1982, he appeared on the Phil Donahue show entitled "Missing Kids." *Id.* "This testimony and his subsequent appearance on the Phil Donahue television show generated over 40,000 letters and calls to Congress. As a result of his efforts, and those of many others, the law was changed as a national priority given to finding our missing children." *Id.* (statement of Sen. Bill Bradley, N.J.).

33. CONG. INDEX (CCH) ¶ 34,532 (1981-82).

34. See, e.g., Minnesota Missing Children's Act, ch. 510, 1984 Minn. Sess. Law Serv. 14 (West). ("If the child is determined to be missing, the agency shall immediately enter identifying

state cooperation with the U.S. Attorney General was necessary if the federal Act was to be effective.³⁵ Additionally, many states established their own statewide informational clearinghouses, separate from the NCIC computer, for tracking filed missing children reports.³⁶

The rebroadcast of the television movie "Adam" on April 30, 1984, resulted in a significant increase in public awareness concerning missing children.³⁷ Pictures of missing children were printed on grocery bags, milk cartons, pizza boxes, Coca-Cola bottles, and numerous other commercial products, as well as displayed on billboards, television, and posters across the country.³⁸ This concerted advertising effort was made possible by the enactment of the Missing Children's Assistance Act of 1983, which corrected many of the shortcomings of the 1982 Missing Children's Act by establishing a national network for locating and recovering children who are missing.³⁹ The Missing Children's Assistance Act focuses on finding persons under eighteen years of age who were likely to have been abducted or sexually exploited.⁴⁰ The findings of the Senate Subcommittee on Juvenile Justice state that "over one million children are missing from their homes each year; and . . . thousands of these children are abducted under circumstances which immediately place them in grave danger."⁴¹ To substantiate these findings, U.S. Senator Arlen Specter, Chairman of the Senate Subcommittee and co-

and descriptive information about the child through the CJIS into the NCIC computer.").

35. The U.S. Attorney General is required only to accept and classify whatever information is tendered. 28 U.S.C.A. § 534 (West Supp. 1985). If no state police agency tenders information to the Attorney General, his task is limited and of no use in determining statistics. Six states, including Illinois and five surrounding states, have approached the missing children information problem by establishing "Inter-State Enforcement Agencies to Recover Children" (I-SEARCH). Ohio is not one of the six states. Frank, *I-Search Is On*, A.B.A. J., Nov. 1985, at 22.

36. States that have created their own informational clearinghouse have designated primarily the Department of Law Enforcement, or its equivalent, as the coordinator or have delegated the authority to the Commissioner of Public Safety. Florida, a leader in missing children legislation, did not establish a state clearinghouse until May, 1984. Act of May 24, 1984, ch. 43, 1984 Fla. Sess. Law Serv. 141 (West). Florida did not mandate entry of missing children reports into the NCIC until this same act was passed. *Id.*

Ohio does not provide for any state clearinghouse. Instead, Amended Substitute Senate Bill 321 (S. 321) shifts responsibility to the Department of Education for coordination and dissemination of information. See *infra* text accompanying notes 87-94.

37. S. 2014 Hearings, *supra* note 7, at 2. President Reagan participated in the roll call of missing children's names after the April 29, 1985, broadcast. "The president's participation in the cause speaks of the tremendous strides that have been made in bringing the issue of missing . . . children into the national forefront." Hickey 1, *supra* note 12. Also, "[t]he success of public awareness campaigns may be best illustrated by the widespread response to the nationally televised movie 'Adam' . . ." S. 2014 Hearings, *supra* note 7, at 2 (statement of Sen. Specter).

38. Cole, *Help In Searching For Missing Children*, Akron Beacon J., Feb. 8, 1985 (available on NEWSBANK, INC., Microfiche No. 6:G10).

39. 42 U.S.C.A. § 5773(b)(2) (West Supp. 1985).

40. *Id.* § 5772(1)(B).

41. S. 2014 Hearings, *supra* note 7, at 2.

sponsor of S. 2014, presented statistics supplied by the U.S. Department of Health and Human Services which show approximately 50,000 children abducted by strangers every year.⁴²

The United States House of Representatives did not incorporate the figure of "one million" missing children into the Missing Children's Assistance Act of 1983. Rather, the Act referred to *many* children who are missing each year.⁴³ The Act stipulated that a national toll-free telephone line and a national resource center were to be established to coordinate public and private efforts in locating missing children.⁴⁴ Further, periodic studies were to be conducted to determine the actual number of children missing annually, with the results published and analyzed on a yearly basis.⁴⁵ Funding for the program was authorized at ten million dollars per year from 1984 through 1987.⁴⁶

The National Center for Missing and Exploited Children, which receives 3.3 million dollars per year of available federal funds, opened in June, 1984, in Washington, D.C.⁴⁷ The Center maintains that the number of abducted children in the U.S. ranges from 4,000 to 20,000

42. *Id.* at 1-2. No documentation exists which supports the Department of Health and Human Service's estimate that 50,000 children are taken by strangers every year. *See infra* note 132 and accompanying text.

43. The findings of the House of Representatives did not cite a figure on the number of missing children. *Juvenile Justice, Runaway Youth, and Missing Children's Act Amendments of 1984: Hearings on H.R. 4971 Before the Subcomm. on Human Resources, 98th Cong., 2nd Sess. (1984)* [hereinafter cited as *H.R. 4971 Hearings*]. Instead, H.R. 4971 amended S. 2014 by eliminating "over one million children are missing from their homes each year." *Id.* at 70. The Missing Children's Assistance Act of 1983 also eliminated the "one million children are missing" statement, and instead simply stated that "each year thousands of children are abducted or removed from the control of a parent having legal custody without such parent's consent, under circumstances which immediately place them in grave danger." 42 U.S.C.A. § 5771(1) (West Supp. 1985).

44. 42 U.S.C.A. § 5773(b)(1)-(2) (West Supp. 1985).

45. *Id.* § 5773(a)(5), (b)(3). The responsibility for compiling and publishing this information is with the Secretary of Health and Human Services. *Id.*

46. *Id.* The Act does not state how the money is to be allocated nor identify who will make the allocation decision.

47. Hickey 1, *supra* note 12. The Center acts in cooperation with the U.S. Department of Justice, but does not represent the views or position of the Justice Department. *See NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, SELECTED STATE LEGISLATION: A GUIDE FOR EFFECTIVE STATE LAWS TO PROTECT CHILDREN* (Jan. 1985) (information available from this source at 1835 K St., N.W., Suite 700, Washington, D.C. 20006). The FBI, a department within the Justice Department, has documented statistics in contradiction to the Center's stance on missing children. *S. 2014 Hearings, supra* note 7, at 94.

The Center's Executive Director, Jay Howell, worked as a prosecutor in Jacksonville, Fla., and as an aide to Sen. Hawkins. He later worked as an investigator for the Justice Department, and in 1985 was appointed Executive Director of the Center. Hickey 1, *supra* note 12. The Center's staff consists of 35 attorneys, social workers, and police officers. *Id.* Additionally, John Walsh has been employed by the Center since 1984 in the capacity of "special consultant."

per year,⁴⁸ despite the Center's "firm records" of 142 such incidents.⁴⁹ The Center also publishes and distributes a booklet designed to assist state legislators in enacting effective missing children laws.⁵⁰ Recommended provisions for states include creation of a state board or commission, a clearinghouse of information, elimination of any waiting period for acting on a missing child report, mandatory entry of missing child reports into the NCIC computer, and use of a nationwide system for identifying deceased persons.⁵¹

B. Missing Children Legislation in Ohio

Many of the provisions recommended by the National Center for Missing and Exploited Children are contained in Amended Substitute Senate Bill 321 (S. 321).⁵² This is not surprising in that John Walsh, who is employed by the Center as a "special consultant," worked directly with S. 321 sponsor, Senator Lee I. Fisher and was instrumental in Ohio's enactment of S. 321.⁵³ Watching the television movie "Adam" in 1983 motivated Senator Fisher to investigate existing Ohio law, the missing children problem nationwide, and Ohio's need for legislation of this sort.⁵⁴ After conducting this initial research and determining to his satisfaction that Ohio needed a missing children law, Senator Fisher contacted John Walsh.⁵⁵ Walsh agreed to help Fisher draft and lobby for passage of an Ohio missing children law and to travel throughout Ohio in 1984 to garner public support for the bill.⁵⁶ Walsh spoke to numerous Ohio organizations and received their endorsements for S. 321 and also gave numerous television and radio interviews.⁵⁷ As a result, thousands of letters were received by Ohio legislators in support of S. 321, along with endorsements from many Ohio

48. Griego, *supra* note 30.

49. *Id.*

50. See NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *supra* note 47.

51. *Id.*

52. Act of January 7, 1985, 1984 Ohio Legis. Serv. 5-811 (Baldwin) (codified as amended in scattered sections of tits. 1, 21, 23, 29, 33, and 51 OHIO REV. CODE ANN. (Page 1985 & Supp. 1985)). The only provision not contained in S. 321 is the state clearinghouse of information.

53. Telephone interview with Susan Axelrod, Legislative Aide to Sen. Fisher (Oct. 11, 1985) [hereinafter cited as Axelrod interview] (on file with University of Dayton Law Review). Walsh works for the Center as a "special consultant" and "[i]n that capacity, he jets around the country working on state laws. As an independent advocate, he does speaking engagements for the PTAs, service clubs and other organizations." Hickey 2, *supra* note 15.

54. Axelrod interview, *supra* note 53.

55. *Id.*

56. *Id.*

57. *Id.* Some of the endorsements were from the Ohio Parent Teacher Association, the Ohio Nurses Association, the Ohio Association for the Education of Young Children, Child Find, the Adam Walsh Child Resource Center, and Channel 3, WKYC, in Cleveland. *Id.*

and national organizations.⁵⁸

Senator Fisher introduced S. 321 before the Ohio Senate in February, 1984, and it received unanimous approval in May, 1984.⁵⁹ While the bill was before the Ohio House of Representatives, Fisher received media attention for his public endorsement of an Ohio satellite office of the Adam Walsh Child Resource Center (AWCRC).⁶⁰ Fisher stated that the main reason for choosing the AWCRC was because of its emphasis on education and prevention of stranger abductions and missing children.⁶¹ The choice of the AWCRC came at the expense of denying Ohio office facilities to many other private child find organizations, including Child Find.⁶² S. 321 passed the House in December, 1984, with minimal opposition (89-3).⁶³ Governor Celeste signed the bill into law on January 7, 1985, and it became effective April 9, 1985.⁶⁴

58. *Id.* "Thousands and thousands of letters were sent to Ohio legislators supporting S. 321." *Id.* The letters were sent by concerned parents and organizations after Walsh spoke to these persons in his lobbying campaign. *Id.* Walsh also inspired thousands of persons to write letters and make telephone calls to the U.S. Congress when he was lobbying for passage of S. 1701. S. 2014 Hearings, *supra* note 7, at 80.

59. *Far-Reaching Child-Safety Bill Clears House*, Akron Beacon J., Dec. 13, 1984 (available on NEWSBANK, INC., Microfiche No. WEL 58:B4).

60. Lynch, *supra* note 31. Ohio was the first state to set up a branch office of the AWCRC, even though AWCRC had initially declined to set up branch offices anywhere, including Ohio. Axelrod interview, *supra* note 53. However, Sen. Fisher and others lobbied and succeeded in bringing the AWCRC to Ohio. *Id.* The branch office was established in South Euclid, Ohio, near the Cleveland-based office of Sen. Fisher. The second branch office of the AWCRC was also established in Ohio in Toledo. *Id.* After the AWCRC branch office was opened in South Euclid, it lobbied extensively for passage of S. 321 and played a key role in the passage of S. 321. *Id.*

Branch offices were also opened in Los Angeles in May, 1985, and other offices are planned for Las Vegas and Houston. Albrecht, *supra* note 31.

61. Albrecht, *supra* note 31.

62. In June, 1984, Sen. Fisher held a meeting in his office specifically to choose between the AWCRC and Child Find. *Id.* The meeting was attended by Fisher, his two aides, Susan Axelrod and Rochelle Bloom, and 14 other persons who were lawyers, businessmen, and concerned parents. *Id.* Although not specifically mentioned as a reason for choosing AWCRC, Fisher was probably influenced by the direct participation of John Walsh in formulating and lobbying for S. 321. Another possible reason relates to the charge against Child Find of "financial irregularities." *Id.* Two of the officers of the AWCRC include Fisher's two legislative aides, Axelrod and Bloom.

63. Cole, *supra* note 38. While S. 321 was under consideration in the House, Rep. Paul Jones added an amendment requiring safety belts on restaurant high chairs, but this amendment was subsequently removed after a conference committee unanimously agreed on its removal. Press Release No. R-115-2805 from Sen. Fisher's office, Dec. 21, 1984 [hereinafter cited as Fisher Press Release] (on file with University of Dayton Law Review). One amendment that was not removed, however, was a provision making it a crime to lure a child younger than 14 into a vehicle. See OHIO REV. CODE ANN. § 2905.05 (Page Supp. 1985).

64. *Ohio Gets Missing Child Law*, Clev. Plain Dealer, Jan. 8, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 2:B15). Governor Celeste signed the bill into law amidst a flurry of media attention. He was "surrounded by 30 pre-schoolers, age 2 to 6, who shouted with glee as he signed the missing children bill and as media cameras recorded the event." *Id.* At hand for the signing were Sen. Fisher, Ohio Attorney General Anthony J. Celebrezze, Jr., and John

III. SUMMARY OF S. 321 PROVISIONS

The Missing Children Act, Amended Substituted Senate Bill 321 (S. 321),⁶⁵ defines missing children as persons under eighteen years of age who are missing from the "care, custody, and control" of parents, guardians, or persons responsible for them.⁶⁶ The definition specifically includes runaway children⁶⁷ and would not exclude children who have been ejected from or permitted to leave their homes.⁶⁸

There is no requirement that a child be absent for any particular length of time before he or she can be characterized as a missing child. In fact, the Act prohibits law enforcement agencies from employing policies that delay agency response until a specific period of time has elapsed from the time of discovery that a child is or may be missing.⁶⁹ When a child is reported as missing to a law enforcement agency, the agency must immediately compile information concerning the child, and that information must be entered into the NCIC computer within twelve hours of the report.⁷⁰ The agency taking the report must make a reasonable effort to notify other law enforcement agencies within the county and is encouraged, but not required, to notify any other law enforcement or social service agencies to inform them of the missing child and to request assistance and cooperation in the investigation.⁷¹ The law enforcement agency is given considerable latitude in conducting the information-gathering process. The parent or party responsible for the child must provide information to the law enforcement agency upon request, and the police may, subject to constitutional and statutory limitations, request information from any other persons.⁷² At any time during the investigation, law enforcement officials may request parents to execute a written request for dental records and must so request if the child remains missing thirty days after the initial report.⁷³

Schools⁷⁴ and county agencies that provide social services for children must, upon request of the law enforcement agency, grant access to

65. Act of January 7, 1985, 1984 Ohio Legis. Serv. 5-811 (Baldwin) (codified as amended in scattered sections of tits. 1, 21, 23, 29, 33, and 51 OHIO REV. CODE ANN. (Page 1985 & Supp. 1985)).

66. OHIO REV. CODE ANN. § 2901.30(A)(2)-(3)(a) (Page Supp. 1985).

67. *Id.*

68. These children may represent 15% of all runaways. Ohio Department of Education, Missing Children (1985) (unpublished report) (on file with University of Dayton Law Review).

69. OHIO REV. CODE ANN. § 2901.30(B) (Page Supp. 1985).

70. *Id.* § 2901.30(C).

71. *Id.* § 2901.30(D).

72. *Id.* § 2901.30(C).

73. *Id.* § 2901.30(F).

74. *Id.* § 3319.321(E) (Page 1985).

all information that might be relevant to a missing child investigation.⁷⁵ Use of the information by the law enforcement agency is restricted to furthering investigation to locate the child and may not be used for any other investigation or proceeding.⁷⁶ The Act also mandates that law enforcement agencies cooperate with and assist other law enforcement agencies—state, out-of-state, or federal—in their missing children investigations.⁷⁷ The cooperation and assistance provisions are designed to meet the requirements of the federal Missing Children Act of 1982 as well.⁷⁸ The only organizations specifically exempted from the requirement that all information about a missing child be provided on request are recognized runaway shelters where confidentiality to a runaway child is at issue.⁷⁹

The Act also provides for a special training program to be developed by the attorney general for police officers, deputy sheriffs, marshals, and others⁸⁰ falling under the definition of “peace officer”⁸¹ who might become involved in missing child and child neglect cases.⁸² With respect to the content of the special training, the Act requires only that it be “a specified amount of training in the handling of missing children and child abuse and neglect cases.”⁸³ Otherwise, formulation of the program is left to the discretion of the attorney general,⁸⁴ with recommendations from the Ohio peace officer training council.⁸⁵

The Act provides that the Superintendent of the Bureau of Criminal Identification and Investigation formulate and recommend, to state and local agencies and officials, cooperative policies for coordination of activities under the Missing Children Act.⁸⁶ The bureau is to prepare a bulletin, with information from the NCIC computer, on missing children who may be in the state and to distribute copies of the bulletin to law enforcement agencies within the state and to the Department of

75. *Id.* § 2901.30(D) (Page Supp. 1985).

76. *Id.*

77. *Id.* § 2901.30(E).

78. *Id.* § 2901.31.

79. *Id.* § 2901.30(H).

80. *Id.* § 109.741. Because it was determined that it would be impossible to train all affected officers by the effective date of the legislation, this part of the Act has been amended to allow officers to continue to serve while the attorney general arranges a timetable for the training of officers. Act of Mar. 27, 1985, 1985 Ohio Legis. Serv. 5-10, § 9 (Baldwin) (codified at OHIO REV. CODE §§ 109.741, 109.77 (Page Supp. 1985)).

81. OHIO REV. CODE ANN. § 109.71(A)(1) (Page Supp. 1985).

82. *Id.* § 109.741.

83. *Id.* § 109.73(A)(5).

84. *Id.* §§ 109.73, 109.741.

85. *Id.* § 109.73(A)(5).

86. *Id.* § 109.55.

Education.⁸⁷ The superintendent must also prepare for the Department of Education a standard impression sheet for use in school fingerprint programs.⁸⁸ These provisions establish the link between the investigational activities carried on by law enforcement officials and the substantial educational activities which the Act imposes on the Department of Education.

The Department of Education is required under S. 321 to establish the "Missing Child Educational Program."⁸⁹ The Department is to integrate the information from the missing children information bulletin sent by the Bureau of Criminal Identification and Investigation into a pamphlet, copies of which are to be sent periodically to all Ohio school districts and private schools so that children who have been reported missing from their homes but who have appeared in a school may be identified.⁹⁰ The Department is also required to prepare and distribute its own informational and instructional materials directed toward the general subject of missing children.⁹¹ The materials are to help school personnel, parents, and children become aware of and understand various aspects of the problems involving missing children.⁹² Suggested topics include types of missing children, circumstances under which children may become missing, legal and emotional consequences for children and parents, prevention, and procedures to be followed upon the realization that a child may be missing.⁹³ The Department must also establish a toll-free number for questions and requests for the informational materials from individuals or groups.⁹⁴

Using the materials and suggestions provided by the Department, individual school systems are to develop missing children informational programs for students, parents, and community members.⁹⁵ School systems may implement fingerprinting identification programs, which must be optional rather than required, for any children within the system.⁹⁶ Fingerprinting programs must be performed by law enforcement officials,⁹⁷ with imprints kept only by parents or guardians and use of

87. *Id.* § 109.64.

88. *Id.* § 109.58.

89. *Id.* § 3301.25(B)(1).

90. *Id.* § 3301.25(B)(2).

91. *Id.* § 3301.25(B)(3).

92. *Id.* § 3301.25(B)(3)(b).

93. *Id.* § 3301.25(B)(3).

94. *Id.* § 3301.25(B)(6). This number is 1-800-325-5604. Ohio Department of Education, *Missing!* (1985) (unpublished report) (on file with University of Dayton Law Review).

95. OHIO REV. CODE ANN. § 3313.96(B) (Page 1985).

96. *Id.* § 3313.96(C).

97. *Id.* It had been found in earlier fingerprinting programs carried out by schools or community service organizations that impressions taken by people other than law enforcement officials were of little use. Interview with Edwin Whitfield, 1985.

imprints restricted to assistance in location and identification of a missing child.⁹⁸ Photographs of all students for use in possible missing child investigations are to be requested of photographers contracting to take school pictures.⁹⁹

S. 321 requires that individual school systems implement certain "security" procedures. Each school board must adopt a written policy for notifying parents or responsible parties of a student's absence from school.¹⁰⁰ If at the time of initial entry into a school a student does not present copies of his birth certificate (or an equivalent from another state or nation) and previous school records, and if the school from which the student claims to have come either indicates that it has no records for the student or sends no records within fourteen days after a request, the district must notify the local law enforcement agency of a possible missing child.¹⁰¹

S. 321 addresses the possibility of campaigns to solicit funds for private organizations that operate missing child informational programs.¹⁰² Funds may be solicited only for nonprofit organizations incorporated under Ohio or other state law for at least two years.¹⁰³ The organizations may not employ independent professional fund raisers and must expressly consent to use of the organization name by any group wishing to raise funds in the organization's behalf.¹⁰⁴

The Ohio Department of Human Services is affected by S. 321, but to a lesser extent than law enforcement agencies or the Department

Associate Director of Educational Services, Ohio Department of Education, in Columbus, Ohio (Sept. 26, 1985) [hereinafter cited as Whitfield interview] (on file with University of Dayton Law Review).

98. OHIO REV. CODE ANN. § 3319.321 (Page 1985).

99. *Id.* § 3319.322.

100. *Id.* § 3313.205.

101. *Id.* § 3313.672. The provisions originally enacted by S. 321 were amended by House Bill 112. Act of Oct. 17, 1985, 1985 Ohio Legis. Serv. 5-645 (Baldwin). The amendments added the 14-day delay to allow for the mailing of records for students who had not obtained them from the previous school and provided for acceptance of a birth certificate equivalent, in view of the large number of children in Ohio who have come from other states or countries. H. 112 also dealt with standardization of block-parent programs to ensure proper authorization and control of those representing themselves as block parents. *Id.*

102. In June, 1984, the state attorney general halted the fund-raising activities of Buckeye Advertising, Inc., because of the organization's misleading promotions. Lynch, *supra* note 31.

103. OHIO REV. CODE ANN. § 2901.32(A) (Page Supp. 1985). It has been estimated that over 100 groups nationwide are devoted to missing children information and/or services. Karlen, *How Many Missing Kids?*, NEWSWEEK, Oct. 7, 1985, at 30. Exploitation of the missing children problem has resulted in investigations by state attorneys general and by the U.S. Postal Service. In Arizona, Edwin Negrin is serving a 14-year prison sentence for having swindled over \$100,000 in connection with Kids for Missing Kids, which he operated in five states. Gratteau & Gibson, *Missing-Children Groups Worried by Unethical Fund-Raising Ploys*, Omaha World-Herald, Sept. 5, 1985, at 31.

104. OHIO REV. CODE ANN. § 2901.32(B) (Page Supp. 1985).

of Education. The Act requires an agreement with the United States Secretary of Health and Human Services to make available the federal Parent Locator Service.¹⁰⁵ The Act also provides that the Ohio Department of Human Services receive reports of possible child abuse or neglect and take action in response to those reports.¹⁰⁶

Other provisions relating to child abuse law include the establishment of special training for peace officers in child abuse and neglect cases¹⁰⁷ and the requirement that an attorney responsible for presenting evidence alleging child neglect or abuse not be appointed guardian ad litem for that child in delinquency or unruly child proceedings.¹⁰⁸

The Act does effect changes with respect to the elements of criminal acts, the penalties, and the victims in crimes involving children. Allowing child involvement in prostitution is now punishable under the child endangering provisions as a felony.¹⁰⁹ Enticing a child under the age of fourteen into any vehicle, without permission or legal authority and without regard to any motive for (except in emergency situations) or consequence of the enticement, has been made a misdemeanor.¹¹⁰ Furthermore, a law enforcement official may arrest, without a warrant, anyone he or she reasonably suspects of having violated the enticement provision and detain that person until a warrant can be obtained.¹¹¹ Penalties for some violations of the child stealing laws have been increased and all provisions, previously applicable only to children under the age of fourteen, have now been made applicable to children under the age of eighteen.¹¹²

For the adult whose child or ward has been the victim of the crime of child stealing, S. 321 establishes a new civil cause of action—deprivation of a possessory interest in a minor.¹¹³ Parents, non-custodial parents, guardians, and other custodians may sue to recover punitive damages and full compensatory damages, including loss of society, loss of the child's services, mental suffering and anguish, and all costs incurred in recovering the child and maintaining the suit. The action is not available, however, "for one parent against the other par-

105. The service was originally established under 42 U.S.C. § 653 (1982) to provide access to any information held by any federal agency or governmental department to assist in location of absent parents from whom support payments were due.

106. OHIO REV. CODE ANN. § 2152.421 (Page Supp. 1985).

107. See *supra* text accompanying notes 80-85.

108. OHIO REV. CODE ANN. § 2151.281 (Page Supp. 1985).

109. *Id.* § 2919.22.

110. *Id.* § 2905.05.

111. *Id.* § 2935.03.

112. *Id.* § 2905.04.

ent who commits a child stealing crime against his own child."¹¹⁴

IV. ANALYSIS: A CRITICAL OVERVIEW OF S. 321

A. *The Purpose*

It is difficult to analyze legislation without a clear understanding of its purpose, particularly in the case of a bill like Amended Substitute Senate Bill (S. 321)¹¹⁵ that enacts or amends twenty-seven sections scattered throughout the Ohio Revised Code. The denomination of the Act as the Missing Children Act would seem to indicate the general focus of the provisions. The media attention given missing children¹¹⁶ has generally been perceived as reflecting a stranger-abduction problem of major significance.¹¹⁷ The purpose of the Act has also been described in terms of a very specific aspect of the problem—the short-term abduction/enticement and molestation of children, not necessarily by a complete stranger.¹¹⁸

The Act defines missing children extremely broadly and would include long-term and short-term abduction, abduction by strangers or noncustodial parents, runaways, and children ejected from their homes by parents or guardians.¹¹⁹ Media attention has been directed at least as much toward responses to the problem as towards defining the problem itself. Photographs of missing children (without definition of "missing") have been distributed on grocery bags and milk cartons,¹²⁰ on bills sent out by utilities,¹²¹ and on toll tickets handed out on thruways.¹²² Books on preventing abduction are available for children and adults at neighborhood bookstores.¹²³ Legislative action is a natural result of the overwhelming public concern and media attention to

114. *Id.* § 2307.50(D).

115. Act of January 7, 1985, 1984 Ohio Legis. Serv. 5-811 (Baldwin) (codified as amended in scattered sections of tits. 1, 21, 23, 29, 33, and 51 OHIO REV. CODE ANN. (Page 1985 & Supp. 1985)).

116. *See supra* text accompanying notes 37-38.

117. Goodman, *Hysteria About Missing Children Overwhelms The Facts*, San Jose Mercury News, July 9, 1985. The willingness of people to believe that the abduction of children by strangers, and the risk to their own children, is a significant problem springs from what has been described as a "primal anxiety" reflected in mythology, nightmares, and village folklore about children stolen by strangers, gypsy or mythical. *Id.*

118. Axelrod interview, *supra* note 53.

119. OHIO REV. CODE ANN. § 2901.30(A)(3)(a) (Page Supp. 1985).

120. *See supra* text accompanying notes 37-38.

121. N.Y. Times, Apr. 19, 1985, at B5, col. 1.

122. N.Y. Times, Mar. 14, 1985, at B2, col. 5.

123. A survey of one large suburban bookstore disclosed, in addition to the numerous childcare and child safety books with sections on teaching children to be on guard against advances from strangers, five books devoted solely to that subject, including a 1985 picture/story book for young children, *Benjamin Rabbit and His Stranger Danger*, by Irene and Dick Keller.

the myriad responses to the problem.

S. 321 was not enacted to address a problem arising out of case law, nor has its enactment generated case law.¹²⁴ The legislative response to public concern about the missing children problem resulted in an Act that is largely service oriented, imposing significant responsibility on law enforcement agencies and the Ohio Department of Education. Evaluation of that legislative response must be based on analysis of the probable effects of the Act's provisions in relation to the Act's purpose. This depends on a realistic appraisal of the missing children problem that the Act was designed to address and of the information used by the legislature to define that problem. However, definition of the missing children problem, and thus the purpose of the S. 321 legislation, becomes *less* clear rather than more so after careful analysis.

B. *Misinformation on Statistics*

The central theme behind the federal Missing Children Act of 1982 and various kindred state provisions, including S. 321, has been to focus awareness on the 50,000 children purportedly abducted each year by strangers.¹²⁵ The term "missing children" itself has come to refer specifically to those victims of stranger abductions.¹²⁶ S. 321, however, not only encompasses stranger abductions, but also attempts to merge the separate concerns of runaways and parental child snatching into one comprehensive bill.¹²⁷ Moreover, the General Assembly intended S. 321 to focus the public's attention on the problem of stranger and parental abductions.¹²⁸ The legislation, however, is focused primarily on runaways and to a lesser degree on parental child snatching. The bill has no practical effect on stranger abductions, and any potential posi-

124. There is case law concerning crimes in which runaways or abducted children were somehow involved and case law concerning custody disputes in which children have been taken by noncustodial parents—but none concerning the governmental response to the general problem.

125. *S. 2014 Hearings*, *supra* note 7, at 1-2.

126. Missing Children's Assistance Act of 1984, Pub. L. No. 98-474, 98 Stat. 2125 (codified as amended at 42 U.S.C.A. §§ 5571-77 (West Supp. 1985)). *See also* Kaufman, *Children Are Missing, But Number Disputed*, *Cin. Enquirer*, June 23, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 24:G13-14).

127. *See* OHIO REV. CODE ANN. § 2901.30(A)(3)(a), (b) (Page Supp. 1985).

128. Axelrod interview, *supra* note 53. Axelrod states that the primary focus of S. 321 was on abducted children, and in particular, on stranger abductions. *Id.* Acknowledging the controversy over the actual number of abducted children, Axelrod points out that the problem lies not in the figures, but in determining when an abduction has occurred. *Id.* The intent behind S. 321, according to Axelrod, was to include children who have been taken for several hours and sexually molested in the "abduction by a stranger" category. *Id.* However, this is not the definition stated within S. 321, which defines a missing child to be either a runaway, a child believed to have been kidnapped, abducted, unlawfully restrained, a victim of child stealing, or when custody of the minor has been interfered with. OHIO REV. CODE ANN. § 2901.30(A)(3)(a), (b) (Page Supp.

tive effect is countered by the sloppy drafting prevalent throughout the bill. Therefore, Ohio's designation of S. 321 as a missing children law is a misnomer and continues the legacy of misinformation that pervades this topic.¹²⁹

Both Walsh and Fisher have espoused publicly that there are 50,000 stranger abductions of children annually in the U.S.¹³⁰ Every state and federal enactment of missing children legislation has been motivated by this "unbelievable and unaccounted for figure."¹³¹ Therefore, in analyzing the validity of the legislation, it is important to establish whether the figure cited by Walsh and others is accurate.

No documentation exists within any private or public child find organization to support the 50,000 stranger-abduction statistic.¹³² To the contrary, documented statistics of the Federal Bureau of Investigation (FBI) show that only sixty-seven children nationwide were victims of stranger abductions in 1983.¹³³ Prior to 1983, the FBI's number of

129. For example, Gov. Celeste stated at the signing of S. 321 that 50,000 children are abducted by strangers each year. *Ohio Gets Missing Child Law*, *supra* note 64. Also, the public paranoia and hysteria created by the media coverage of the missing children issue fuels the fear of parents and children. See, e.g., Krauth, *Missing Children: A Manipulated Issue?*, Toledo Blade, 1985. Davis, *Crusade For Missing Children Spawns Overanxious Parents*, Raleigh News and Observer, June 30, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 24:G8); Kilzer, *Fear Fuels Abducted Child Data*, Milwaukee J., May 19, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:E13).

130. See *supra* note 30; *infra* note 133.

131. *S. 1701 Hearings*, *supra* note 10, at 65.

132. Many critics, including law enforcement officials and leading missing children experts, have discounted the 50,000 stranger-abduction figure. Griego & Kilzer, *supra* note 30. Extensive newspaper coverage during 1985-86 has also discounted the figure of 50,000 stranger abductions.

133. See *supra* note 26. Bill Carter of the FBI's public information bureau argues that what is needed is perspective, not paranoia. Griego & Kilzer, *supra* note 30.

More than 50,000 soldiers died in the Vietnam War. Almost everyone in America knows someone who was killed there The numbers I've seen from missing child groups on abducted children range from 5,000 to 50,000. Do you know a child who has been abducted? That should tell you something right there.

Id.

Ohio, Colorado, Indiana, and Kentucky reported no stranger abductions of children in 1984. Kaufman, *supra* note 126; Kilzer, *supra* note 129. There seems to be a lot of disagreement as to the correct number of child abductions, even among advocates of the higher figures. Child Find's Executive Director states that the number is between 4,000 and 20,000. Griego & Kilzer, *supra* note 30. The American Bar Association's conservative estimate is 25,000 stranger abductions a year. Las Vegas Review-Journal, Apr. 28, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:E5). Find My Child, Inc. reports at least 150,000 children abducted each year. Davis, *supra* note 129. Child Find states that the actual number is less than 600. Griego & Kilzer, *supra* note 30. A Child Find spokesman recently stated that the 50,000 figure was "pulled out of a hat." *Id.* Walsh claims the higher figure of 50,000 takes into account the underreporting of missing children cases and the underutilization of the NCIC computer by local law enforcement agencies. *S. 1701 Hearings*, *supra* note 10, at 82. Also, according to Sen. Fisher, the 50,000 stranger-abduction figure is justified because of the high number of short-term child molestation/abduc-

verified child abductions by strangers was forty-nine in 1982, and thirty-five in 1981.¹³⁴ Walsh and others maintain that the FBI's figure is low because they believe the vast amount of missing children cases are not entered into the National Crime Information Center (NCIC) computer.¹³⁵ Initial advocates of the 50,000 figure, such as Child Find, have either backed down from their stance or completely abdicated any responsibility for promoting the 50,000 figure.¹³⁶ Even the National Center for Missing and Exploited Children has documented only 142 cases of stranger abductions since its inception in June, 1984.¹³⁷

Despite the growing mass of documentation discrediting the "unbelievable and unaccounted for figure" of 50,000 stranger abductions,¹³⁸ Walsh and other supporters, including Fisher, maintain their position and continue to lobby for state legislation.¹³⁹ The accuracy of actual figures for child abductions is crucial in evaluating the effectiveness of legislation based on such figures. In Ohio, S. 321 sponsor Senator Fisher remains a supporter of Walsh and the 50,000 national stranger-abduction figure.¹⁴⁰ A recent news release reported 280 children missing in Ohio during 1984,¹⁴¹ and television and newspaper coverage has focused on the vast number of Ohio's missing children.¹⁴² The FBI's statistics, however, show that of the sixty-seven documented cases of stranger abductions in 1984, none were from Ohio or the surrounding states.¹⁴³ Therefore, documented statistics do not support either a significant nation-wide or state-wide problem of children abducted by strangers. Extensive legislation such as S. 321, which is based on the belief that 50,000 children are taken by strangers each year, represents an over-reaction by politicians to the actual problem. Nevertheless, S. 321 contains provisions which create two legal actions—one civil and one criminal—directed solely at stranger abductions of children.¹⁴⁴ Both provisions, however, suffer from poor draftsmanship, vagueness, and overly broad construction.¹⁴⁵

134. S. 2014 Hearings, *supra* note 7, at 94.

135. *Id.*

136. See *supra* note 133. See also Griego & Kilzer, *supra* note 30.

137. Griego & Kilzer, *supra* note 30.

138. *Id.*

139. See Hickey 2, *supra* note 15; Axelrod interview, *supra* note 53.

140. See Axelrod interview, *supra* note 53.

141. Kestrzewa, *Far-Reaching Child-Safety Bill Clears House*, Akron Beacon J., Dec. 13, 1984 (available on NEWSBANK, INC., Microfiche No. WEL 58:B4).

142. See, e.g., WHIO News Broadcast, Dayton, Ohio (Sept. 25, 1985).

143. Kaufman, *supra* note 126.

144. See OHIO REV. CODE ANN. §§ 2307.50, 2905.05 (Page Supp. 1985).

145. An Ohio Common Pleas Court has struck down Ohio Revised Code § 2907.323, a provision within S. 321, as being overbroad, vague, and violative of plaintiff's first amendment right of privacy. *Ohio v. Robinson*, No. 85 CR 23/24 (Ohio C.P. Ct., Greene County May 30,

C. Civil Action Created for Interference with a Possessory Interest

Section 2307.50 of the Ohio Revised Code creates a civil action which can be utilized by anyone, other than a parent against a parent, who has a possessory interest in a minor when the offender has interfered with custody of the minor or when the minor has been kidnapped, abducted, unlawfully restrained, or a victim of child stealing.¹⁴⁶ While two of the underlying criminal offenses can be brought against a non-custodial parent,¹⁴⁷ section 2307.50 specifically states that it does not "create a civil action for one parent against the other parent."¹⁴⁸ The purpose of allowing a civil action is twofold: to deter child abductions by strangers and to provide parents legal recourse against a person who abducts their child.¹⁴⁹ However, the purpose of the provision and its effect are vastly different. The effect of section 2307.50 is that, in a parental child snatching case, anyone other than a parent¹⁵⁰ who has a possessory interest in the minor can bring a civil action against a non-custodial parent who snatches the child. For example, if a noncustodial parent takes his or her child, the custodial parent would not be able to bring a civil action. But if a noncustodial parent takes his or her child and the legal guardian is someone other than a custodial parent (such as a grandparent), then the legal guardian may institute a civil action.¹⁵¹

1985). See OHIO REV. CODE ANN. § 2907.323 (Page Supp. 1985). "[T]he attempts of the legislature to limit the scope of the statute under 2907.323(A)(1)(a)&(b) and (3)(a)&(b) are *poorly drafted*." *Robinson*, No. 85 CR 23/24, slip op. at 2 (emphasis added).

The court also stated, "Vague statutes suffer from three infirmities: 1) they fail to provide notice that the contemplated conduct is prohibited; 2) the guidelines are not reasonably clear which results in arbitrary and unequal enforcement and 3) the criminal statutes often proscribe conduct that is normally innocent." *Id.*

Finally, the court overturned section 2907.323 because it was overbroad. "[A]n overbroad statute is one designed to punish activities which are not constitutionally protected, but the statute includes within its scope activities which are protected by the first amendment." *Id.* at 1.

146. OHIO REV. CODE ANN. § 2307.50(A)(1) (Page Supp. 1985).

147. *Id.* §§ 2905.05 (child enticement), 2919.23 (interference with custody).

148. *Id.* § 2307.50(D).

149. Axelrod interview, *supra* note 53.

150. While section 2307.50(A) distinguishes between custodial and noncustodial parent, section 2307.50(D) does not.

151. Section 2307.50(D) specifically refers to "one parent against the other parent," but leaves open the use of the civil action by anyone other than a parent. This raises questions of due process and equal protection. The custodial parent is deprived of the compensable interest that the state has granted to nonparental custodians. In addition, "[t]he equal protection guarantees require the government to treat similarly situated individuals in a similar manner." *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

The interrelationship of the civil action with the Uniform Child Custody Jurisdiction Act (UCCJA), OHIO REV. CODE ANN. §§ 3109.21-37 (Page 1980 & Supp. 1985), and the Parental Kidnapping Prevention Act of 1980 (PKPA), Pub. L. No. 96-611, 94 Stat. 3568 (codified in 28 U.S.C. §§ 1738-1738C (1987)), is unclear. An Ohio court may, under the

Given that parental child snatching is more prevalent than stranger abduction,¹⁵² it is senseless to limit the civil action in this manner.¹⁵³ A custodial parent who has lost a child by parental child snatching suffers as much mental anguish, loss of society, and cost in locating the child as does a legal guardian in the same position. Also, a custodial parent whose child has been snatched by the noncustodial parent suffers the same mental anguish and loss of society as does a parent whose child has been abducted by a stranger.¹⁵⁴

1. Short-Term Abductions

If the civil action does apply strictly to stranger abductions, as is its intent, there are several critical problems that severely limit its practical use. There are two types of stranger abductions—long-term and short-term—which the drafters intended section 2307.50 to encompass.¹⁵⁵ The short-term abduction occurs when the child has been taken for several hours, sexually molested, and then set free.¹⁵⁶ According to Senator Fisher's aide, Susan Axelrod, short-term abduction and sexual molestation of minors is the real problem concerning missing children.¹⁵⁷ However, parents of a minor who has been sexually molested can not use section 2307.50 because sexual molestation is not one of the enumerated offenses to which the civil action applies.¹⁵⁸ If section 2307.50 is designed to address the short-term abduction and sexual molestation, then the drafters could easily have included sexual molestation as one of the enumerated criminal offenses that section 2307.50 covers. As written, a litigant may use section 2307.50 only if the of-

UCCJA and the PKPA, award a parent costs of locating the child and bringing the action in a custody-based complaint, but not damages for mental anguish. 28 U.S.C. § 1738A note (1982); *Minton v. McManus*, 9 Ohio App. 3d 165, 458 N.E.2d 1292 (1983) (construing OHIO REV. CODE ANN. §§ 3109.22(A), 3109.29(C) (Page 1980 & Supp. 1985)).

152. Karlen, *supra* note 103.

153. The policy reasons justifying interspousal immunity in tort actions do not apply when the parents are divorced. It is conceivable that a parent in a parental child-snatching case could recover actual costs under the UCCJA and the PKPA, *supra* note 151, and damages for mental anguish by having an "other custodian" (such as a grandparent) maintain the civil action created by section 2307.50. This would effectively defeat the restriction that section 2307.50 does not "create a civil action for one parent against the other parent." OHIO REV. CODE ANN. § 2307.50(D) (Page Supp. 1985).

154. See, e.g., Thurman, *Judge Returns 2 Children to Father*, Dallas Morning News, May 5, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:D5).

155. Axelrod interview, *supra* note 53.

156. *Id.*

157. *Id.* This is buttressed by a news article printed in a Cleveland-based newspaper which reported that there are "800,000 sexual assaults against children . . . reported every year." Schwinn, *Child Safety Program Studied at Seminar*, Jackson J., Mar. 13, 1984, at 5, col. 2. The article reported that one female in four will be sexually molested before the age of 13. *Id.* 500,000 females between the age of four and 16 are sexually molested every year. *Id.*

fender is charged with kidnapping, abduction, unlawful restraint, child stealing, or interference with custody.¹⁵⁹ Although the intent of section 2307.50 is to give parents of a sexually molested child legal recourse against the offender, the civil action cannot be utilized for this purpose unless the offender is also charged with one of the underlying criminal offenses.¹⁶⁰

Assuming that the perpetrator of a short-term abduction is charged not only with sexual molestation, but also one of the section 2307.50(A) offenses, a person who has a possessory interest in the minor can institute a civil action for interference with this interest.¹⁶¹ Again, numerous problems are encountered. First, if the parents of the child are divorced or legally separated, each may maintain a civil action for possessory interference.¹⁶² Also, anyone else, such as a stepparent, legal guardian, or "other custodian," may maintain the civil action against the offender.¹⁶³ Damages that could be awarded include, but

159. *Id.*

160. *Id.* Even if sexual molestation had been specifically added as one of the offenses under which the civil action might be brought, it is unlikely that this would have a significant effect either in deterring the abduction or in providing redress for the child and his family. Studies on child molestation reveal that the parent usually will not report the incident to the police. See NATIONAL INSTITUTE OF JUSTICE, *WHEN THE VICTIM IS A CHILD* 4 (1985). Reasons cited for nonreporting included that the parents preferred to handle the situation themselves, they felt sorry for the abuser, they want to forget the incident ever happened, and most importantly, the offender may have been a family member. *Id.* See White, *Incest Victims, Perpetrators Keep "The Secret"*, Portland Press-Herald, June 14, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 24:A13); Pudlow, *The Children, and System, Cry For Help*, Tallahassee Democrat, May 26, 1985 (available on NEWSBANK, INC., Microfiche No. WEL 19:A10-11) (54% of sexual abusers are natural or stepparents; an additional 14.7% are close relatives) (citing *Relationship of Sexual Abuser to Child, 1984*, DEPARTMENT OF HEALTH & REHABILITATIVE SERV.) (exact citation omitted in original).

If parents do not report the sexual molestation, none of the underlying criminal charges will be brought, and the parent is thus precluded from utilizing the civil action. If the incident is reported, the offender will probably be charged with gross sexual imposition or a similar charge, see OHIO REV. CODE ANN. §§ 2907.02-06 (Page 1981 & Supp. 1985), and not with one of the section 2307.50(A) offenses. As it stands, it is difficult to see how the civil action will have any effect on the short-term abduction/molestation problem.

161. OHIO REV. CODE ANN. § 2307.50(A)(3) (Page Supp. 1985). Possessory interest means anyone who has "a right of custody or access to a minor as his parent, custodial parent, noncustodial parent, guardian, or other custodian." *Id.* Section 2307.50 does not define what constitutes a right of access, or what an "other custodian" would be. A statement released by Senator Fisher included a parenthetical example of a right of custody or access which was "such as the right to visit." Fisher Press Release, *supra* note 63. An example such as "the right to visit" is so broad that a litigant might successfully argue that it includes aunts, uncles, brothers, sisters, and other relatives. Parents could defeat the purpose behind section 2307.50(D) by having a aunt, uncle, or other relative with a "right to visit" institute the civil action. See *supra* note 153.

162. Section 2307.50(A)(3) includes custodial as well as noncustodial parents, so both parents may maintain the action.

163. OHIO REV. CODE ANN. § 2307.50(A)(3) (Page Supp. 1985). Although a stepparent is not specifically included within section 2307.50(A)(3), the stepparent has a right of access to the

are not limited to, mental suffering and anguish, loss of minor's society, loss of minor's services, expenses incurred in locating the child, punitive damages, reasonable attorney's fees, and the costs of bringing the action.¹⁶⁴ For a short-term abduction, the parent or persons with a possessory interest have been deprived of the interest for only several hours. It is usually not until the child returns home and tells the parent what has happened that the parent is aware of any deprivation.¹⁶⁵ Damages for mental suffering and anguish would probably not be applicable in this situation because any mental suffering would result from knowing that the child was sexually molested, not from deprivation of the child.¹⁶⁶ Second, a jury would be unlikely to award a significant amount of damages to a plaintiff for loss of society for several hours, especially when the parent was not aware of a deprivation or loss of society. Finally, there would not be any costs to the plaintiff(s) in locating and recovering the child, so they could not ask for damages on that basis.¹⁶⁷ The damages the plaintiff would likely recover would not be based on interference with a possessory interest, but on an already available tort action of negligent infliction of emotional distress.¹⁶⁸ The civil action created by S. 321 would be meaningless in this situation.

If the Act's intent is that section 2307.50 be directed primarily toward stranger abduction and at providing parents a viable means to recover damages for short-term abductions, it fails on both counts. The provision is written too broadly—it could be used against persons not

164. *Id.* § 2307.50(C).

165. A short-term abduction, according to Axelrod, is when the child is taken, sexually molested, and set free several hours later. Axelrod interview, *supra* note 53. In cases of sexual molestation of children, studies have found that the molested child does not report the incident to anyone. NATIONAL INSTITUTE OF JUSTICE, *supra* note 160, at 4.

[E]ven the child's most trusted confidante may be unaware that something has happened. Very young children may simply lack the verbal capacity to report or the knowledge that an incident is inappropriate or criminal. Older children may be embarrassed. Many child victims are threatened into silence. When they do confide in trusted adults, their reports may be dismissed as fantasy or outright lies.

Id.

166. NATIONAL INSTITUTE OF JUSTICE, *supra* note 160, at 4.

167. Because the child returns home on his or her own, the parents do not incur costs in locating and recovering the child as they would in a long-term abduction or parental child snatching recovery.

168. For a recent affirmation of the existence of the tort action of negligent infliction of emotional distress, see *Reamsnyder v. Jaskolski*, 10 Ohio St. 3d 150, 462 N.E.2d 392 (1984). Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community. Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, "Outrageous!"

Id. at 153, 462 N.E.2d at 394 (quoting RESTATEMENT (SECOND) OF TORTS § 46 comment d (1965)).
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meant to be included within its scope.¹⁶⁹ At the same time, it fails to include child molestation as an offense for which the civil action could be employed.¹⁷⁰ Further, a plaintiff has little chance of recovering any of the enumerated damages under section 2307.50. The harm for which plaintiffs would most likely recover a significant amount of damages would be negligent infliction of emotional distress, a tort action already available prior to the enactment of S. 321.¹⁷¹

2. Long-Term Abduction

The same problems apply to a long-term abduction where a child is taken and never found, or if found, has been murdered by his or her abductor. Plaintiffs already have the tort action of negligent infliction of emotional distress available to them. This deficiency in the civil action created by S. 321 is minute, however, in comparison with the larger problems this civil action raises.

First, there must be a victim. Walsh's figure of 50,000 stranger abductions represents children who are never seen or heard from again.¹⁷² Without a victim/witness or without evidence that an abduction has occurred, no legal action can be taken. Even if there is evidence of an abduction, the minor must be found, the abductor's identity established, and the abductor located.¹⁷³ Most defendants in the criminal justice system do not have sufficient assets to cover a large tort award.¹⁷⁴ Any assets a defendant does have would probably be spent on defending the criminal charges. Most likely the defendant is indigent, cannot afford an attorney, and so receives a court-appointed attorney.¹⁷⁵ Therefore, in an ensuing civil action, the abductor would not be able to defend himself or herself or pay any of the damages awarded to the plaintiff. The result would be that plaintiffs have instituted a time-consuming and expensive legal action, and although they have the satisfaction of winning their claim, the victory would be in name only. The plaintiff would ultimately be responsible for legal fees incurred in insti-

169. See, e.g., *supra* note 145.

170. See *supra* text accompanying note 158-59.

171. See *Reamsnyder*, 10 Ohio St. 3d 150, 462 N.E.2d 392 (1984).

172. *S. 1701 Hearings*, *supra* note 10, at 65. See also *S. 2014 Hearings*, *supra* note 7, at 136 (displaying the article *Lost, Stolen, Slain: 50,000 Kids a Year*, N.Y. Post, Sept. 20, 1985).

173. The difficulty in recovering children who have been abducted by strangers is evidenced by a recent news release which reported that the first stranger-abduction victim found was returned to her parents through the efforts of the national missing children movement. Dayton J. Herald, Feb. 10, 1985, at 27, col. 1.

174. Interview with Thomas Hagel, Professor of Law, University of Dayton School of Law (Oct. 10, 1985) [hereinafter cited as Hagel interview] (on file with University of Dayton Law Review).

tuting the civil action and for expenses incurred in locating the child.¹⁷⁶

Parents are being given a false hope by the creation of section 2307.50—the false hope that they have legal recourse against an abductor and can obtain compensatory damages.¹⁷⁷ The creation of the civil action leads the public to believe that there is a significant stranger-abduction problem and that something is being done about it by the enactment of S. 321.¹⁷⁸ However, the intent and the effect of this legislation are not the same.

D. Criminal Action of Child Enticement

The constitutional problems of vagueness and overly broad construction that plague the newly created civil action are apparent in the enactment of section 2905.05, the criminal offense of child enticement.¹⁷⁹ Section 2905.05 states that it is now a crime in Ohio to “knowingly solicit, coax, entice, or lure” a minor fourteen years of age or younger into a vehicle.¹⁸⁰

Section 2905.05 varies from the other twenty-six provisions of S. 321 in that the applicable age in this provision is under fourteen, whereas the age applicable to all other sections within S. 321 is under eighteen.¹⁸¹ If missing children constitute a large enough problem to enact extensive legislation to combat the problem, it is inconsistent to except from the protection of the criminal provisions those missing children between the ages of fourteen and eighteen.¹⁸²

Section 2905.05 specifies no requisite mental state for the crime of

176. Damages may be recoverable under Ohio's program for reparation awards to victims of crime. OHIO REV. CODE ANN. §§ 2743.51–72 (Page Supp. 1985). Awards would be available to victims and parents of victims, *id.* § 2743.51, for direct economic loss, *id.* § 2743.52, including replacement services loss, *id.* § 2743.51(H), but not for pain and suffering except insofar as they result in direct economic loss, *id.* § 2743.56(B)(6).

177. See Krauth, *supra* note 129.

178. See *id.* For example, an article praising the enactment of S. 321 stated:

The plight of missing children and their parents is one of serious proportions, but one which has become a public concern only recently. *Law enforcement authorities in Ohio now have important new tools to use in their attempt to combat the problem. It is a feather in the cap of the state and of those who made it possible.*

Landmark Leadership, Sun Messenger, Jan. 10, 1985, at A4, col. 1 (emphasis added).

But see Krauth, *supra* note 129. “[B]usinesses are profiting by the hysteria, . . . politicians are gaining points by pushing popular legislation, and . . . children are becoming unnecessarily paranoid.” *Id.* Further, “[p]oliticians are guaranteed praise from constituents for pushing missing-children legislation, regardless of its proven value.” *Id.*

179. OHIO REV. CODE ANN. § 2905.05 (Page Supp. 1985).

180. *Id.* § 2905.05(A).

181. *Id.* § 2905.05(A)(1).

182. One reason which could justify lowering the age to 14 instead of 18 is to exclude teenagers from the ages of 14 to 18 who might be unjustly detained or arrested under of section

child enticement.¹⁸³ It is a strict liability offense to "solicit, coax, entice, or lure" a minor under the age of fourteen into a vehicle, unless the actor has the expressed or implied consent of the parents.¹⁸⁴ Section 2905.05 does not define what conduct rises to the level of soliciting, coaxing, enticing, or luring, nor what constitutes "implied consent."¹⁸⁵ For first time offenders, the "crime" is a misdemeanor of the first degree, and for persons with a prior child enticement conviction, the "crime" is a felony of the fourth degree.¹⁸⁶

A police officer can arrest and detain a person when the officer believes that reasonable grounds exist evidencing that the crime of child enticement has been committed.¹⁸⁷ The result is that when a police officer sees someone he or she believes is soliciting, coaxing, enticing, or luring a minor under the age of fourteen into a vehicle, that officer may arrest the "offender" and charge him or her with child enticement. The potential for abuse in enforcement of section 2905.05 is apparent. Police officers are required to decide first if the minor is fourteen years of age or younger, and second, whether the actor's conduct amounts to soliciting, coaxing, enticing, or luring. While age identification will be relatively simple for very young children, determination of the age of children in their early teens may prove difficult. Furthermore, the statute is vague—persons are not given fair notice as to what conduct would be a crime and police are not provided clear standards to determine what is a crime.¹⁸⁸ The effect of section 2905.05 is that police officers may arbitrarily detain and/or arrest suspicious-looking persons.¹⁸⁹ The overwhelming public concern and fear that children are being abducted could produce such a result.¹⁹⁰ Under the standards (or

183. OHIO REV. CODE ANN. § 2905.05(A) (Page Supp. 1985). The offender will be guilty, regardless of whether he or she knows the age of the child at the time of the solicitation. Section 2905.05 requires only that the offender knowingly lure or coax a minor into a vehicle, without regard to motive or consequence.

184. *Id.* § 2905.05.

185. *Id.* § 2905.05(A)-(A)(1).

186. *Id.* § 2905.05(C).

187. *Id.* § 2935.03.

188. *See Robinson*, No. CR 23/24, slip op. at 2. As written, the statute could be applied if a child were offered a ride by an uncle or grandparent unless "implied consent" of the parents is automatically presumed for all relatives of the child. Without such a presumption, and none is expressly included in the statute, either (1) the statute requires that police enforce its provisions only selectively and without statutory guidelines, or (2) the statute is subject to constitutional challenge for overbreadth, in that it would allow violation of the constitutionally guaranteed right to privacy in the extended family. *See Moore v. City of East Cleveland*, 431 U.S. 494 (1977). In any case, the statute is certainly overly broad in that it encompasses a broad range of conduct which, although not constitutionally protected, no legislature could have intended to characterize as criminal.

189. *Robinson*, No. CR 23/24, slip op. at 2.

190. *The Ohio State Journal*, "Child Enticement May Cause Police to Act When Otherwise They

lack thereof) enunciated in section 2905.05, most persons would be guilty of the "crime" at one point or another in their lives. Therefore, these deficiencies in section 2905.05 make the provision susceptible to constitutional challenge on the basis of vagueness and overly broad construction.¹⁹¹

More importantly, there are already numerous provisions within the Ohio criminal code that should deter child snatching, and these provisions are not as vague and overinclusive as is section 2905.05. Kidnapping,¹⁹² abduction,¹⁹³ sexual imposition,¹⁹⁴ homicide,¹⁹⁵ and battery¹⁹⁶ offenses have deterrent penalties which make the threat of punishment by prosecution of the crime of child enticement unnecessary.¹⁹⁷ Because child enticement is a lesser offense included within the offenses of kidnapping and abduction, a prosecutor who charges an offender with kidnapping or abduction might be countered by a defendant who claims the proper charge and penalty is child enticement. Where the only act by the defendant has been to coax the child into the vehicle, elements of both kidnapping and child enticement offenses have been satisfied.¹⁹⁸ However, the penalties for the two offenses are significantly different—with a disparity of six-months imprisonment for child enticement¹⁹⁹ and a maximum of twenty-five years for kidnapping.²⁰⁰ The new offense of child enticement, although intended to aid law enforcement, will create substantial problems for prosecutors—the abductor may indeed benefit from enactment of section 2905.05.²⁰¹ The crime of

would not.

191. See *Robinson*, No. CR 23/24, slip op. at 1-2.

192. OHIO REV. CODE ANN. § 2905.01 (Page 1984).

193. *Id.* § 2905.02.

194. *Id.* § 2907.02.

195. *Id.* § 2903.02.

196. *Id.* § 2903.12.

197. All of these are felony offenses, whereas section 2905.05 is a misdemeanor.

198. The elements of kidnapping a person under the age of 13 are that the victim be removed from the place he or she is found, and this can be accomplished by any means. OHIO REV. CODE ANN. § 2905.01(A) (Page 1984). For persons older than 13, force, threat, or deception must be employed in the removal of the victim from the place he or she is found, or the victim must be restrained of his or her liberty for a specific purpose which the statute governs in order to satisfy the elements of kidnapping. *Id.*

For the offense of child enticement, all the prosecutor need show is that the offender solicited, coaxed, enticed, or lured the minor into a vehicle. OHIO REV. CODE ANN. § 2905.05(A) (Page Supp. 1985).

199. OHIO REV. CODE ANN. § 2905.05(A) (Page Supp. 1985). The penalty for a misdemeanor of the first degree is imprisonment of not more than six months and a maximum fine of \$1,000. *Id.* § 2929.21 (Page 1985).

200. *Id.* § 2905.01(C) (Page 1985). The penalty for a felony of the first degree is minimum imprisonment of four, five, six, or seven years, and a maximum term of 25 years. *Id.* § 2929.11(B)(1).

201. The offender can utilize the child enticement provision to plea bargain and thereby

child enticement is an example of the legislative response to the public paranoia surrounding the missing children issue.²⁰² The child enticement provision fuels the public's fear and makes less certain the conviction and sentencing of an offender who abducts a minor.

E. Education and Information

The greatest responsibilities for combating the missing children problem may fall on the Department of Education. Ohio is the first state, and as of September 1, 1985, the only state,²⁰³ to have enacted such comprehensive missing child legislation to be implemented by a state department of education.²⁰⁴ The Act provides that the Department must establish the "Missing Child Educational Program"²⁰⁵ and develop informational materials to assist individual schools and school districts in formulating their own educational programs for parents, students, and community members.²⁰⁶ This is a combat-the-disease-not-just-the-symptoms approach that, by emphasizing prevention, may be the most effective way to deal with the missing children problem. As schools probably represent the best link to the largest number of people likely to be involved—parents and children under the age of eighteen—they would seem to offer the most effective means of implementing a program.

The Act does suggest some general subject areas that the Department of Education is to include in the program²⁰⁷ but does not direct specific development of either the content or the means of implementation.²⁰⁸ Although the bill was supported by the Department of Education and contact was maintained through the Department's legislative liaison,²⁰⁹ there was no direct communication between the writers of the bill and the department of guidance and testing, to which organizational responsibility for the program was assigned within the Depart-

exchange a potentially significant prison term for a maximum of six months imprisonment.

202. See Krauth, *supra* note 129. USA Today devoted an entire page to opposing views on the missing children issue recently. See USA Today, Jan. 23, 1986, at 10A. Titles of the various articles reflect the public concern and hysteria on the topic—*Hype and Publicity Are Harming Children, This Negative Focus is Shortchanging Children*, and *Better Warned Than Mourned*. See *id.*

203. Whitfield interview, *supra* note 97.

204. Florida and Kentucky have legislation requiring distribution of lists of missing children to schools and school districts. In California, school systems must present one program per year on missing children and must have comprehensive informational programs dealing with child abuse and neglect. NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN, *supra* note 47.

205. OHIO REV. CODE ANN. § 3301.25 (Page 1985).

206. *Id.* § 3319.96.

207. *Id.* § 3301.25(B)(3).

208. Whitfield interview, *supra* note 97.

209. As a side note, see *supra* note 117.

ment of Education.²¹⁰ Without specific direction from the legislature, the guidance department formulated its materials and programs according to its understanding of the missing children problem in Ohio—that the majority of the children are teenage runaways and that some are children taken by noncustodial parents but *none*, at present, are known to have been abducted by *strangers*.²¹¹

In accord with assignment of the program to the department of guidance and testing, it is expected that much of the instruction and discussion in schools will be handled by guidance counselors.²¹² Under the director of the department of guidance and testing are two full-time assistants responsible for the production and dissemination of information and the informational programs. During the first two months of the 1985–86 school year, workshops were offered on the regional level for superintendents, directors of student services, other high-level administrators of school systems, and officials representing law enforcement agencies.²¹³ These workshops were used to explain the Missing Children Act, school systems' responsibilities, and the services that would be offered to school systems by the Department of Education.²¹⁴ The next round of workshops, to be offered on a county or multi-county basis, is designed for guidance counselors and psychologists who will implement the programs in their school systems.²¹⁵ The multi-level workshop approach would appear to provide an excellent means of ensuring that all school personnel involved will understand the general goals and implement their own programs according to the expectations of the Department.

For younger children, there will be the “don’t-talk-to-strangers” types of programs, including some instruction in awareness of sexual and physical abuse, and suggested courses of action, both for parents of missing children and for children who are abducted or molested.²¹⁶ In addition, there will be intensive programs devoted to giving students, parents, and teachers better understanding of the circumstances that

210. Whitfield interview, *supra* note 97.

211. *Id.* Relying on statistics published by the U.S. Department of Health and Human Services, a Department of Education report maintains that each year approximately 10% of children between the ages of 12 and 17 run away from home; 80% of the runaways are estimated to be between the ages of 14 and 16. *See supra* note 68.

212. Whitfield interview, *supra* note 97.

213. *Id.*

214. *Id.*

215. *Id.*

216. This would include encouraging assertiveness in saying no when an adult makes the child uncomfortable, teaching use of the telephone to summon help, and less traditional suggestions such as telling a child who has been enticed or abducted into a car that he or she should not buckle the seatbelt and should be prepared to jump out at a stop. *Id.*

may lead to a child's running away; the legal, physical, and emotional consequences of running away;²¹⁷ suggested actions after a child has run away; some alternatives for troubled children considering running away; and sources of social service and legal help for parents and children.²¹⁸ The programs should address at least to some degree the abduction problem that has captured public attention and the sexual molestation problem that has been targeted by the sponsor,²¹⁹ and although it was apparently not a goal of the legislature, the program should provide much needed counseling help for troubled adolescents and those who care for them.

The Department's toll-free telephone number, established to answer questions concerning missing children and requests from individuals or groups for informational materials²²⁰ has received an unexpectedly large number of calls concerning children taken by noncustodial parents.²²¹ Informational programs directed at parents, teachers, and students may increase awareness of this aspect of the missing children problem. As a result, children taken by noncustodial parents might at some stage become suspicious of their own situations and contact school officials for investigation. The programs and publicity may discourage noncustodial parents from attempting to take their children. Some parts of the program directed at individual school systems—the requirement that records be produced at enrollment²²² and the distribution²²³ to schools every two months²²⁴ of pictures of missing children thought to be in Ohio—should have their greatest effect in making it much more difficult to take children and begin a new life without detection. It is children taken by noncustodial parents who are most likely to be re-enrolled in school, certainly not runaways, and probably not children abducted by strangers.²²⁵ The counseling services intended to help children who may run away or who have returned after running away, and their families, may also be useful to families adjusting to the

217. A major goal would be to dispel any romantic notions of freedom on the road by a realistic portrayal of the typical consequences of running away. *Id.* Statistics published by the Department indicate that 85% of certain types of runaways (not those who are gone for only a short time or those whose destination is another parent or close family member) will suffer some degree of sexual abuse. Ohio Department of Education, *supra* note 68.

218. This would include awareness of local counseling and psychological services, social service agencies, and, for parents of missing children, law enforcement agency responsibilities under the new law. Whitfield interview, *supra* note 97.

219. Axelrod interview, *supra* note 53.

220. See *supra* note 94.

221. Whitfield interview, *supra* note 97.

222. OHIO REV. CODE ANN. § 3313.672 (Page 1985).

223. *Id.* § 3301.25(B)(2).

224. Whitfield interview, *supra* note 97.

225. *Id.*

recovery of children taken by noncustodial parents.

Such provisions as the records requirement do exact their cost, however. Schools within Ohio are empowered to withhold records until all fees assessed against the student have been paid.²²⁶ School systems in other states have their own procedures for sending or not bothering to send records out of state and are under no obligation, moral or legal, to comply with Ohio's procedures or legislative purposes. Consequently, the provision of the new Act requiring schools to report as possible missing children all students enrolling without records, whether through parents' negligence or circumstances beyond their control, has already been amended.²²⁷

The cooperative efforts encouraged by the Act²²⁸ between law enforcement and other agencies may yield substantial benefits. National and local law enforcement agencies, schools, and social service agencies may be able to pool information that allows them to formulate profiles of children and circumstances that might suggest whether a child is simply late in returning home, has run away, has been taken by a non-custodial parent, or has been abducted by a stranger. Such profiles might also be developed to indicate typical sequences of events for each type of missing child. In investigating individual cases, law enforcement officials, with the cooperation of parents, schools, and social service agencies, may be able to gather enough information about a particular child to ascertain not only which type of missing child he or she is likely to be, but also the areas in which further investigation would prove most fruitful. Because the Act provides unmistakably that all information gathered in investigation of a missing child case may be used only to assist in locating the child,²²⁹ the danger of misuse (for example, use against the child in later delinquency proceedings) of what would otherwise be confidential information is minimized. Even if the sharing of information only speeds the recovery of children who would eventually be recovered anyway, the chances of their becoming involved in criminal activities and the potential for physical and emotional harm to the children and their families must be proportionately reduced.

The majority of missing children cases do not involve abductors or the eventual filing of any criminal charges as most "missing children"

226. *Id.*

227. See *supra* note 101.

228. OHIO REV. CODE ANN. §§ 109.55, 2901.30 (Page Supp. 1985). An example of such an effort is the program developed independently by the Montgomery County Sheriff's Department to distribute posters of missing children for display in county schools; the program was publicly announced on local evening news programs on September 25, 1985.

229. OHIO REV. CODE ANN. §§ 2901.30(D), 3319.321 (Page 1985 & Supp. 1985).

are runaways.²³⁰ The role of the police in these cases is in investigation and in dealing with the parents and children. Recognition that a significant part of the missing children problem is social and personal, rather than criminal, should direct the orientation of the peace-officer missing-children training program which the Act proposes.²³¹ An effective training program in the handling of missing children cases should include instruction in how to deal with the people—parents and children—involved.

Parents can hardly be more vulnerable than when the safety of their children is at stake. A major complaint of parents whose children cannot be located has been the lack of sympathy and response from law enforcement officials.²³² Parents reporting missing children do not want to be told that they should go home and wait to see if the children return;²³³ those parents want action. The Act provides that law enforcement officials must respond to reports without delay.²³⁴ Even if the only effect is to provide some reassurance to distraught parents for a few hours or days before the children are recovered, the Act provides some benefit.

The assistance and cooperation shown by the Ohio Attorney General to the Department of Education in the development of the missing children program²³⁵ indicates sensitivity to the social service function. Because it is the attorney general who is responsible for design of the peace officer training program,²³⁶ it is to be hoped that the sensitivity to the social service function will be carried over into the peace officer training. One of the most significant benefits of the Act may be a positive effect, at least with regard to the missing children problem, on the relationship between the community, particularly parents, and the police. The police may come to represent assistance rather than hindrance

230. Whitfield interview, *supra* note 97. See also Ohio Department of Education, *supra* note 68.

231. OHIO REV. CODE ANN. §§ 109.73, 109.741 (Page Supp. 1985).

232. Whitfield interview, *supra* note 97.

233. The lack of response by police is due to the fact that most children reported missing are recovered safely within a short time. The National Crime Prevention Council reports that approximately 85% of all children reported missing are returned safely to their homes. In Indianapolis in 1982, all 1,592 children reported missing were accounted for. See NATIONAL CRIME PREVENTION COUNCIL, KEEPING KIDS SAFE ___ (1984).

234. OHIO REV. CODE ANN. § 2901.30 (Page Supp. 1985).

235. Whitfield interview, *supra* note 97. For several years law enforcement agencies throughout the state have organized informational programs for children which have been presented for schools and community groups. Some programs have used materials (e.g., McGruff the crime-fighting dog) from the National Crime Prevention Council. The attorney general has made the information and materials readily available to the Department of Education to assist in formulation of its programs. *Id.*

236. OHIO REV. CODE ANN. § 109.741 (Page Supp. 1985).

to parents in efforts to locate missing children.

F. The Role of Law Enforcement Agencies

The General Assembly enacted section 2901.30 to insure increased police involvement with and sensitivity to "missing children."²³⁷ The provision, however, suffers from the poor draftsmanship which is evident throughout the bill. A police agency is required to make out a report on *any* missing child claim filed by *any* person.²³⁸ The procedure outlined in section 2901.30 requires the police to file a report, to take prompt action on the report,²³⁹ take immediate action to locate the minor,²⁴⁰ notify all on-duty law enforcement personnel,²⁴¹ notify all law enforcement agencies in the county,²⁴² possibly notify other law enforcement agencies in the state,²⁴³ gather additional information about the child,²⁴⁴ and integrate the information into the NCIC computer within twelve hours.²⁴⁵ Inherent in every missing child report filed is the time, diversion of an officer from prevention and protection tasks, and the expense of following this procedure.

Take, for example, a relatively common occurrence.²⁴⁶ Parents of a fourteen-year-old child set curfew for the minor at nine p.m. on weekdays. By eleven p.m., the child is not home and the parents do not know where the child is. They make a missing child report to the local police, triggering the mandatory procedure outlined above. By midnight, the child has returned home—out late with friends who had lost track of time. The police agency, however, is still required to follow the procedures established by section 2901.30, including entering the minor into the NCIC computer as a missing child, and then integrating his safe return in the computer file.²⁴⁷ The public fear generated by the missing children publicity makes a situation such as this example likely to occur.²⁴⁸ Police agencies could receive numerous reports of missing children and spend a large percentage of their time involved in unnecessary paperwork instead of performing more traditional police functions.

237. *Id.* § 2901.30.

238. *Id.* § 2901.30(B).

239. *Id.*

240. *Id.*

241. *Id.* § 2901.30(D).

242. *Id.*

243. *Id.*

244. *Id.* § 2901.30(C).

245. *Id.*

246. Whitfield interview, *supra* note 97.

247. OHIO REV. CODE ANN. § 2901.30(G) (Page Supp. 1985).

248. Riggerbach, *Missing Kids Hysteria is Terrorizing Families*, USA Today, July —, 1985.

In the event that there is a valid missing child report, whether by parental child snatching, runaway, or stranger abduction, the positive aspect of section 2901.30 is that there is no waiting period before a police agency may take a missing child report.²⁴⁹ Parents can be assured that when they make a report to the police, the police must take the report and act on it immediately. This prompt action could result in locating the minor before he or she travels far or is taken far. The group most likely to benefit by the new police procedures would be children who have been taken by a noncustodial parent. This may not be true for runaways, however, although statistics show that the vast majority of runaways return home within a matter of weeks.²⁵⁰ The possible beneficial aspect for a long-term stranger abduction is that both the minor and the offender could be located at an early stage before physical harm comes to the minor. For a short-term abduction, the parent does not know the child has been taken and sexually molested, so section 2901.30 would not be applicable. If parents did suspect that a child had been taken to be sexually molested, reports of suspected sexual molestation are not among those reports which are to be entered into the NCIC computer.

Overall, the police procedures established by S. 321 should be beneficial, but also could be potentially burdensome. Increased precision in wording and a more practical approach to effective procedures for local law enforcement would have produced more effective legislation than that established with the broad guidelines contained within section 2901.30. Further, the public's perception that thousands of children are kidnapped and murdered each year is reinforced when the legislature enacts extensive police procedures such as those outlined in section 2901.30.²⁵¹

G. Cost-Benefit Summary

Public concern of such magnitude that it has been characterized as "missing kids hysteria"²⁵² undoubtedly justifies some sort of legislative response, and the response of the Ohio legislature is far-reaching. The burden imposed on state educational resources is significant. The development and implementation of the informational programs necessitated a 1985-86 budget of \$260,000²⁵³ and the cooperation of school personnel from systems all over the state, whose budgets were not in-

249. OHIO REV. CODE ANN. § 2901.30(B) (Page Supp. 1985).

250. See *supra* note 26.

251. Riggerbach, *supra* note 248.

252. *Id.*

253. Whitefield interview, *supra* note 97.

creased.²⁵⁴ These programs do address the problems of stranger abduction and molestation and of runaways, and do so in a manner that stresses prevention.²⁵⁵ As the school system provides the greatest link between the state and those affected by the missing children problem, it represents the best hope for a comprehensive solution. In order to comply with provisions affecting individual school systems (such as the records and notification requirements), significant administrative burdens have been imposed, some resulting in amendments to the new Act.²⁵⁶ The provisions may, however, be the best means of reaching children who have been abducted by noncustodial parents and who are most likely to be enrolled in school.²⁵⁷

The peace officer training in missing children and child abuse and neglect cases holds promise if it is organized to increase sensitivity and understanding of law enforcement officials to the emotional impact of what is a significant social, if not criminal, problem. Cooperation among law enforcement and social service agencies can only be beneficial in police investigations and in community relations, and these benefits may be obtained at the relatively minor cost of additional administrative burdens. It is also possible that these benefits may not be obtained at all unless law enforcement agencies do make the requests and initiate cooperative ventures. Without statutory provisions that *require* law enforcement agencies to request and initiate cooperative ventures, however, there can be no guarantees.

If the overall effect of the provisions addressing social aspects of the missing children problem is at least superficially favorable,²⁵⁸ the overall effect of the provisions addressing criminal aspects is not.²⁵⁹ Because of the local nature of law enforcement organizations and the ease of mobility throughout the United States, a central computer system such as the NCIC computer is the only practical approach to collection and distribution of information concerning missing children. Without standardized procedures for the classification of information put into the computer and without any systematic means of disseminating the information, use of the computer system is likely to yield insubstantial benefits.²⁶⁰

The new cause of action for interference with a possessory interest

254. *Id.*

255. *See supra* notes 216–18 and accompanying text.

256. *See supra* note 101.

257. Whitfield interview, *supra* note 97.

258. *See supra* notes 216–18 & 228 and accompanying text.

259. *See supra* note 201 and accompanying text.

260. Hagel interview, *supra* note 174.

in a child²⁶¹ and the creation of the new crime of child enticement²⁶² may have been intended to provide legal redress in situations where it was not previously available. There is no evidence that the number of situations deserving redress where it was truly unavailable under other provisions of the code is at all significant, and there is every indication that these provisions could be read to cover a large number of essentially innocent situations in which legal redress would be completely inappropriate.²⁶³

If in addressing "missing kids hysteria," S. 321 generally provides a benefit in demonstrating to the public that the legislature is willing to respond to public concerns, it also exacts a large cost in failing to define the problem. The numerous provisions calling for educational programs, police action, and civil and criminal sanctions only reinforce the public perception of the missing children problem and its significance. The famous child care expert Benjamin Spock has warned that intensive warning programs are producing morbid fears in children of being kidnapped and harmed by strangers wildly out of proportion to the actual problem.²⁶⁴ The director of the National Center for Missing and Exploited Children has suggested that parents are succumbing to the same sorts of fears and investing in identification devices that will never be used.²⁶⁵ The detrimental effect on children of the media-created—and legislatively reinforced—hysteria is a cost of such significance that it is becoming a topic of media attention in its own right.²⁶⁶

V. CONCLUSION

The ultimate determination of whether legislation has been successful must depend on its purpose. While there may be agreement that the purpose of Amended Substitute Senate Bill 321 (S. 321)²⁶⁷ was to address the problem of missing children, there is no agreement—either

261. OHIO REV. CODE ANN. § 2307.50 (Page Supp. 1985).

262. *Id.* § 2905.05.

263. *See supra* text accompanying notes 187–91.

264. B. SPOCK, *BABY AND CHILD CARE* 609 (40th Anniversary ed. 1984).

265. Howell, *Missing Children Fears*, N.Y. Times, May 25, 1985, at A5, col. 1. The director suggests that only where a parent is involved in a bitter custody dispute would he hesitate to consider identification devices that are completely unnecessary and possibly harmful. *Id.*

266. The "Phil Donohue Show" presented a psychologist, Ernie Drucker, Ph.D., who asserted that "they've gone too far with all the programs" and have made children afraid that they are in danger of being kidnapped. Broadcast, Nov. 13, 1985. *Time* quoted Harvey Greensburg, a professor of psychiatry, as warning that kidnapping/exploitation awareness programs for children must be presented "without scaring a child out of its wits." *Protecting Kids*, TIME, Nov. 18, 1985, at 47.

267. Act of January 7, 1985, 1984 Ohio Legis. Serv. 5-811 (Baldwin) (codified as amended in scattered sections of tits. 1, 21, 23, 29, 33, and 51 OHIO REV. CODE ANN. (Page 1985 & Supp.

in terms of magnitude or significance of aspects—as to what that problem is.

Whatever the intent of the legislature in enacting S. 321, the significant effects will be social, not legal. Some effects will be highly beneficial. Law enforcement agencies are forced to assume a supportive role that can only improve the relationship between those agencies and members of the community. They are being encouraged to engage in cooperative efforts with other law enforcement and social agencies, which should improve not only community relationships but also their effectiveness in dealing with a large number of problems. Schools are enacting programs designed generally to prevent children from becoming missing children and specifically to help troubled adolescents who are likely to become runaways. It is ironic to note that the greatest benefits are likely to result from programs for which the legislature provided little or no direction but which were left to the discretion of the implementing bodies.

If the legislature intended to provide legal assistance and remedies to the parents of children abducted by strangers, the successful aspects of the Act must be regarded as no more than beneficial by-products that do not go to the core of the problem. With respect to the problem of long-term stranger abduction as generally perceived, the provisions for police procedures do not go far enough in standardizing and coordinating efforts at the state and national level to significantly increase likelihood of recovery. With respect to the problem of long-term stranger abduction as it exists according to the most reliable statistics, the Act, if necessary at all, is overbroad, reaching situations in which legal interference is inappropriate. If the Act was intended to reach the problem of short-term abduction and molestation, although some programs will apparently address the problem, that purpose has not been clearly communicated to those with responsibility for implementation and is hardly evident from the language and organization of the Act.

It would appear that legislators were responding more to their perception of significant public concern about “missing children” than to any real understanding of what the problem might be. In demonstrating willingness to respond to the public, the Ohio legislature has affirmed and encouraged public fears of a problem that does not exist as generally perceived and that remains undefined. For a parent whose child is one of those abducted and murdered by a stranger, no matter how limited the general problem is, it assumes terrifying significance, and it is understandable that the parent should campaign to attack the problem in every way possible. A legislator, however, no matter how moved he or she is by the tragedy, has a responsibility to analyze thoroughly and realistically both the problem and any proposed legislative

response.

The Missing Children Act arose from the very best of intentions, but enactment of a far-reaching bill without careful definition of the problem or purpose and without adequate consideration of the bill's effects, makes for the very worst kind of legislation.

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Code Sections Affected: To amend sections 109.55, 109.58, 109.71, 109.73, 109.75, 109.77, 109.79, 2151.281, 2151.421, 2905.04, 2907.323, 2919.22, 2935.03, 3319.321, and 5101.31 and to enact sections 109.64, 109.741, 2307.50, 2901.30, 2901.31, 2901.32, 2905.05, 3301.25, 3313.205, 3313.672, 3313.96, and 3319.322.

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Sponsor: Fisher (S)

Committee: Judiciary(S)

State Government(H)