

LETTER OPINION
94-L-156

June 6, 1994

Mr. Lyle V. Gallagher
Director
State Radio Communications
PO Box 5511
Bismarck, ND 58502-5511

Dear Mr. Gallagher:

Thank you for your letter inquiring whether local law enforcement agencies may set waiting periods or search locally before entering reports of lost or missing children into the National Crime Information Center (NCIC) system or notify State Radio to have the information entered into the system.

North Dakota Century Code (N.D.C.C.) ? 54-23.2-04.1 provides in relevant part:

The state radio department shall:

. . .

3. Notify all enforcement agencies that reports of lost or runaway children and missing persons shall be entered as soon as the minimum level of data specified by the state radio department is available to the reporting agency and that no waiting period for entry of such data exists. If the enforcement agency is unable to enter the data, the state radio department shall immediately upon notification enter the information into the national crime information center file.

The legislative history behind the enactment of N.D.C.C. ? 54-23.2-04.1 reveals that its purpose was to adopt uniform reporting requirements and eliminate any waiting periods which theretofore had been established by local law enforcement. It is my opinion, therefore, that local law enforcement agencies must enter reports of lost or runaway children and missing persons into the statewide file system as soon as an established minimum level of information is available.

As you indicate in your letter there are also federal requirements with respect to missing persons. 42 U.S.C.A. ? 5772 provides in relevant part:

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For the purpose of this subchapter--

(1) the term "missing child" means any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if--

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited;

42 U.S.C. ? 5779(a) provides:

Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 18 reported to such agency to the National Crime Information Center of the Department of Justice.

42 U.S.C. ? 5780 provides:

Each State reporting under the provisions of this section and section 5779 of this title shall--

(1) Ensure that no law enforcement agency within the State establishes or maintains any policy that requires the observance of any waiting period before accepting a missing child or unidentified person report;

(2) provide that each such report and all necessary and available information, which, with respect to each missing child report, shall include--

(A) the name, date of birth, sex, race, height, weight, and eye and hair color of the child;

(B) the date and location of the last known contact with the child; and

(C) the category under which the child is reported missing;

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is entered immediately into the State law enforcement system and the National Crime Information Center computer networks and made available to the Missing Children Information Clearinghouse within the State or other agency designated within the State to receive such reports; and

(3) provide that after receiving reports as provided in paragraph (2), the law enforcement agency that entered the report into the National Crime Information Center shall--

(A) no later than 60 days after the original entry of the record into the State law enforcement system and National Crime Information Center computer networks, verify and update such record with any additional information, including, where available, medical and dental records;

(B) institute or assist with appropriate search and investigative procedures; and

(C) maintain close liaison with the National Center for Missing and Exploited Children for the exchange of information and technical assistance in the missing children cases.

Given the above it is my opinion that a local law enforcement agency may not set waiting periods or investigate locally before entering a report of a lost or runaway child or missing person or notify state radio. Local law enforcement agencies must enter into the state file system every reasonable report of a lost or runaway child or missing person or notify state radio once an established minimum level of information is known.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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