



# The Florida Senate

*Interim Project Report 2008-106*

*October 2007*

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Committee on Children, Families, and Elder Affairs

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## MISSING CHILDREN

### SUMMARY<sup>1</sup>

Children who become missing while under an open abuse investigation or while under the protective supervision of the Department of Children and Families (DCF or "the department") are sometimes missing as the result of the actions of their parents or guardians, who would typically be expected to report them as missing.

Under current law, law enforcement agencies are not required to accept missing children reports from DCF or its contracted providers for children who are involved with the department, whose whereabouts are unknown and whose parents or guardians fail or refuse to report them as missing. Without statutory guidelines, law enforcement protocols and practices for accepting such reports vary across the state.

This report recommends that the Legislature amend ch. 39, F.S., and s. 937.021(1), F.S., to establish clear and consistent guidelines for the department, its contracted providers and law enforcement agencies for responding to cases involving children who become missing while involved with the department.

When a local law enforcement agency generates a missing child report in a case in which a child involved with DCF goes missing with a parent or guardian, it can also generate a report regarding the adult suspected of absconding with or accompanying the child, and link

the adult's record to the child's record. This facilitates the search for the missing child. Although there is statutory authority to pursue a warrant for the adult in this kind of situation, the statute is rarely enforced.

This report recommends that the Legislature direct the department to promulgate rules that will ensure that parents and guardians are advised of their responsibilities under the statute and that violations of the statute are reported when appropriate.

At the outset of this project, the department identified as an additional barrier to the process of reporting and locating missing children, the decision by some courts to close cases of children who become missing while under the protective supervision of the department. The data reviewed for this report do not support a need for legislative intervention regarding this issue at this time.

### BACKGROUND

The disappearance of Rilya Wilson in 2002 raised national awareness of the problem of children who become missing while under the care of the child welfare agencies charged with protecting them. Since then, Florida and many other states have studied the issue and have enacted legislation and implemented policies intended to improve tracking of children in state care. Florida and other states have also taken steps to facilitate communication among responsible agencies and to enhance staff training.<sup>2</sup> Nevertheless, as evidenced by the recent Florida case involving two-year old Courtney Clark, more remains to be done to ensure that children missing from state care are located and returned to safety as quickly as possible.

On any given day, there are some 48,000 children in the care of the department,<sup>3</sup> and the whereabouts of

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<sup>1</sup> The scope of this Interim Project was approved before Courtney Clark became the subject of national media attention in June 2007. Although the Courtney Clark case did involve some issues related to the reporting and recovery of children missing from state care, it also involved many other issues outside the scope of this project. In response to the case, Secretary Butterworth appointed a Task Force for Child Protection to study not only the case, but the entire child protection system. This report, therefore, refers to the Courtney Clark case where appropriate, but does not address all of the issues raised by the case.

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<sup>2</sup>Jennifer Michael, *Children Missing from Care*, Children's Voice, Child Welfare League of America, Vol. 14, No. 5, October/November 2005.

<sup>3</sup>E-mail from Hans Soder, DCF Operations (September

approximately 1.2 percent (or 600) of them are unknown.<sup>4</sup> According to the department, the number of children categorized as missing on any given day remains constant at 590 to 620, with seasonal fluctuations.<sup>5</sup>

Between January 1, 2007 and June 30, 2007, DCF entered an average of 919 missing child episodes each month into its internal database, the Missing Child Tracking System (MCTS).<sup>6</sup> The department “counts” a missing child episode when a Missing Child Report Form (MCRF) is entered into MCTS. An MCRF is entered when the following criteria have been met:

- the location of a child in the care of DCF has become unknown;
- local law enforcement has been notified; and,
- either a report number has been issued by law enforcement, or four hours have elapsed.<sup>7</sup>

Approximately 95 percent of missing child episodes involve children who run from care.<sup>8</sup>

Most missing child episodes are resolved with the child being located. According to the department, 45-50 percent of the episodes are resolved within three days, with the child being located. Ninety-five to ninety-seven percent of the episodes are resolved within six months, also with the child being located. Three to five percent of the episodes are considered resolved because the child reaches the age of majority, or the court otherwise closes the case, before the child is located.

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10, 2007). Children “in the care of the department” are those who are under protective supervision in an in-home or out-of-home placement, including shelter. *See* Measure Definition for FS108, M05145 at <http://dcfdashboard.dcf.state.fl.us/index.cfm?page=details&id=M05145>.

<sup>4</sup> Summary of data from DCF’s Missing Child Tracking System (hereinafter MCTS). *See also*, E-mails from Hans Soder, DCF Operations (August 15 and 31, 2007) (on file with the Senate Committee on Children, Families and Elder Affairs, hereinafter Senate Committee on CF&EA).

<sup>5</sup> E-mails from Hans Soder, DCF Operations (August 8, 15 and 31, 2007) (on file with Senate Committee on CF&EA).

<sup>6</sup> Summary of data from the MCTS. *See also*, E-mails from Hans Soder, DCF Operations (August 8 and 31, 2007) (on file with Senate Committee on CF&EA).

<sup>7</sup> E-mail from Hans Soder, DCF Operations (August 8, 2007) (on file with Senate Committee on CF&EA).

<sup>8</sup> Summary of data from the MCTS. *See also*, E-mails from Hans Soder, DCF Operations (August 8 and 31, 2007) (on file with Senate Committee on CF&EA).

Only one to three percent of the total episodes entered remain active beyond six months.<sup>9</sup>

## METHODOLOGY

Committee staff interviewed DCF Child Recovery staff, Family Safety Program staff, and General Counsel staff, Florida Department of Law Enforcement representatives and local law enforcement officers to review current practices and procedures.

Staff conducted surveys of local law enforcement authorities regarding current practices for accepting reports of children who become missing while the subject of open abuse cases or under protective supervision of the department.

One version of the survey was sent to the 26 police chief members of the Florida Police Chiefs Association, with a request that the chiefs respond to the survey and distribute it to the members within their respective districts.<sup>10</sup> Twenty-four agencies responded. The survey results from the police departments were inconclusive and unquantifiable, indicating a possible misunderstanding of the questions asked. As such, the results of this survey are used in this report only anecdotally. Another, more detailed version of the survey was sent to the 67 sheriffs’ offices, 18 of which responded.<sup>11</sup> The sheriffs’ responses are discussed in this report.

Staff also surveyed the 20 circuit courts regarding current practices for closing cases of children who become missing while under the protective supervision of the department. Seventeen circuits responded to the survey.

Staff also reviewed existing Florida law and rules, as well as the laws of other states.

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<sup>9</sup> E-mail from Hans Soder, DCF Operations (August 8, 2007) (on file with Senate Committee on CF&EA).

<sup>10</sup> According to the Florida Police Chiefs Association, if the survey was distributed as requested, it would have been received by approximately 300 agencies. E-mail from Amy Mercer, Executive Director of the Florida Police Chiefs Association (October 9, 2007) (on file with Senate Committee on CF&EA).

<sup>11</sup> This survey was distributed for the Committee by Frank Messersmith, Government Consultant for the Florida Sheriff’s Association, and was sent to each Sheriff, as well as to the command staff in some of the sheriffs’ offices. E-mail from Frank Messersmith (August 7, 2007) (on file with Senate Committee on CF&EA).

## FINDINGS

The department relies on the following to manage cases of missing children:

- Missing Children Guide, Reporting, Location, Stabilization and Prevention;<sup>12</sup>
- Operating Procedure: Prevention, Reporting and Services to Missing Children;<sup>13</sup> and
- Administrative Rule: Missing Children.<sup>14</sup>

Although these documents provide guidelines for the department and its contracted providers, they are, in some respects, inconsistent, incomplete or unclear. In addition, neither the Missing Children Guide nor the Operating Procedure are enforceable against DCF's contracted providers or local law enforcement agencies.

### Accepting Reports of Missing Children

One issue addressed by both the Missing Children Guide and DCF's Operating Procedure concerns the refusal of local law enforcement to accept reports of missing children from DCF or its contracted providers.

In Florida, under current law, local law enforcement agencies are mandated to accept a report that a child is missing when the report is filed by the child's parent or guardian.<sup>15</sup> If a report that a child is missing is filed by any other individual or entity, including DCF or its contracted providers, local law enforcement may, but is not required to, accept the report and initiate an investigation.

It is the policy of most local law enforcement agencies to accept any report of a missing child who meets the agency's definition of "endangered." The definition of the term "endangered," however, varies across law enforcement agencies, making the application of the standard uneven.

<sup>12</sup> Developed by DCF, community-based care providers and FDLE (December 2006). The Guide describes when and how a caregiver should report a child as missing and how to work with local law enforcement to recover a child.

<sup>13</sup> CFOP No. 175-85 (October 17, 2002). The Operating Procedure defines "missing children" and provides instruction on the reporting, recovery, prevention and stabilization of missing children.

<sup>14</sup> Fla. Admin. Code Ann. r. 65C-30.019 (2006) prescribes the responsibilities of caregivers when children under investigation or protective supervision are believed to be missing.

<sup>15</sup> Section 937.021(1), F.S., provides, "[u]pon the filing of a police report that a child is missing *by the parent or guardian*, the law enforcement agency receiving the report shall immediately . . . transmit the report for inclusion within the [FCIC] (emphasis added)."

Unlike Florida, some states legislatively mandate law enforcement agencies to accept reports of all missing children, without regard to the circumstances of their disappearance or their relationship to the reporter. For example, in Ohio, "[w]hen a law enforcement agency . . . is informed that a minor is or may be a missing child and that the person providing the information wishes to file a missing child report, the law enforcement agency shall take that report."<sup>16</sup> Similarly, Massachusetts requires law enforcement to immediately enter information about a missing child (i.e., accept a report) "whenever a parent, guardian, *or governmental unit responsible for a child* (emphasis added)" reports that the child is missing.<sup>17</sup>

Because local law enforcement agencies in Florida are not required by law to accept reports of missing children from DCF or its contracted providers, cases of children who become missing while they are involved with the department sometimes go uninvestigated by law enforcement.

In some cases, law enforcement agencies will only accept a missing child report from DCF or a contracted provider upon receipt of a pick-up order<sup>18</sup> that "authorizes" law enforcement to take a particular child into custody and deliver the child to the care or supervision of DCF.<sup>19</sup> However, no state statute or rule requires a law enforcement agency to have or obtain a pick-up order prior to accepting a report of a missing child.<sup>20</sup>

<sup>16</sup> Ohio Rev. Code. Ann. s. 2901.30 (B) (2007). *See also*, Kan. Stat. Ann. s. 75-712c (2006).

<sup>17</sup> Mass. Gen. Laws Ann, ch. 22A, s. 4 (2007). *See also*, S.C. Code Ann. s. 23-3-250 (2006); N.H. Rev. Stat. Ann. s. 169-E:2 (2007). *See also*, Thomas B. Smith, *et al.*, Children Missing from Care: The Law Enforcement Response, p. 4 (2005); Law Enforcement Policy and Procedures for Reports of Missing and Abducted Children, Developed by NCMEC (rev. January 2006).

<sup>18</sup> Also called a Take into Custody Order (TICO) or an Order to Take into Custody (OTTIC). The format for such an order is typically based on Fla.R.Juv.P. 8.905.

<sup>19</sup> The overuse of pick-up orders was observed during Operation SafeKids, which noted that the practice predated the federally mandated entry of missing children into the NCIC system. James T. Moore and Jerry Reiger, Operation SafeKids, Results, Findings & Recommendations, p.21 (December 12, 2002).

<sup>20</sup> *See* Missing Children Guide, Reporting, Location, Stabilization and Prevention, Developed by DCF, community-based care providers and FDLE/MCIC, p.4-5 (December 2006).

Without guidelines, law enforcement protocols for accepting missing child reports from DCF or its contracted providers vary across the state and missing children may be put in harm's way when law enforcement delays or declines to act.

According to the department, the potential refusal or reluctance of law enforcement to accept reports of missing children is of particular concern in two types of cases: those involving children who become missing while an abuse investigation is pending and those who become missing after they have been placed under the department's protective supervision. Often, these children are missing because their parents or guardians, who are the only individuals from whom a law enforcement agency *must* take a report of a missing child, have absconded with them or have failed to prevent or report their absence.

#### **Active Abuse Investigations**

The department reports that relatively few (no more than five to ten per month) of the total number of missing child episodes involve children who are the subject of open abuse investigations.<sup>21</sup> The incidents that *are* included in the total are ones in which a court has become involved in the case, by issuing a shelter order pursuant to ch. 39, F.S., or a "Take into Custody Order" pursuant to administrative rule.<sup>22</sup>

Because DCF does not specifically track the cases of children who become missing while under open abuse investigations, it is difficult to determine the scope of the reported problem. Nonetheless, according to the department, although relatively few in number, these cases often pose a serious threat to the children involved in them.

Section 39.301, F.S., describes the steps to be taken when a protective investigation is initiated in response to a report of known or suspected child abuse or neglect. The statute requires the investigator, at the commencement of the investigation, to inform the

subject of the investigation of his or her "duty . . . to report any change in the residence or location of the child to the investigator . . ."<sup>23</sup>

Section 39.301, F.S., also provides that if a parent or guardian, after having been advised of the duty to report a change in residence, causes or allows a child to be moved, the protective investigator *may* report the child as missing to law enforcement in accordance with s. 937.021, F.S.<sup>24</sup> As discussed *supra*, pursuant to s. 937.021, F.S., local law enforcement may or may not accept a report from the investigator in these circumstances.

Committee staff surveyed local law enforcement agencies to identify current practices regarding law enforcement response to these kinds of cases. The majority of agencies responded that they *would* accept a missing child report from DCF or its contracted provider in cases where a child becomes missing while the subject of an open abuse investigation, suggesting that law enforcement is not notably reluctant to take reports in these kinds of cases. However, some of the responders qualified their answers by noting that they would take a report only if the department presented a pick-up or other order "showing authority," even though such an order is not required by statute or rule.

Following up on law enforcement's response to the survey, the department polled the Child Location Points of Contact on the same issue.<sup>25</sup> In contrast to the law enforcement responses, one-third of the Points of Contact responded that in two to four cases in the preceding six months, a law enforcement agency refused or was reluctant to take a missing child report on a child involved in an open abuse investigation.

#### **Protective Supervision Cases**

The department also reports that law enforcement agencies, reluctant to interfere with parental rights, often refuse to accept missing children reports from the department or a contracted provider for children who are under the protective supervision of the

<sup>21</sup> E-mail from Hans Soder, DCF Operations (August 31 and September 4, 2007) (on file with Senate Committee on CF&EA).

<sup>22</sup> *Id.* When a child protective investigator has probable cause to believe that a family has fled to avoid investigation, the department may petition the court for a Take into Custody Order, also called a pick-up order. If an Order is entered, the child must be entered into the MCTS, and DCF must continue efforts to locate. Fla. Admin. Code Ann. r. 65C-29.013(4)(d) (2006). The entry in the MCTS does not require or ensure that law enforcement initiate or continue efforts to locate.

<sup>23</sup> Section 39.301 (5)(a) 6, F.S.

<sup>24</sup> Section 39.301 (23), F.S.

<sup>25</sup> Each community-based care lead agency has a designated "Child Location Point of Contact" whose primary responsibility is to act as the liaison between department staff, local law enforcement and FDLE in local missing children cases. The department polled all 20 Points of Contact, asking questions similar to those posed by the survey. Twelve responded. (Summary on file with Senate Committee on CF&EA).

department.<sup>26</sup> This is especially true in cases where the child is still living with the parent or guardian.

Pursuant to s. 39.521(3), F.S., when a child is adjudicated dependent, the court will determine the appropriate placement for the child. The following options, *inter alia*, are available:

- The child may be placed in the home of the parent with whom the child had been living, **under the protective supervision of the department**; or
- The child may be placed in the temporary legal custody of a relative or non-relative adult, **under the protective supervision of the department**.<sup>27</sup>

Children under protective supervision remain in the legal custody of their parents or guardians.

In anticipation of the reluctance of law enforcement agencies to accept reports of children who become missing while under protective supervision, DCF legal staff includes language in its proposed orders that specifically encourages law enforcement to generate missing child reports in protective custody cases when the parent removes the child from the circuit or the child is otherwise unable to be located. Although these orders encourage law enforcement officers to take a report of a child missing from protective supervision, they do not and cannot mandate law enforcement to do so.

The majority of law enforcement agencies responding to the survey answered that they would accept a report of a missing child from DCF or its agent in cases where a child under the protective supervision of the department has become missing. Some of the responses were contingent on the receipt of a court order (e.g., a custody order as described above); others indicated that a pick-up order was necessary.

<sup>26</sup> This was the situation in the Courtney Clark case. The child's mother took her from a non-relative placement and, when it became apparent that her caseworker should have reported her as missing to the Lake County Sheriff's Office (LCSO), the LCSO refused to accept the report, noting that her mother's parental rights had not been terminated. FDLE eventually intervened and the report was accepted, but not until almost 4 months after the child's whereabouts had become unknown. Sheryl G. Steckler and Keith R. Parks, Florida Department of Children and Families, Office of the Inspector General, *IG Investigation 2007-0061* (July 16, 2007). The LCSO did not respond to the Committee's survey regarding this issue.

<sup>27</sup> Section 39.521 (3), F.S.

Contrary to the responses from law enforcement, however, a majority of DCF's Child Location Points of Contact reported that in as many as a dozen instances over the preceding six months, it was difficult to convince law enforcement to take a report of a child who became missing while under protective supervision. The Points of Contact noted that it is particularly difficult when the child is in the physical custody of the parent, and the parent fails or refuses to make the report.

### ***Court Closures***

With respect to the issue of cases in which children become missing while under protective supervision, the department reports that in some cases, courts are closing cases of children under protective supervision while the children are missing.

Although some cases are closed because the child turns 18, thus forcing the courts to relinquish jurisdiction,<sup>28</sup> DCF reports that others are closed simply because the child is missing. The closure of the court case results in the closure of the case with the community-based care provider, which is then no longer able to assist law enforcement with efforts to locate the child. In fact, law enforcement is no longer required to keep its case open or to continue to look for the child.

Over 70 percent of the circuit courts responding to a survey indicated that they do not close cases of children under protective supervision. The remaining respondents indicated that they close fewer than five such cases each year. Many courts referred specifically to the statutory requirement that dependency cases be reviewed at least every six months.<sup>29</sup> A review of a sample of recently closed cases revealed that the closures are fact-specific and do not appear to represent any kind of trend. Therefore, the available data does not support a need for legislative intervention at this time.

### **Linking Reports of Missing Children to Adult Records**

When an adult absconds with a child who is involved with the department, and a local law enforcement agency accepts a missing child report on the child, the agency may also accept a report regarding the adult, enter the adult into the criminal databases, either as wanted on a warrant or as missing, and link the adult's record to the child's record. The ability to link the

<sup>28</sup> Section 39.521(3), F.S.

<sup>29</sup> Section 39.701(1)a, F.S., and Fla. Admin. Code Ann. r. 65C-30.013 (2007).

records in the databases facilitates the location of the child, since the likelihood of a law enforcement officer looking up an adult in the database (e.g., at a traffic stop) is greater than the likelihood of an officer looking up the child.<sup>30</sup>

While there is understandable reluctance on the part of law enforcement to list an adult as missing in the absence of any reason other than that a child is missing, it is unclear why adults are not more often entered as wanted pursuant to s. 787.04(3), F.S.<sup>31</sup>

Section 787.04(3), F.S., makes it unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor from the state, or to conceal the location of a minor, under the following circumstances:

- During the pendency of a dependency proceeding affecting the minor; or
- During the pendency of any investigation, action, or proceeding concerning the alleged abuse or neglect of the minor.

The statute requires that the defendant must have had notice of the pending proceeding, investigation, or action, and that he or she must have acted without the permission of a state agency or court.<sup>32</sup> It is a defense that a person acted with the belief that the action was necessary to protect the child from abuse.<sup>33</sup> Violation of s. 787.04, F.S., is a third degree felony.<sup>34</sup>

Section 787.04(3), F.S., appears to allow, if not require, law enforcement to issue arrest warrants for adults who abscond with children under the circumstances described, and to enter them in the data bases as wanted, while entering the children as missing. This rarely occurs, however, suggesting that actual use of the statute is limited.<sup>35</sup> Barriers to enforcement

include insufficient evidence that a parent or guardian had notice of the statute, and inadequate training of law enforcement officers, as well as of department and provider staff, as to the effective use of the statute.<sup>36</sup>

In addition, s. 787.04(3), F.S., requires “criminal intent” but it may be more precise and more prosecutable to require that the defendant acted “knowingly and willfully” after receiving actual or constructive notice of the pending proceeding, investigation or action.

## RECOMMENDATIONS

The department does not have specific rulemaking authority with respect to the reporting, location and recovery of children whose whereabouts are unknown. It is recommended that DCF be given rule-making authority specific to missing children. The department should be directed to promulgate rules that will provide comprehensive, explicit and consistent guidelines to be followed by its employees and contracted providers.

In addition, the Legislature should consider amending Chapter 39 to require the department and its contracted providers to report a child as missing to the appropriate law enforcement agency, after making reasonable but unsuccessful efforts to locate the child and determining that it is necessary to report the child as missing.

The Legislature might also direct the department to establish by rule the criteria to be used to determine when it is necessary to make a report that a child in the care of the department is missing. The criteria should require, at a minimum, that in all cases in which a criminal investigation has been initiated pursuant to s. 39.301(2)(a), F.S., and the whereabouts of the subject child are unknown, a report must be filed.

It is further recommended that the Legislature amend s. 937.021(1), F.S., to make it clear that a law enforcement agency must take reports of missing children not only from parents and guardians, but also from the department or its contracted providers. The Legislature may wish to clarify that a law enforcement agency may not require a pick-up order as a prerequisite for taking a report from the department or its contracted provider.

<sup>30</sup> See James T. Moore and Jerry Reiger, Operation SafeKids, Results, Findings & Recommendations, p.17 (December 12, 2002); FDLE, Florida Dept. of Juvenile Justice and DCF, 2007 Florida Juvenile Handbook, p. 38 (revised June 2007).

<sup>31</sup> According to FDLE, less than one percent of cases involving missing children are linked in the databases to a case identifying an adult as missing or wanted. See E-mails from Lee Condon, FDLE (August 21 and 26, 2007) (on file with Senate Committee on CF&EA).

<sup>32</sup> Section 787.04(3), F.S.

<sup>33</sup> Section 787.04(5), F.S.

<sup>34</sup> Section 787.04(6), F.S.

<sup>35</sup> According to FDLE, only 114 arrest charges were made for violation of s. 787.04, F.S., between 2003 and 2006 inclusive. See E-mail from Donna Hodges, MCIC/FDLE (September 25, 2007) (on file with Senate Committee on CF&EA).

<sup>36</sup> Interviews with Major Connie Shingledecker, Manatee County Sheriffs’ Office (September 13, 2007) and Lee Condon, FDLE (September 28, 2007).

It is recommended that s. 787.04(3), F.S., related to removing a child during an investigation or while under protective supervision, be amended to require that a defendant act knowingly and willfully, rather than with criminal intent, after receiving constructive or actual notice of the pending matter.

It is further recommended that the Legislature direct the department to establish by rule the steps to be taken by caseworkers and investigators to ensure (1) that there is proof that parents and guardians have been advised of the requirements of s. 787.04 (3), F.S.; and (2) that violations of s. 787.04 (3), F.S., are reported to law enforcement.