MISSING CHILDREN DISCRIMINATION

ITAY RAVID* & TANISHA BROWN**

The problem of missing children in America—many of whom are victims of crime—has haunted society for decades. In response, a range of laws and policies have emerged, culminating in the nationwide adoption of the AMBER Alert system in the early 2000s. While often hailed as a success, this Article reveals a sad truth: Not all children benefit equally from AMBER. In particular, missing Black children are systematically underserved by the system, which ultimately contributes to the disproportionate impact of the missing children crisis on Black communities. While this issue received limited scholarly attention, states have recently started recognizing it. In January 2024, California offered the most comprehensive attempt to date by introducing a new alert system for "missing Black youth" (named "Ebony Law"). Since then, other states—including Alabama, Illinois, Massachusetts, and Pennsylvania—have begun discussing similar systems. This Article interrogates the crisis of missing Black children through the lens of race-conscious legislation like Ebony Law, situating these efforts within broader constitutional conversations on race-conscious remedies in criminal law.

This Article recognizes the importance of race-based legislation in addressing the disproportionate number of missing Black children in America. Additionally, this legislation holds expressive value by acknowledging past discrimination and the systemic failures in the treatment of Black children and their families. However, such legislation faces constitutional challenges under current equal protection doctrine, probably more so today after *Students for Fair Admissions, Inc. v. Harvard*. This Article tackles this tension. First, it offers changes to the current AMBER legislation by adopting three simple measures: a holistic—as opposed to cumulative—approach to initiating factors, a reconceptualization of child risk, and a shift in law enforcement burdens in decisions to initiate an alert. These proposed amendments can begin addressing some of the problems with current AMBER laws. Second, it calls for resisting the urge to address this issue by relying solely on a new colorblind legislation. Instead, the Article investigates whether Ebony-like provisions, if understood as race-conscious

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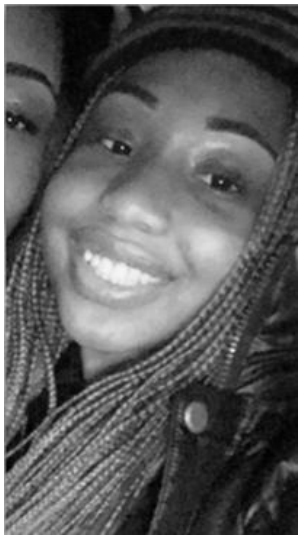
legislation in criminal law, can potentially withstand strict constitutional scrutiny as narrowly tailored interventions to address a compelling state interest.

This Article thus offers a new venue through which to assess the limits of the Supreme Court's equal protection jurisprudence to challenge entrenched racial disparities and affect social change. It demonstrates that the continuous adherence to narratives of colorblindness might stand in the way of advancing meaningful mobilization and deeper recognition of the history and politics of racial inequality in the United States.

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INTRODUCTION



This is Jholie Moussa,[1] a sixteen-year-old teenager from Alexandria, Virginia.[2] You probably have never heard of Jholie and her story. You probably have never heard that on a casual Friday in January 2018 she told her twin sister she had to leave the house for a short while but never came back.[3] You also probably never heard that two weeks after she went missing, she was found dead in a nearby park.[4]

And how would you hear about Jholie? The way many of us know about missing children is through a notification sent directly to our cellphones, famously known as an AMBER Alert (or AMBER).[5] The

1. This image was pulled from a news source. Peggy Fox, *Jholie Moussa's Family Pushes for Amber Alert Changes*, 13NEWSNOW (July 26, 2018, at 10:50 ET), https://www.13newsnow.com/article/news/local/virginia/jholie-moussas-family-pushes-for-amber-alert-changes/291-577634067 [https://perma.cc/G3BF-RNZL].

2. *Id.*

3. *Id.*

4. Lisa Marie Segarra, *Missing 16-Year-Old Girl Found Dead Weeks After Strange Text Message*, TIME (Jan. 27, 2018, at 13:38 ET), https://time.com/5121698/jholie-moussa-found-woodlawn-park/ (covering Jholie Moussa's tragic story).

5. The "Child Abduction Emergency Alert," mostly known as "AMBER Alert," is also an acronym for "*America's Missing: Broadcast Emergency Response*," and will therefore be used interchangeably as "AMBER Alert" or "AMBER." *Frequently Asked Questions*, U.S. DEP'T OF JUST.: AMBER ALERT (Apr. 30, 2025), https://amberalert.ojp.gov/about/faqs [https://perma.cc/4JFH-ZNZD].

alert is supposed to be initiated by law enforcement agencies when a child has gone missing and there are concerns for their safety. Jholie's concerned family indeed begged law enforcement agencies to initiate an AMBER Alert in her case.[6] But law enforcement refused to do so, claiming that Jholie had simply run away from her home.[7] Sadly, we all know now that she did not.

This Article uncovers a disturbing truth: Jholie's case is not an exception. There is a racially unequal treatment of Black children under the AMBER Alert system. The problem of missing children in America has haunted our society for decades. Most of these children are victims of crimes. They are abducted from their neighborhoods, homes, and schools, and then go through physical and mental abuse. In many cases, like Jholie's, the story ends tragically with their horrific death. Only in the late 1970s and early 1980s, however, with the disappearance of two children—Etan Patz and Adam Walsh—was the federal government's attention finally captured, leading to a host of law and policy changes to address this issue.[8] The federal government's attention culminated in the "Child Abduction Emergency Alert," more famously known as "AMBER Alert." Named after Amber Hagerman, who was abducted in 1996, AMBER Alert has modeled a system alerting the public about the abduction of children quickly after their disappearance, asking the public for help in finding them.[9] Following the federal legislation, states have adopted local AMBER Alert laws.[10]

The AMBER Alert is a powerful and comprehensive alert system, distributing information about a missing child via commercial and public radio stations, text messages, television channels, emails, and even Google and Meta. Through heightened media attention and public awareness, the public becomes involved in the search process and is invited to provide information that could help recover the missing child. The system is not only helping law enforcement agencies; it also raises awareness of the problem of missing children as a whole and has the potential to connect the public emotionally with missing children and their families. A decision to initiate an AMBER Alert is made by the police in each relevant jurisdiction, based on criteria defined by law and related regulation.[11] While the empirical data about the success of the system is still contested, the National Center for Missing and Exploited

6. Fox, *supra* note 1.
7. *Id.* (discussing family and communal responses to Moussa's story).
8. *See infra* Sections I.A–B.
9. *Frequently Asked Questions*, *supra* note 5.
10. For more on the history of AMBER, see *infra* Section I.C.
11. *Frequently Asked Questions*, *supra* note 5.

Children (NCMEC) has reported that, as of December 2024, 1,268 children were recovered because of the AMBER Alert system.[12]

As this Article highlights, whatever the overall child recovery rates attributed to AMBER Alert may be, not all children in America benefit equally from it. Despite an allegedly colorblind application of the AMBER Alert system, Black children are systematically mistreated by this system.

Generally, the problem of missing children disproportionally affects Black communities;[13] and the numbers are striking. The NCMEC noted that, between 2019 and 2023, 31.3 percent of missing children reported to them were Black, even though Black people make up only 14 percent of the U.S. population.[14] Our original data analysis further indicates that the probability of Black children going missing is *three times* the probability of white children going missing.[15] This troubling reality has also been recently recognized in the important Missing and Minority Report released in May 2025.[16] This new report, which "sheds light on a critical issue that has long been underreported and underinvestigated," is a collaborative effort between the Minority and Missing Initiative and the FBI-Law Enforcement Executive Development Association, the National Organization of Black Law Enforcement Executives, the

12. *See infra* Section II.C.

13. *See infra* Section II.C.

14. *Protecting Missing and Exploited Children: Hearing Before the Subcomm. on Early Childhood, Elementary & Secondary Educ.*, 118th Cong. (2024) (questions for the record from Rep. Rick Allen and response from Michelle Delaune, President & CEO, Nat'l Ctr. for Missing & Exploited Child.), https://www.congress.gov/118/meeting/house/116794/documents/HHRG-118-ED14-20240206-QFR001-U1.pdf [https://perma.cc/GR63-G5TS]; *see also Our Impact: 2024*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., https://www.missingkids.org/ourwork/impact [https://perma.cc/W5KV-BXYR] (last visited Oct. 1, 2025) (showing that, in 2024, Black children comprised approximately 36 percent of the missing children cases). For a detailed data analysis related to the problem of missing children and its racial disparities, see *infra* Section II.A. It should be noted that NCMEC's definition of "missing child" is broad, and it includes "any individual less than 18 years of age whose whereabouts are unknown to the child's parent or legal guardian," that is, "children who have gone missing for any reason at all." *Children Missing from Care*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD. (citing 34 U.S.C. § 11292), https://www.missingkids.org/theissues/missingfromcare [https://perma.cc/965X-2V8K] (last visited Sep. 10, 2025).

15. In fact, our analysis indicates that the disparity in probabilities between Black and white children going missing is growing over time: Black children are now four times more likely to go missing compared to white children. *See infra* Section II.A.

16. *See National Congress of American Indians and Partners Release Groundbreaking Minority and Missing Report*, NAT'L CONG. OF AM. INDIANS (May 5, 2025) [hereinafter *Report Release*], https://www.ncai.org/news/minority-and-missing-report [https://perma.cc/MNU6-H7HN]. For the report, see *Missing and Minority Report*, NAT'L CHILD ID PROGRAM [hereinafter *Missing and Minority Report*], https://childidprogram.com/missing-and-minority-report/ [https://perma.cc/XD7G-EMYM] (last visited Sep. 10, 2025).

National Child Identification Program, the National Congress of American Indians, the Pro Football Hall of Fame, and the National Football League Alumni Association's Caring for Kids Campaign.[17] The report highlights the disproportionate impact of missing cases among minority groups, particularly Black and Indigenous people.[18]

Not only do Black children go missing disproportionately compared to white children, but they are also more prone to risks, for example, being trafficked.[19] Indeed, there are many systemic inequalities that Black children are subjected to which contribute to their vulnerability and exploitation more broadly, such as their overrepresentation in the foster care system.[20]

How do these systemic inequalities come into play regarding the application of AMBER Alert? Recognizing some data limitations and challenges, this Article identifies two main issues of concern. First, at the alert initiation phase. For an AMBER Alert to be issued, strict criteria related to the missing child must be fulfilled. For example, children who are categorized as "runaways" are excluded from the AMBER Alert system.[21] For a host of reasons, Black children are disproportionately prone to being categorized as "runaways."[22] Consequently, they are excluded from the AMBER Alert system, decreasing their chances of being found. Furthermore, even if an alert is issued, data suggests that disparities exist in the recovery rates between Black and white children,

17. *Report Release*, *supra* note 16.

18. *Missing and Minority Report*, *supra* note 16. The report also included several operative recommendations to address the problem of missing minority children and youth. *Id.* We will address some of the report's recommendations later in this Article. It should also be acknowledged that, while the focus of this Article is on disparities in the treatment of Black missing children, Indigenous populations—and other minoritized communities—also suffer from systemic inequalities in the treatment of their missing children. *See id.* This unsettling reality deserves similar attention from legislators, policymakers, civil society organizations, and academics. Given the distinct experiences of each group, however, issues related to non-Black communities will be left for discussion in future work. *See* Devon W. Carbado, *Afterword: Critical What What?*, 43 CONN. L. REV. 1593, 1602–03 (2011) (emphasizing the importance of investigating the experiences of different minoritized communities through the lens of Critical Race Theory).

19. *See infra* Section II.B.

20. *See infra* Section II.B.

21. Danae King, *17,000 Missing Child Reports, 13 Amber Alerts: Why Only Some Cases Prompt Public Notices*, COLUMBUS DISPATCH (Nov. 17, 2024, at 06:31 ET), https://www.dispatch.com/story/news/local/2024/11/17/amber-alerts-ohio-missing-children-endangered-child-notification/75916276007/ [https://perma.cc/8PUV-9763].

22. For a discussion of Jholie's case as one illustration of the application of AMBER on Black children, see *supra* notes 1–7 and accompanying text. For additional discussion, including on data limitations and challenges, see *infra* Section II.C.

with some indications that Black children are being recovered about half as often as white children.[23]

In the context of AMBER Alert, this differential treatment has a dual effect. First, on the practical side, fewer Black children are found and reunited with their families. Second, on the expressive side, the problem of missing Black children receives less attention from the media and the public. Consequently, the suffering of Black missing children and their families does not receive the social recognition it deserves. In turn, this lack of social recognition preserves the subordination of Black families, particularly in the context of ideal versus non-ideal victims, reflecting a deep and long-lasting social resistance to empathize with Black victims, while also preserving the dehumanization of Black individuals, including Black children.[24]

While academics have largely overlooked the issue, some states have slowly started to advance race-conscious solutions in recognition of the urgency of addressing the unequal treatment of Black children under the AMBER Alert system. To date, the most comprehensive arrangement to tackle this problem became effective in California in January 2024. The innovative California intervention created a new alert system for "missing Black youth," which received the name "Ebony Alert."[25] Recognizing the deficiencies of AMBER Alert in treating Black children, the new system was particularly tailored to guarantee that cases of missing Black youth will be treated fairly by law enforcement agencies, and the public will be alerted in similar fashion and through the same venues offered under AMBER.[26] Ebony Law received no opposition at the California Senate.[27]

Despite the proposal's smooth path through California's legislature, media coverage and public response to its passage was mixed. Some, including leaders in communities of color, commended the attempt to take action to combat the concerning problem of missing Black children, even calling it a "historic breakthrough guaranteeing that Black children and young Black women will receive the attention and protection they need," while also hoping that additional states will follow California's lead.[28] Others criticized the legislation. While some of the critique

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23. *See infra* Section II.C.

24. *See infra* Section II.C.

25. The terms "Ebony Law" and "Ebony" will be used interchangeably throughout this Article.

26. *See infra* Section III.A.

27. *See infra* Sections III.A–B.

28. Krystal Nurse, *California Creates Ebony Alert for Missing Black Women, Children. Here's How It Works*, USA TODAY (Oct. 12, 2023, at 16:48 ET), https://www.usatoday.com/story/news/nation/2023/10/11/ebony-alert-missing-black/71139957007/ [https://perma.cc/V486-3SSN]; *see also* Andrew J. Campa, *Ebony Alert Bill Lauded by Black Advocates as 'Historic' Step in Rescuing Missing Children*,

focused on the law's name or provisions, the majority questioned its constitutionality, mostly arguing that the legislation is discriminating against non-Black communities.[29]

This Article systematically discusses the problem of Black missing children through the lens of race-conscious legislation, such as Ebony Law. Predicting that Ebony is just the first attempt to address this nationwide problem, this Article contextualizes such legislation within broader constitutional conversations on race-based remedies in criminal law and offers a legal framework for jurisdictions aspiring to tackle this important issue. Indeed, since California introduced Ebony, a few states, including Alabama, Illinois, Massachusetts, Pennsylvania, and New York, have engaged in these important conversations and introduced legislation building on the principles underlying California's Ebony Law.[30]

This Article's premise is that race-conscious legislation in the context of missing children is important. It is important because it offers a state-level attempt to tackle the concerning problem of the disproportionate number of Black missing children in America. State action not only addresses practical concerns for finding those children but also carries an expressive value by offering a venue for increased social recognition of the problem of missing Black children. Further, social awareness of this problem is likely to illuminate systemic inequalities that pervade society and affect the treatment of Black children and their families more broadly. Such legislation is also important because it exposes yet another domain in which colorblind legislation—in our case, AMBER Alert—contributes to de facto discrimination against Black communities, and detrimentally so: It decreases the likelihood of their children's survival.[31] Therefore, Ebony Law and Ebony-like provisions have the potential to address the disproportionately negative effects on Black children and their communities arising from the current legal landscape.

Nonetheless, and despite its importance, race-conscious legislation like Ebony Law is also constitutionally challenging under current equal protection jurisprudence, even more so today, after *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* (*SFFA*),[32]

L.A. TIMES (Oct. 11, 2023, at 16:21 PT), https://www.latimes.com/california/story/2023-10-11/ebony-alert-bill-lauded-by-black-advocates-as-historic-step-in-rescuing-missing-children (noting that the bill received support from several advocacy groups, including the NAACP's California-Hawaii State Conference and the Black and Missing Foundation, who characterized the bill as historic and expressed hope that other states would follow suit). For a detailed discussion, see *infra* Section III.B.

29. *See infra* Section III.B.

30. *See infra* Section III.B. The legislation in N.Y. was later stricken.

31. *See infra* Section III.C.

32. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* (*SFFA*), 143 S. Ct. 2141 (2023).

which highlighted the anticlassification interpretation of the strict scrutiny standard.[33] Ebony Law falls squarely within what the Supreme Court has identified as racial classification under the Equal Protection Clause. As such, Ebony Law is subject to strict scrutiny, an almost impassable hurdle.

To tackle the tension between the importance of the legislation and its potential constitutional challenges, this Article advances in two stages. First, it focuses on policy considerations. Recognizing that Ebony identifies a real-world problem that requires a practical solution, this Article starts by identifying the flaws in the current AMBER Alert regime that lead to the mistreatment of Black children by law enforcement agencies under the system. It focuses on the tendency to categorize many Black children as "runaways" and thus to exclude them from AMBER Alerts. It further discusses the potential structural challenges to the work of law enforcement agencies in recovering Black children even if alerts are being initiated. As part of this analysis, the Article explores Ebony Law provisions and offers three interventions that aim to address Amber's flaws: (1) a holistic as opposed to cumulative approach to initiating factors, (2) a reconceptualization of child risk, and (3) a shift in law enforcement burdens in decisions to initiate an alert. This Article synthesizes both frameworks and proposes an amendment to current AMBER laws that accounts for the unique concerns related to Black children and their families, including distrust between Black communities and the police as well as systemic inequalities Black children are subjected to in modern-day America.[34] Embedding these considerations into the general legislation related to missing children (*i.e.*, AMBER Alert laws) will likely mitigate some of the current legislation's disproportional negative effects on Black communities, without the need to address the constitutional challenges it presents.

By doing so, however, this Article risks offering yet another piece of colorblind legislation. No doubt, the proposed legislation might address the practical concerns related to the problem of missing Black children. It might even alleviate some constitutional concerns. However, the proposed amendment will lose much of the expressive value of the Ebony Law. Without such a law, society will likely continue to ignore deeply entrenched systemic issues in the institutional and social treatment of Black victims and their communities.[35] This is, in part, a consequence

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33. *See id.* at 2150. *SFFA* is a consolidated decision in two cases: *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina*. Unless otherwise stated, this Article will refer to *SFFA* as the unified decision. *See infra* Section III.D.

34. *See infra* Sections IV.A.2–3.

35. *See infra* Part IV.

of the current Supreme Court equal protection jurisprudence, which adheres to the principle of colorblindness.[36]

Colorblindness has been criticized by critical race theorists and constitutional scholars for its failure to recognize deep pervasive racial inequalities and discrimination.[37] To resist this colorblind instinct, the Article further offers a constitutional analysis of Ebony Law, asking whether, if understood as a race-conscious criminal law legislation, Ebony could potentially survive strict constitutional scrutiny. That is, whether Ebony and "Ebony-like" provisions can be framed as narrowly tailored interventions to address a compelling state interest.[38]

This Article thus offers a new setting through which to evaluate the capacity of the current equal protection jurisprudence to deeply challenge entrenched racial disparities and affect social change, particularly after *SFFA*. It further illustrates the potential harms of continuing to entertain the colorblindness narrative by showing that courts, in rejecting the subordination interpretation to the strict scrutiny standard, obstruct meaningful mobilization and deeper recognition of the history and politics of racial treatment of Black communities in the United States.

This Article proceeds as follows. Part I introduces the problem of missing children in America and surveys the developments in law and policy over the years that led to the creation of AMBER Alert. It then discusses the praise and the critique that AMBER has received. Part II delves deeper into the reality of missing children in America and introduces data which exposes the racial and gender disparities in the population of missing children. It addresses some of the systemic inequalities that lead to Black children going missing at disproportionate rates. It further exposes that Black children suffer from unequal treatment under the AMBER Alert system. This Part discusses the structural challenges of AMBER that contribute to its disproportionately negative effect on Black children and their communities.

Part III engages with the small number of states which recognized AMBER's disproportional effects on Black children and communities and offered legislation to tackle these disparities. In particular, it focuses on California's most recent legislation, Ebony Law, surveying its legislative process and the praise and critique it has received. This Part also expands the conversations on Ebony to discuss the broader significance of race-conscious legislation in the context of Black children. It further discusses the potential constitutional challenges to this type of legislation under the current equal protection jurisdiction, particularly after the recent *SFFA* decision.

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36. *See infra* Part IV.

37. For more on the critique of the colorblindness doctrine, see *infra* Part V.

38. *See infra* Sections V.B–C.

Part IV aspires to resolve the tension between the importance of Ebony and its potential constitutional challenges by offering a policy analysis of the different provisions adopted by Ebony. It offers novel structural changes in the current AMBER Alert system and discusses how these changes engage with the idiosyncratic nature of missing Black children. It then recommends amending AMBER provisions in light of those suggested changes. Recognizing the limitations of such policy solutions in addressing the broader issues related to the failed institutional treatment of Black children and families and the need to correct past discrimination, Part V engages with an intriguing question: whether race-conscious legislation in the context of missing children—such as Ebony—may in fact pass the strict scrutiny standard. This Part further discusses David E. Pozen and Adam M. Samaha's anti-modality framework in the context of Ebony Law. In conclusion, this Article underscores the importance of race-conscious legislation, particularly given the limitations of adhering to the colorblindness narrative, and calls to apply more creative frameworks in other criminal-law-related contexts.

I. THE PROBLEM OF MISSING CHILDREN–FROM MILK TO AMBER

This Part traces the evolution of America's response to missing children, from the highly publicized cases that sparked national attention in the 1980s to the legislative mechanisms created to address the crisis. It examines early responses including the Missing Children Act of 1982 and the establishment of the NCMEC and then analyzes the AMBER Alert system—its operation, celebrated successes, and significant scholarly critiques regarding its actual effectiveness in achieving its life-saving goals.

A. The National Crisis of Missing Children

The problem of missing children, who are often victims of crime, has haunted American society for centuries. Only in the 1980s and 1990s, however, with multiple high-profile cases of disappearing children, was it recognized as a national crisis. In particular, the disappearance of two children—Etan Patz and Adam Walsh—garnered national attention.

In 1979, six-year-old Etan Patz begged his mother to allow him to walk by himself for the first time—just two blocks to the bus stop that took him to school in New York City.[39] His mother was reluctant, as most mothers would be, but eventually gave in to Etan's request for

39. Rick Rojas, *What Happened to Etan Patz? Unraveling a Nearly 40-Year-Old Case*, N.Y. TIMES, https://www.nytimes.com/2017/01/30/nyregion/what-happened-to-etan-patz.html (last visited Sep. 10, 2025) (discussing the disappearance of Etan Patz).

independence.[40] However, to his mother's horror, that would be the last time she saw her son. Etan never made it to his bus.[41] That moment would not only change the lives of Etan's family forever but also would change the way America responds to missing children.[42] Etan's disappearance received national attention all across America with the young boy's face plastered on front pages of city newspapers and shown on television.[43] Etan's face eventually was featured on a milk carton—a common way missing children were publicized to spread awareness in the 1980s.[44]

Only two years later, another missing child's case took the national news media by storm. This time, it was the kidnapping and murder of Adam Walsh, a six-year-old boy from Florida, that "shook the nation."[45] Adam had been shopping with his mother at the mall and was left to play in the toy department of a Sears store.[46] When Adam's mother returned, Adam was gone; she searched the mall frantically, unable to locate him.[47] A dreadful two weeks passed for his family before Adam's decapitated

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40. *Id.*

41. *Id.*

42. *Id.* Over three decades after Etan's disappearance, the NYPD announced that they arrested Pedro Hernandez whose brother-in-law alerted authorities to Hernandez's potential responsibility. *Id.* Hernandez was found guilty on February 14, 2017, for the murder and kidnapping of Etan Patz. *Id.*

43. *Id.*

44. *6-Year-Old Etan Patz–Boy on Milk Carton–Goes Missing*, HISTORY (July 21, 2025), https://www.history.com/this-day-in-history/etan-patz-milk-carton-kids-goes-missing [https://perma.cc/M2ZJ-XHUB]. Iowa was one of the first states to feature missing children on milk cartons during the 1980s, but they proved largely ineffective. Linh Ta, *The Missing Kids Milk Carton Campaign Started in Iowa*, DES MOINES REG. (Sep. 4, 2017, at 20:25 CT), https://www.desmoinesregister.com/story/news/crime-and-courts/2017/09/04/missing-kids-milk-carton-campaign-outcome/627165001/ [https://perma.cc/2VEQ-SFM8]. The National Child Safety Council initiated the Milk Carton Program to help find missing children and partnered with hundreds of dairies around the nation. *A Brief History of National Child Safety Council*, NAT'L CHILD SAFETY COUNCIL, https://nationalchildsafetycouncil.org/about/ (last visited Aug. 29, 2025). However, the end of the milk carton strategy came from the fear that it terrified children and was ineffective. Brian Palmer, *Why Did Missing Children Start Showing Up on Milk Cartons?*, SLATE (Apr. 20, 2012), https://slate.com/news-and-politics/2012/04/etan-patz-case-why-did-dairies-put-missing-children-on-their-milk-cartons.html [https://perma.cc/4ZQG-YQD4].

45. Police Solve Walsh Murder, TAMPA BAY TIMES (Dec. 20, 2008), https://www.tampabay.com/archive/2008/12/17/police-solve-walsh-murder/ [https://perma.cc/CH63-BVRF]; *see also In Memory of Adam Walsh*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD.: BLOG (Nov. 13, 2023), https://www.missingkids.org/blog/2022/in-memory-of-adam-walsh [https://perma.cc/P75N-RP9C] (discussing the tragic story of Adam's kidnapping and murder that led to the creation of NCMEC).

46. *Police: 1981 Killing of Adam Walsh Solved*, NBC NEWS (Dec. 16, 2008, at 13:39 CT), https://www.nbcnews.com/id/wbna28257294.

47. *Id.*

head was discovered.[48] His murder, however, would remain unsolved for decades to come despite the massive media attention Adam's case garnered.[49]

Etan and Adam's highly publicized disappearances concerned parents all across America and increased the media attention around missing children.[50] In 1981, a national symposium about missing children was held where advocates, including the parents of Adam and Etan, were in attendance to send a clear message: Missing and exploited children were a national problem that should be addressed.[51] Etan's disappearance also captured the attention of the federal government. In 1983, President Regan officially declared May 25, the day Etan Patz went missing, as National Missing Children's Day.[52] The decision to devote a national day to the problem of missing children brought the issue to the forefront of everyone's mind.[53] Adam's death also helped bring more missing children's faces to milk cartons, and with the help of his parents, prompted national legislation through the Adam Walsh Act and the

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48. *Id.*

49. *Id.* In 2008, Florida police announced that Adam was murdered by a serial killer, Ottis Toole, who had died more than a decade before the announcement. *Id.*

50. *See Commemorating National Missing Children's Day*, U.S. DEP'T OF JUST. OFF. OF JUST. PROGRAMS (May 20, 2020), https://www.ojp.gov/files/archives/blogs/2020/commemorating-national-missing-childrens-day [https://perma.cc/4U9K-8XNP]; *see also* Susan Newhart Elliott & Dianna L. Pendleton, *S. 321: The Missing Children Act—Legislation by Hysteria*, 11 U. DAYTON L. REV. 671, 672, 677 (1986) (stating that a rebroadcast of the television movie based on Adam Walsh's story reignited public awareness about missing children).

51. *See Civil Rights Activist Ozell Sutton Helped Advance Missing Child Movement in America*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD.: BLOG (Feb. 25, 2021) [hereinafter *Civil Rights Activist Ozell Sutton*], https://www.missingkids.org/blog/2021/civil-rights-activist-ozell-sutton-helped-advance-missing-child-movement-in-america [https://perma.cc/3AEN-Q55J]. For another illustration of the increased attention that issues of exploited children received in the early 1980s, *see also Exploitation of Children: Hearing Before the Subcomm. on Juv. Just. of the Comm. on the Judiciary U.S. Sen.*, 97th Cong. 33, 75–76 (1981) (statement of Father Bruce Ritter and statement of Ernest E. Allen, Ronald J. Pregliasco & John B. Rabun, Jr.).

52. *About Missing Children's Day*, U.S. DEP'T OF JUST.: OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://ojjdp.ojp.gov/nmcd/about-missing-childrens-day [https://perma.cc/BTJ2-V2NT] (last visited Sep. 11, 2025).

53. *See id.*; *see also 42nd Annual National Missing Children's Day*, NAT'L CRIM. JUST. TRAINING CTR. OF FOX VALLEY TECH. COLL., https://ncjtc.fvtc.edu/programs/PR00005772/42nd-annual-national-missing-childrens-day [https://perma.cc/6MFL-B6M2] (last visited Sep. 11, 2025) (recognizing that Missing Children's Day honors the dedicated efforts of agencies, individuals, and organizations committed to protecting children). National Missing Children's Day is intended to encourage everyone "concerned with the well-being of children" to prioritize child safety and "serve[] as a reminder to continue . . . efforts to reunite missing children with their families and an occasion to honor those dedicated to this cause." *About Missing Children's Day*, supra note 52.

popular crime production, *America's Most Wanted*, hosted by Adam's father.[54]

Given the tight connections between crime victimization and the phenomenon of missing children, the growing interest in the issue of missing children in the mid-1980s received tailwind from the victims' rights movement. The victims' rights movement, which dates back to the mid-1960s, has advanced meaningful institutional changes in amplifying the voices of crime victims.[55] Several horrific cases of missing children, including Etan's and Adam's and the similar murders of Megan Kanka and Amber Hagerman, advanced the realization that the phenomenon of missing children should also be advocated through a crime victims' lens.[56] The consequent collaboration among victims' rights activists, the government, and families of missing children helped to amplify their broader message.[57] This coalition introduced victim assistance programs, led public campaigns to raise awareness (including the introduction of the "stranger danger" concept),[58] and introduced legislation such as Megan's Law and AMBER Alert[59] as detailed later in this Article.

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54. *Police: 1981 killing of Adam Walsh*, *supra* note 46. The Adam Walsh Act was enacted "[t]o protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims." Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

55. Itay Ravid, *Inconspicuous Victims*, 25 LEWIS & CLARK L. REV. 529, 530–31, 536–37 (2021). But note Ravid's critique on the racially imbalanced lens through which victims' rights were advanced.

56. *See id.* at 535–42 (surveying the history of the victims' rights movement in the U.S.). *See generally* Francis D. Boateng & Gassan Abess, *Victims' Role in the Criminal Justice System: A Statutory Analysis of Victims' Rights in U.S.*, 19 INT'L J. POLICE SCI. & MGMT. 221, 222 (2017) (describing President Reagan's Task Force on Victims of Crime as the catalyst for legislative efforts to "broaden the scope of victims' rights"); Stacy Lee, *Crime Victim Awareness and Assistance Through the Decades*, 281 NAT'L INST. JUST. J. 55, 55–59 (2019) (discussing the role of the National Institute of Justice in the victims' rights movement); Marlene Young & John Stein, *The History of the Crime Victims' Movement in the United States: A Component of the Office for Victims of Crime Oral History Project*, OFF. FOR VICTIMS OF CRIME (Dec. 2004), https://ovc.ojp.gov/sites/g/files/xyckuh226/files/pubs/OVC_Archives/ncvrw/2005/pg4c.html [https://perma.cc/T5L2-Y67U] (discussing five main influences which contributed to the development of the crime victims' movement in the U.S.).

57. *See* Ravid, *supra* note 55, at 536–37; *see also Civil Rights Activist Ozell Sutton*, *supra* note 51 (discussing the contribution of Ozell Sutton to the development of the missing children movement and the creation of NCMEC). Among those missing children was Jonelle Matthews, another child whom President Reagan mentioned in his speech introducing the NCMEC. Joe Moylin & Greeley Tribune, *Greeley Case Shows How Missing-Child Investigations Evolved*, AP (Aug. 4, 2019, at 11:19 CT), https://apnews.com/general-news-b93a744ba80f4ce68b886186d9489504 [https://perma.cc/NT5V-988T].

58. Moylin & Greeley Tribune, *supra* note 57.

59. *See* Ravid, *supra* note 55, at 540.

While collaboration with the victims' rights movement has indeed contributed significantly to institutional recognition of the problem of missing children, it has also advanced a vision of a very certain kind of missing child that deserves institutional protection: a white child. Just as the victims' rights movement has advanced a hierarchical view of worthy versus unworthy victims, with the former recognized as an "ideal victim,"[60] so did the advocates pushing to resolve the problem of missing children. Similarly, stakeholders have advanced solutions with a very certain type of an "ideal missing child."[61] Non-white children, particularly Black children, were left out of the institutional mechanisms designed to protect missing children.[62] Consequently, Black children and their families were also left out of the public consciousness as deserving of the government's protection and recognition in the status of crime victims.[63]

B. First Legislative Responses: The Missing Children Act of 1982

The first legislative act to address missing children was the Missing Children Act of 1982 which authorized the Attorney General to obtain and exchange information in assistance to federal, state, and local officials to identify certain deceased individuals and locate missing persons.[64] However, the Act did not establish a network for locating and recovering children who were subsequently reported missing and was

60. *Id.* at 538–40.

61. *See id.* (discussing the related concept of an ideal victim). And note, that indeed most of the children whose stories contributed to the advancement of the legislation we know of today followed the "ideal victim" prototype, particularly across racial lines.

62. *See infra* Sections II.B–C.

63. Ravid, *supra* note 55, at 538–39; *see also* ROBERT ELIAS, THE POLITICS OF VICTIMIZATION: VICTIMS, VICTIMOLOGY, AND HUMAN RIGHTS 60 (1986) (discussing how victims in the U.S. are divided across gender and racial lines); Esther I. Madriz, *Images of Criminals and Victims: A Study on Women's Fear and Social Control*, 11 GENDER & SOC'Y 342, 353 (1997) (emphasizing the gendered and racial approach to victimization). Nils Christie's seminal work on the "ideal victim" is a helpful framework for assessing the exclusion of Black children from the victimization discourse. *See generally* Nils Christie, *The Ideal Victim*, *in* FROM CRIME POLICY TO VICTIM POLICY: REORIENTING THE JUSTICE SYSTEM 17, 18 (Ezzat A. Fattah ed., 1986) (discussing how the concept of a victim is a social construct and describing how the ideal victim is socially characterized). The lack of recognition in Black victimization is also a product of society's reluctance to recognize the victim/offender overlap, particularly as it relates to victims/offenders of color. *See, e.g.*, Cynthia Godsoe, *The Victim/Offender Overlap and Criminal System Reform*, 87 BROOK. L. REV. 1319, 1321 (2022) [hereinafter Godsoe, *The Victim/Offender Overlap*].

64. Missing Children Act, Pub. L. No. 97-292, 96 Stat. 1259 (1982) (codified as amended at 28 U.S.C. § 534).

ultimately criticized for not doing enough.[65] The Juvenile Justice and Delinquency Prevention Act of 1974, initially created to address juvenile delinquency, was reauthorized and amended in 1984 to establish the Missing and Exploited Children Program directed by the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP).[66] The program was designated "to coordinate the Federal Government's response to missing and exploited children."[67] In that same year, President Regan officially announced the opening of the NCMEC, a non-profit organization that was founded by Adam's parents, John and Revé Walsh, along with other child advocates, "to serve as the national resource center for information about missing and exploited children."[68]

The OJJDP funds and works in partnership with the NCMEC, which provides a twenty-four-hour hotline, assists in the recovery of children, and provides advice and technical assistance to parents, prosecutors, and law enforcement.[69] Since its creation in 1984,[70] NCMEC has received over five million calls related to missing and exploited children on their national hotline, circulated billions of photos of missing children, and

65. *See* Elliott & Pendleton, *supra* note 50, at 674–77.

66. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109, *amended by*, Department of the Interior and Related Agencies Appropriations Act, Pub. L. No. 98-473, sec. 620, § 201, 98 Stat. 1837, 2108–09 (1984).

67. MICHAEL MEDARIS, OFF. OF JUV. JUST. & DELINQ. PREVENTION, FS-9761, THE MISSING AND EXPLOITED CHILDREN'S PROGRAM (1997), https://www.ojp.gov/pdffiles/mecp.pdf [https://perma.cc/VYD4-PJ8J]. In 1912, the Children's Bureau was created by Congress through the Act that "directed the Bureau 'to investigate and report . . . on all matters pertaining to the welfare of children and the child life among all classes of our people . . . .'" *The Juvenile Justice and Delinquency Prevention Act of 1974*, OFF. OF JUVENILE JUST. & DELINQ. PREVENTION, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/jjdpchronology.pdf [https://perma.cc/HE8L-2AAC] (last visited Sep. 12, 2025).

68. *In Memory of Adam Walsh, supra* note 45; *Remarks at a White House Ceremony Marking the Opening of the National Center for Missing and Exploited Children*, RONALD REAGAN PRESIDENTIAL LIBR. & MUSEUM (June 13, 1984), https://www.reaganlibrary.gov/archives/speech/remarks-white-house-ceremony-marking-opening-national-center-missing-and-exploited [https://perma.cc/4YEJ-5BFZ] (encouraging the protection of children and their families and commending John and Revé Walsh on their efforts to help awaken the nation "to the tragedy of America's missing children").

69. *See Commemorating National Missing Children's Day*, *supra* note 50; *Justice Department Awards Almost $141 Million to Protect Children*, U.S. DEP'T OF JUST. (Dec. 22, 2021), https://www.justice.gov/archives/opa/pr/justice-department-awards-almost-141-million-protect-children [https://perma.cc/AG5L-DPKT]. As mentioned, the NCMEC works under federal law's broad definition of "missing children," to include children missing for any reason, including runaways, family and non-family abductions, and lost. *See supra* note 14.

70. *Civil Rights Activist Ozell Sutton*, *supra* note 51.

helped recover more than 426,000 missing children.[71] In 2023 alone, NCMEC assisted law enforcement, families, and child welfare agencies with over 28,000 cases of missing children and received 36.2 million reports of suspected child exploitation through their CyberTipline.[72] The OJJDP also supports the AMBER Alert System,[73] which will be discussed in the next section.

C. The AMBER Alert

1. Background

The second most important legislation in the context of missing children dates back to the late 1990s–early 2000s. Most are familiar with that legislation. Once in a while, our cell phones start beeping with a loud, strident noise, and a message appears on our screens. The message, which carries the title "AMBER Alert," offers information related to a missing child. However, despite the prevalence of this tool in our modern lives, it is only in 1996 when it was first initiated.[74]

In 1996, Amber Hagerman went missing in Texas.[75] Her disappearance, at a time when the issue of missing children already garnered more attention from legislators and the media, led to the creation of an alert system that was intended to enhance collaboration between the Dallas-Fort Worth, Texas law enforcement agency and the media and to involve the public in the process of finding the abducted child.[76] The AMBER alert system has slowly expanded to other states, and in 2003 was placed under federal oversight with the 2003 Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today (PROTECT) Act.[77] The Act "[e]stablish[ed] a national

71. NAT'L CTR. FOR MISSING & EXPLOITED CHILD., 2023: OUR IMPACT 8 (2024), https://www.missingkids.org/content/dam/missingkids/pdfs/2023-ncmec-our-impact.pdf [https://perma.cc/Y5M5-XD7Q].

72. *Id.* at 2.

73. *Missing and Exploited Children*, U.S. DEP'T OF JUST: OFF. OF JUV. JUST. & DELINQ. PREVENTION, https://ojjdp.ojp.gov/programs/missing-and-exploited-children [https://perma.cc/JFK5-G2FJ] (last visited Sep. 12, 2025). For more on AMBER Alerts, see *infra* Section I.C.

74. *Frequently Asked Questions*, *supra* note 5.

75. Patricia Davis, *Still Searching for Amber's Killer*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD.: BLOG (Jan. 12, 2021), https://www.missingkids.org/blog/2021/still-searching-for-ambers-killer [https://perma.cc/3MXD-8LLG].

76. *Frequently Asked Questions*, *supra* note 5.

77. Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act, Pub. L. No. 108-21, §§ 301–03, 117 Stat. 650, 660–63 (2003); *see also Amber Alert Timeline*, U.S. DEP'T OF JUST.: AMBER ALERT, https://amberalert.ojp.gov/sites/g/files/xyckuh201/files/media/document/amberalerttime

AMBER Alert Program. . . . [and] allow[ed] for national coordination of state and local AMBER Alert programs . . . ."[78] and offered guidelines that states can voluntarily adopt.[79] States followed PROTECT Act guidelines and adopted state-level AMBER laws that can now be found across the nation.[80]

In essence, after a law enforcement agency has decided "that a child has been abducted and the abduction meets AMBER Alert criteria," they collect all relevant information related to the missing child—a picture of the child and personal information related to them—and generate materials to be distributed by media broadcasters, relevant state transportation officials, and designated internet websites and social media channels.[81] These collaborators, in turn, distribute the information to the public through their relevant channels—cell phones, televisions and radio broadcasts, highway and subway signs, and the internet—in hopes of receiving community responses that will assist law enforcement agencies in a specific case.[82]

The recommended federal criteria for activation of an AMBER Alert consists of five main pillars and vests considerable discretion in the hands of law enforcement agencies to decide whether to initiate the process. These recommendations were overwhelmingly adopted by different states introducing AMBER Alerts into their law enforcement systems:

(1) A "reasonable belief by law enforcement that an abduction has occurred."
(2) Belief of the law enforcement agency "that the child is in imminent danger of serious bodily injury or death."
(3) Sufficient information exists regarding the victim-child and the abduction to allow the initiation of an alert.

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line-508c_0.pdf [https://perma.cc/LGR2-9RUJ] (last visited Sep. 12, 2025) (discussing the evolution of AMBER Alerts).

78. *Fact Sheet: PROTECT Act*, DEP'T OF JUST. (Apr. 30, 2003), https://www.justice.gov/archive/opa/pr/2003/April/03_ag_266.htm [https://perma.cc/P68M-3H38].

79. *See* Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 § 302, 117 Stat. at 661–62.

80. *See* Timothy Griffin, *An Empirical Examination of AMBER Alert 'Successes'*, 38 J. CRIM. JUST. 1053, 1053 (2010) (assessing empirically the success of AMBER Alert); *Amber Alert Timeline*, *supra* note 77 (stating that, in February 2005, "Hawaii became the 50th state to complete its statewide AMBER Alert plan, creating a network of plans nationwide").

81. *Frequently Asked Questions*, *supra* note 5; Ariadni Michalitsi-Psarrou et al., *Complementing Amber Alert: Increasing the Social Sensors' Effectiveness Through Focused Communication Channels* (Int'l Conf. on Eng'g Tech. & Innovation, 2019), https://doi.org/10.1109/ICE.2019.8792679 (discussing methods to improve AMBER's effectiveness).

82. Ariadni Michalitsi-Psarrou et al., *supra* note 81.

(4) The child is seventeen years-old or younger.
(5) The child's name and other elements defined as critical (*e.g.*, Child Abduction Flag) have been entered into the National Crime Information Center (NCIC) system.[83]

2. Praise and Critique

After its initiation, AMBER Alert was lauded as a meaningful, transformative step in the protection of American children. Indeed, some—particularly officials—argued that the AMBER Alert system has "helped save the lives of hundreds of children since its creation."[84] The limited scholarship that has investigated AMBER Alert also recognizes the prima facie success of the program, emphasizing several stories of children who were recovered after the system was put in place.[85] However, scholars have also questioned the system's efficacy and capacity to achieve the goals it was designed for. These scholars suggest that most of those advocating for the system's success focus on anecdotal "success stories" and neglect to offer a more systematic and comprehensive analysis of AMBER's ability to truly save children from life-threatening situations.[86]

The small number of studies aiming to overcome this research deficit have indeed uncovered meaningful concerns related to the efficacy of AMBER in saving lives. For example, studies have found that the system is prone to overuse and misuse,[87] that even successful cases involve the "less menacing" abductors—including family members[88]—and that the recovery time is often longer than what is defined as the crucial recovery window.[89] Relatedly, scholars have suggested that while AMBER Alert

83. *Guidelines for Issuing Amber Alerts*, U.S. DEP'T OF JUST.: AMBER ALERT, https://amberalert.ojp.gov/about/guidelines-for-issuing-alerts [https://perma.cc/KC4D-QAN4] (last visited Sep. 12, 2025).

84. Timothy Griffin, Joshua H. Williams, John Wooldredge & Danielle Miller, *Does AMBER Alert 'Saves Lives'? An Empirical Analysis and Critical Implications*, 39 J. CRIME & JUST. 490, 491 (2016) (cleaned up) (arguing that AMBER's "successes" should be carefully scrutinized); *Attorney General Alberto R. Gonzales Honors Law Enforcement Officers for Efforts to Help Missing and Exploited Children*, U.S. DEP'T OF JUST. (May 18, 2007), https://www.justice.gov/archive/opa/pr/2007/May/07_ag_370.html [https://perma.cc/755G-47QR].

85. Griffin, *supra* note 80, at 1054.

86. *Id.*

87. *False Alarms Misuse and Overuse is Endangering Future of Amber Alert System*, HERALD-WHIG (Oct. 30, 2020), https://www.whig.com/archive/article/false-alarms-misuse-and-overuse-is-endangering-future-of-amber-alertsystem/article_6b264ea9-94e3-5838-8fd5-77c838b27f48.html [https://perma.cc/JU2V-SUET] (referencing Thomas Hargrove's argument about potential misuse of AMBER).

88. Griffin, *supra* note 80, at 1053–55.

89. *See* Timothy Griffin, Monica K. Miller, Jeffrey Hoppe, Amy Rebideaux & Rachel Hammack, *A Preliminary Examination of AMBER Alert's Effects*, 18 CRIM.

cases have generally demonstrated success in recovering children, the system has not been effective in its treatment of the cases that inspired its creation—stranger-initiated abduction cases that endanger the life of the child.[90] As such, studies question the correlation between the initial goals of AMBER and the success stories authorities use to celebrate it.[91]

Several factors have been identified as hurdles in the AMBER Alert system's ability to achieve its core life-saving goal. First, there are challenges related to public participation—both technical challenges but also challenges in the ability to consume and analyze the provided data and respond in a timely manner.[92] Second, inherent tension exists between the need to respond swiftly and the strict criteria that law enforcement agencies must adhere to before initiating an alert (which often requires time and resources).[93] Third, some argue that the theoretical assumption behind AMBER—according to which rapid response time is the main factor in recovering abducted children—is flawed as the main factors are actually the nature and intention of the abductor.[94]

Moreover, scholars have raised some ethical concerns stemming from the AMBER Alert system, many of which are premised on the same

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JUST. POL'Y REV. 378, 389 (2007) (assessing AMBER's work on the ground, finding support for positive benefits alongside challenges in its implementation).

90. Griffin, Williams, Wooldredge & Miller, *supra* note 84, at 492–93 ("[O]nce a child is at the mercy of a truly murderous/sexually motivated predator, the prospect of effective and rapid official response is sadly dim."). *See generally* David Finkelhor, Gerald T. Hotaling & Andrea J. Sedlak, *The Abduction of Children by Strangers and Nonfamily Members Estimating the Incidence Using Multiple Methods*, 7 J. INTERPERSONAL VIOLENCE 226, 239–40 (1992) (discussing the challenges of identifying child abduction cases by strangers). *But cf.* Kristen Zgoba, *The Amber Alert: The Appropriate Solution to Preventing Child Abduction?*, 32 J. PSYCHIATRY & L. 71, 80 (2004) (arguing that family child abductions are generally excluded from AMBER's treatment but suggesting that this is a concern as it creates "a false sense of security among communities" and a hierarchy of child abduction cases).

91. Timothy Griffin, Joshua H. Williams & Colleen Kadleck, *AMBER Alert Effectiveness Reexamined*, 33 CRIM. JUST. POL'Y REV. 23, 38–39, 41 (2022) (concluding that "the AMBER Alert system is being oversold to the public" and suggesting that public officials acknowledge the "limits of the AMBER Alert system and what it can actually accomplish").

92. Griffin, Williams, Wooldredge & Miller, *supra* note 84, at 492; Zgoba, *supra* note 90, at 80–81; *see* James Michael Lampinen, Jack Arnal & Jason L. Hicks, *The Effectiveness of Supermarket Posters in Helping to Find Missing Children*, 24 J. INTERPERSONAL VIOLENCE 406, 408 (2009) (empirically documenting the limited capacity of supermarket posters to engage public audiences in the process of recovering missing children).

93. Griffin, Williams, Wooldredge & Miller, *supra* note 84, at 492–93.

94. *Id.* at 493, 501; *see also* KENNETH A. HANFLAND, ROBERT D. KEPPEL & JOSEPH G. WEIS, CASE MANAGEMENT FOR MISSING CHILDREN HOMICIDE INVESTIGATION (1997), https://www.ojp.gov/sites/g/files/xyckuh241/files/media/document/201316.pdf [https://perma.cc/9J3R-PKCW] (offering guidance on how to manage cases of missing children).

challenges as previously mentioned, that is, the inherent difficulties of AMBER in saving children from true "life threatening abductions."[95] Several ethical concerns were raised in this context.

The first concern is the immense discretionary—and arbitrary—powers given to the hands of law enforcement agents deciding on whether to initiate an AMBER Alert.[96] These powers lend themselves to concerns related to "human fallibility and bias" (explicit or implicit), such as potentially unequal application of the existing categories based on race, gender, age, socio-economic status, sexual orientation, etc.[97] As we will discuss, the case of missing Black children indeed suggests that biases—including racial biases—in law enforcement's treatment contributes to AMBER's failure to recover missing Black children.[98]

The second concern is the potential harm creation that outweighs the benefits of the system, particularly its negative impact on victims, families, and perpetrators.[99] Privacy concerns seem central in this context and are in tension with the general approach of the criminal legal system toward data related to children.[100] Privacy of juveniles, more so of victims, and even more so of victims of sexual assault, is well protected in the criminal legal system and for good reasons. AMBER Alert, however, is exactly the opposite: It takes private data about victims and makes it public, thereby risking the loss of all the benefits of the privacy protection regime.[101] Furthermore, due to AMBER's public nature, information disseminated through the system can also reach the perpetrator themself, arguably increasing risks to the life or liberty of the abducted child, for example by potentially pushing perpetrators towards violence earlier than they would have normally planned.[102] Relatedly,

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95. Timothy Griffin & Filip Wiecko, *"Worth It if It Saves Just One Life"? Ethical Reservations Regarding AMBER Alert*, 34 CRIM. JUST. ETHICS 156, 158 (2015) ("[T]he system suffers from an inherent and unavoidable conceptual limitation: it was designed to rescue children from life threatening abductions, but such crimes usually unfold too quickly for the AMBER Alert system . . . . "); *see also* Griffin, Williams & Kadleck, *supra* note 91, at 35–38 (observing that many "successful" AMBER Alerts occur when a child has been abducted by a family member and is thus at a low risk of suffering "imminent harm"). Griffin, Williams, and Kadleck explain that "the overwhelming majority of child abductions results from interfamilial feuds and custody disputes where" abductors are "unlikely to harm members of their own family." *Id.* at 35, 38.

96. Griffin & Wiecko, *supra* note 95, at 158.

97. *Id.* at 159–60; *see also infra* Sections II.A, II.C (suggesting that indeed AMBER Alerts are not applied equally across races).

98. *See infra* Section II.C.

99. Griffin & Wiecko, *supra* note 95, at 158.

100. *Id.* at 160–61.

101. *Id.*

102. *Id.* at 162; *see Sunnyvale Dad Arrested at Border after AMBER Alert Abduction; Son Safe*, CBS NEWS (Nov. 6, 2013, at 19:04 PT), https://www.cbsnews.com/sanfrancisco/news/sunnyvale-amber-alert-issued-for-infant-

AMBER Alerts may pose other potential risks to victims because they are prone to false or inaccurate information received from the public. Allocating time and resources to investigating such information inherently diverts attention away from other relevant and accurate information.[103]

AMBER Alert might also negatively impact those considered perpetrators. Often, these alleged perpetrators do not perceive themselves as such.[104] In fact, in many of the family-related disputes involving children, those perceived as perpetrators take kids from their homes under the belief that it serves the best interest of the child.[105] Regardless, and given the system's emphasis on quick response times, one can imagine situations where family members may be considered abductors even though the context in which they were found with the child lends itself to alternative explanations.[106] This has a negative impact on the privacy and public image of the alleged abductor and could also lead to unnecessary incarceration.

The third concern is the exacerbation of fear among members of the public.[107] Studies have consistently shown that exposure to mass media portrayal of crime distorts public perception of the reality of crime and often leads to panic, support for harsher penal policies, and imbalanced allocation of law enforcement resources.[108] This is regardless of the accuracy of such a portrayal.[109] AMBER Alerts raise particular concerns in this context given the nature of the crime involved and their inherent goal of creating an environment saturated with media coverage once an alert is initiated.[110]

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taken-from-apartment-complex/ [https://perma.cc/59LY-6P2S] (discussing a case in which an abductor threatened to harm a child if law enforcement were notified).

103. Griffin & Wiecko, *supra* note 95, at 162–63.

104. *Id.* at 161.

105. *Id.*

106. *Id.* at 161–62.

107. *Id.* at 158.

108. Griffin & Wiecko, *supra* note 95, at 164–65. *See generally* Ravid, *supra* note 55, at 545–48 (discussing the "potential psychological effects" of media coverage of crime on the "mindset and policy attitudes of media consumers"). *See also* Sara Sun Beale, *The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness*, 48 WM. & MARY L. REV. 397, 441 (2006) (reporting that "[m]ost people also trust the accuracy and fairness of the information" they receive from news broadcasts about the criminal legal system). Sara Sun Beale argues that the media plays a crucial role in directing attention to certain issues and "priming" the way viewers perceive related policy. Beale, *supra*, at 442. Thus, agenda setting the issue of crime and an often politically and racially charged priming thereof has contributed to an increased desire for punitiveness. *Id.* at 442, 445–46.

109. Ravid, *supra* note 55, at 546; Griffin & Wiecko, *supra* note 95, at 164–65.

110. Griffin & Wiecko, *supra* note 95, at 165.

The fourth concern, and the opposite response, is the false hope in the belief that truly threatening abduction cases are being well-handled.[111] Particularly significant is the tension between the high expectations of the system and its inability to fully deliver what it promises.[112] This tension, in turn, can create unjustified accusations of law enforcement's disfunction in abduction cases, and more broadly, hold authorities responsible for the system's failures.[113]

The fifth concern is that the relatively frequent exposure to AMBER Alert vis-à-vis the actual statistical occurrence of life-threatening abduction cases in the U.S. prevents "public discourse regarding the nature of threats to children and their likely remedies."[114] The tension between these two vectors is not only conceptually problematic but may also lead to an imbalanced resource allocation toward AMBER-related incidents, despite the fact that other, more threatening concerns for American children should instead be prioritized.[115] These concerns are particularly relevant to the issue of missing Black children, as the next section will discuss.[116]

However, even scholars who were skeptical of AMBER's celebrated success stories and its ability to achieve its initial goals recognized its potential second-order or expressive effects. For example, they discussed AMBER's potential contribution to improving technology, encouraging community involvement, changing the mindset of police officers involved in the investigation, and what was recognized as "AMBER's Prime"—the public's greater inclination to provide information to the authorities when an AMBER Alert message is attached to the report.[117] We will discuss these expressive benefits later in the context of Ebony Law as well.

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111. *Id.* at 158.

112. *Id.* at 165–66.

113. *Id.* at 165.

114. *Id.* at 158, 167–68.

115. For example, allocating resources toward welfare, employment, parental counseling, substance abuse programs, and more. *Id.* at 168; JANET R. JOHNSTON & LINDA K. GIRDNER, OFF. OF JUV. JUST. & DELINQ. PREVENTION, NCJ 182788, FAMILY ABDUCTORS: DESCRIPTIVE PROFILES AND PREVENTIVE INTERVENTIONS (2001), https://www.ojp.gov/pdffiles1/ojjdp/182788.pdf [https://perma.cc/ZEV4-UDQ9].

116. *See infra* Part II.

117. Griffin, Williams, Wooldredge & Miller, *supra* note 84, at 502–03; Jennifer D. Greer, Po-Lin Pan, David Flores & Marti Cecilia Collins, *Priming and Source Credibility Effects on Individual Responses to AMBER and Other Mediated Missing Child Alerts*, 49 SOC. SCI. J. 295, 301 (2012) (documenting better public responses to AMBER Alert compared to a generalized alert system); Zgoba, *supra* note 90, at 78–79.

II. THE CURRENT REALITY OF MISSING CHILDREN–RACE AND GENDER DISPARITIES

This Part examines the stark racial and gender disparities in missing children cases, focusing particularly on the disproportionate rate at which Black children go missing and the unequal institutional response they receive. It presents data revealing that Black children go missing at significantly higher rates than white children, explores the systemic factors contributing to this disparity—including overrepresentation in foster care and vulnerability to sex trafficking—and analyzes how the AMBER Alert system fails to provide equitable treatment to Black children.

A. Data

The NCIC collects information on missing persons statistics from the federal, state and local levels.[118] Managed by the FBI, it is a "locator-type file" used by states and local agencies to locate missing persons, with an emphasis on missing juveniles who make up a large number of missing persons each year.[119] The Crime Control Act of 1990 promulgates state requirements for reporting missing children under 34 U.S.C. § 41308, which include the child's demographics, "a recent photograph of the child," "the last known contact with the child," and "the category under which the child is reported missing."[120] This information must be provided to the NCIC within two hours of the child

118. *National Crime Information Center*, FED. BUREAU OF INVESTIGATION, https://irp.fas.org/agency/doj/fbi/is/ncic.htm [https://perma.cc/PH3E-8FZH] (last visited Sep. 12, 2025). NCIC offers a definition of "Missing Persons," which includes:

> 1. A person of any age who is missing and who is under proven physical/mental disability or is senile, thereby subjecting that person or others to personal and immediate danger.
>
> 2. A person of any age who is missing under circumstances indicating that the disappearance was not voluntary.
>
> 3. A person of any age who is missing under circumstances indicating that that person's physical safety may be in danger.
>
> 4. A person of any age who is missing after a catastrophe.
>
> 5. A person who is missing and declared unemancipated as defined by the laws of the person's state of residence and does not meet any of the entry criteria set forth in 1–4 above.

Id.

119. WILLIAM H. WEBSTER, NATIONAL CRIME INFORMATION CENTER: THE INVESTIGATIVE TOOL: A GUIDE TO THE USE AND BENEFITS OF NCIC 23 (1984).

120. 34 U.S.C. § 41308(3)(A)–(D).

being reported missing.[121] The NCMEC must be notified of each child reported missing from foster care or a childcare institution.[122]

While data sources vary, a review of the public information indicates that in United States, there are more than 300,000 missing children every year.[123] The data about missing persons collected by the NCIC between 2012 and 2022 reveals several noticeable trends.[124]

First, most of the missing individuals are less than eighteen years old. The NCIC data from 2012 to 2022 reveals that of the total missing persons reported each year, an average of 70.3 percent were juveniles aged zero to seventeen. At the end of the year, an average of 38 percent of missing juvenile cases were still active.

Second, there are more females reported missing each year than males in every demographic. Figure 1 illustrates the gender differences among missing children under eighteen. On average, females represent 54 percent of the missing children population, and males represent the remaining 46 percent. Unfortunately, the data is not sufficiently sensitive to gender non-conforming categories, a limitation that should be considered when evaluating the data.

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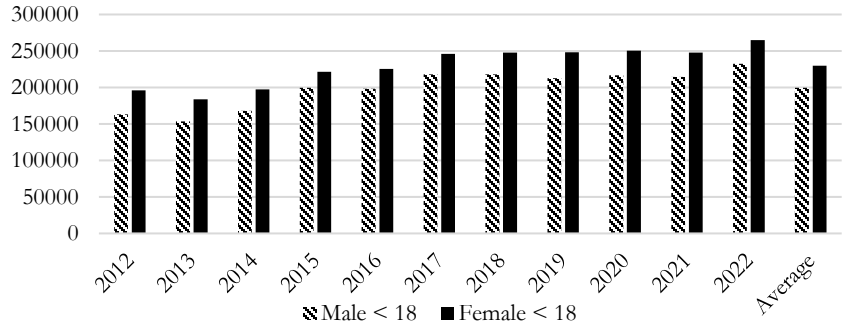
121. *Id.* § 41308(3).

122. *Id.* § 41308(4)(C).

123. *See Missing and Exploited Children*, *supra* note 73 ("In 2024, there were 349,557 reports of missing persons, involving youth, entered into the Federal Bureau of Investigation's National Crime Information Center (NCIC)."); *Every Missing Child Has a Story*, NAT'L CHILD PROT. TASK FORCE, https://ncptf.org/our-impact/missing-children/ [https://perma.cc/77GY-NLTU] (last visited Oct. 2, 2025) ("In the U.S. there are over 460,000 missing children reported each year.").

124. The following analysis will utilize annual NCIC Missing Person and Unidentified Person Statistics reports from 2012 to 2022. The data utilized is inclusive of all missing children under eighteen in any category (reported as involuntary, endangered, juvenile, disabled, and catastrophe victim). These reports are on file with authors. For two examples of these reports, see *NCIC Missing Person and Unidentified Person Statistics for 2012*, NAT'L CRIME INFO. CTR. (2012), https://www.fbi.gov/about-us/cjis/ncic/ncic-missing-person-and-unidentified-person-statistics-for-2012/ and NAT'L CRIME INFO. CTR., 2022 NCIC MISSING PERSON AND UNIDENTIFIED PERSON STATISTICS (2023) . This analysis will also utilize information from the Kids Count Data Center. For this data, see *Selected Kids Count Indicators for Nation in United States*, ANNIE E. CASEY FOUND.: KIDS COUNT DATA CTR. (Sep. 2025), https://datacenter.aecf.org/data/customreports/1/103 [https://perma.cc/R5XN-RYEX].

Figure 1: Missing Children by Gender (2012–2022)

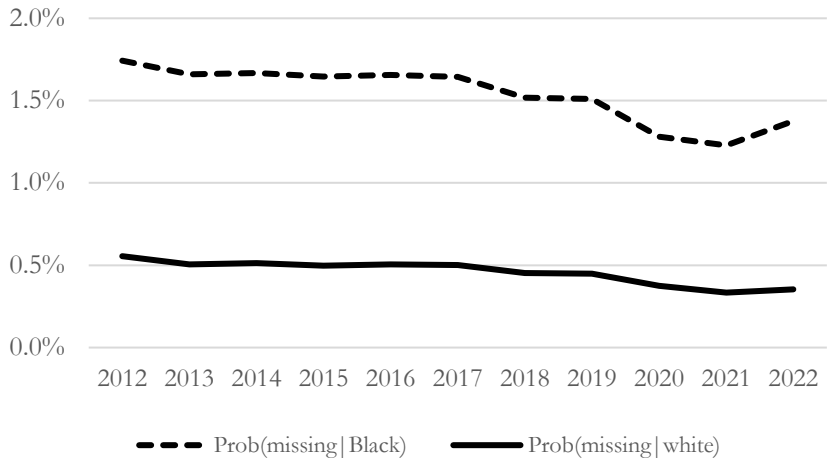


Note: Based on NCIC Missing Person Data

Third is the pattern that is at the focus of this Article, Black children under eighteen are reported missing disproportionately compared to their true population rates. According to NCIC data, Black children represented, on average, 37 percent of the total missing children population while white children comprised 56.5 percent. During those years, however, Black children made up only 14 percent of the total population of children ages zero to seventeen and thus went missing at a disproportionate rate of more than twice their actual representation.

To understand the disproportionate rates at which Black children went missing, we analyzed the data using a Bayesian statistical model, which shows the Bayesian probability of going missing given one's race. Figure 2 captures the differences between the Bayesian probability of Black children going missing (on average 1.5 percent) compared to white children (on average 0.45 percent), indicating that, on average, the probability of Black children going missing is *three times* higher than the probability of white children going missing.

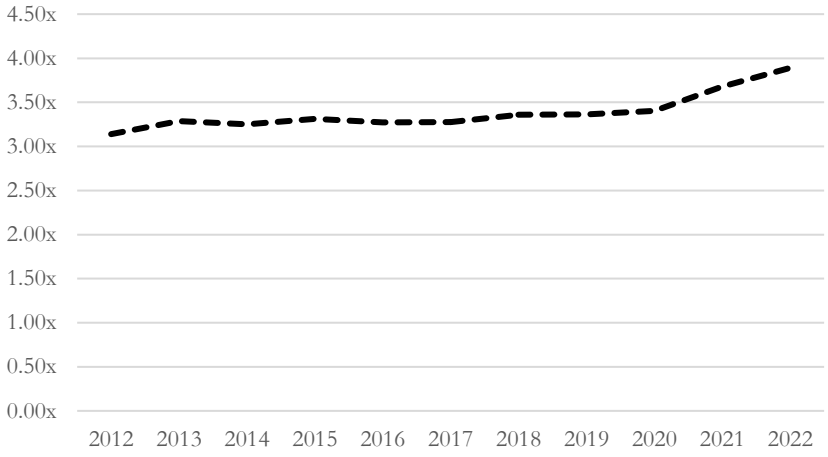
Figure 2: Bayesian Probability of Going Missing by Race (2012–2022)



Note: Based on NCIC Missing Person Data and Kids Count Data Center

Figure 3 represents the ratio between the Bayesian probabilities of Black children going missing and the Bayesian probabilities of white children going missing over the years—that is, the disparity between the probabilities of Black children going missing compared to white children. As the figure indicates, since 2012, we have been witnessing an increase in the disparity between these two groups, with the probability of Black children going missing reaching, in 2022, a record of almost *four times* the probability of white children going missing.

Figure 3: Ratio of Bayesian Probabilities of Going Missing, Black and White Children



Note: Based on NCIC Missing Person Data and Kids Count Data Center

The data thus clearly reveals deep, intersectional gender and race disparities in the problem of missing children in the United States.[125] The recent *Missing and Minority Report* reiterated this troubling reality, and even raised an alarm: "The reality is we do not know how severe the true minority and missing problem is nationally due to inconsistent demographic data and different reporting standards across the country."[126] The next section will delve deeper into the reasons for such disparities, particularly in the context of race.

B. Why Do Black Children Go Missing Disproportionately?

As the data indicates, Black children go missing at disproportionately higher rates than other children, particularly white children. There is also an institutional recognition of this phenomenon. For example, the NCMEC clearly acknowledged this troubling reality.[127] Generally speaking, Black children are subjected to systemic inequalities

125. While this Article's focus is on racial disparities within the population of missing children, gender disparities are equally important and should be meaningfully considered when rethinking any new legislation to address the problem of missing children.

126. *Missing and Minority Report*, *supra* note 16.

127. *Protecting Missing and Exploited Children: Hearing Before the Subcomm. on Early Childhood, Elementary & Secondary Educ.*, *supra* note 14; *see Our Impact: 2024*, *supra* note 14.

that contribute to their vulnerability and exploitation.[128] Many of these vulnerabilities are not new and can be dated back to the founding days of America.[129] For example, Black households are two-and-a-half times more likely to experience food insecurity compared to white households, and Black children are more likely to attend underfunded schools, contributing to ever-growing higher education and wealth gaps between Black and white families.[130] This is not an exhaustive list of the systemic inequalities that affect Black children, but, in a nutshell, it offers a glimpse into what Black families and their children are facing in America.

In the context of missing children, two main reasons likely explain why Black children are going missing at higher rates. First, Black children are overrepresented in the foster care system. Second, Black children are more vulnerable to being trafficked.

1. Overrepresentation in the Foster Care System

The disproportionate presence of Black children in the foster care system represents the systemic inequality that Black communities continue to suffer in America. Generally, Black children are twice as

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128. *See generally* ELIJAH ANDERSON, CODE OF THE STREET: DECENCY, VIOLENCE, AND THE MORAL LIFE OF THE INNER CITY 32–33 (1999) (discussing a pervasive "opposition culture" in inner city Black communities and arguing that "[s]imply living in such an environment places young people at special risk of falling victim to aggressive behavior"). Anderson argues that socially isolated communities with narrow pathways to success funnel young people into illicit professions, thereby feeding a positive feedback loop of vulnerability. *Id.* at 110–13; *see also* Richard Lofton & James Earl Davis, *Toward a Black Habitus: African Americans Navigating Systemic Inequalities within Home, School, and Community*, 84 J. NEGRO EDUC. 214, 219 (2015) (discussing "racialized experiences that produce different struggles and dilemmas . . . [for] African Americans in their homes, schools, and community").

129. DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 19–26 (1993) (discussing racial residential segregation as a product of racial "prejudice and discrimination in employment" in the post-bellum era); Lofton & Davis, *supra* note 128, at 215 ("[T]he legacies of slavery and Jim Crow laws, and the construction and maintenance of concentrated poverty, have further produced distinct paths for African Americans."). The authors observe that young African Americans are forced to "come to terms" with "negative perceptions, unequal distribution of resources, . . . police brutality" and other "unequal treatment" that have become ingrained "multigenerational inequalities." *Id.* at 215.

130. *The Race Gap: Black White*, REUTERS GRAPHICS, https://www.reuters.com/graphics/GLOBAL-RACE/USA/nmopajawjva/#0 [https://perma.cc/2XTE-94UM] (last visited Sep. 14, 2025); *see also* ANDERSON, *supra* note 128, at 77 (discussing the pernicious effect that attending an underfunded, poorly regarded school may have on a young student). When a school, and consequently its students, suffers a poor reputation, those students are more likely to "embrac[e] the oppositional culture," which often appears (dangerously) to offer more attainable paths to upward mobility. *Id.* at 96–97; *see* Lofton & Davis, *supra* note 128, at 215.

likely to be placed into foster care than white children, tend to stay in foster care longer, and are less likely to be reunited with their families or adopted by foster families.[131] Furthermore, 40 percent of Black children also undergo more placement changes in the system, creating more instability in their already traumatic lives.[132]

The history of Black families and children with the foster care system is complicated and is beyond the scope of this Article. However, it is impossible to discuss the prevalence of Black children in the American foster care system without briefly recognizing the treatment that Black families currently are, and have historically been, subject to. Before the Civil Rights Movement, Black families were not subject to child protective services searches or enforcement.[133] Once the system began to focus on protecting minority children, it became more punitive toward their parents.[134] Today, about one third of women in jail are Black, and about one third of children in the foster system are Black.[135] While on its face there is not a direct correlation between this data, as Dorothy Roberts explores in her work, these glaring disparities are evidence of the systemic mistreatment of Black and minority families:[136]

> As a result of the political choice to fund punitive instead of supportive programs, criminal justice and child welfare supervision of mothers is pervasive in poor black communities. The simultaneous explosion of foster care and prison

131. Bilal G. Morris, *Foster Care: Why Are Black Children Overrepresented in Child Welfare?*, NEWSONE (May 2, 2024), https://newsone.com/5199787/foster-care-why-are-black-children-overrepresented-in-child-welfare/ [https://perma.cc/EMC3-G26F]; S. Lisa Washington, *Critical Family Regulation Scholarship*, 2024 WIS. L. REV. 1559, 1567; S. Lisa Washington, *Time and Punishment*, 134 YALE L. J. 536, 557 (2024) [hereinafter Washington, *Time and Punishment*].

132. NAT'L CTR. FOR MISSING & EXPLOITED CHILD., ANALYSIS OF CHILDREN MISSING FROM CARE REPORTED TO NCMEC 2013–2022, at 9 (2023) (on file with authors); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1476–77, 1483–84 (2012) [hereinafter Roberts, *Prison, Foster Care*] (discussing the disproportionate presence of African American children in the foster care system and its corresponding, destructive community impact). *See generally* DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002) [hereinafter, ROBERTS, SHATTERED BONDS] (describing the racial politics of the foster care system and its negative impact on Black children, their families, and their communities); DANETTE DEREZOTES, JOHN POERTNER & MARK F. TESTA, RACE MATTERS IN CHILD WELFARE: THE OVERREPRESENTATION OF AFRICAN AMERICAN CHILDREN IN THE SYSTEM V–VII (2005) (discussing the effects of Black children's overrepresentation in the foster care system on their families and communities).

133. DOROTHY ROBERTS, TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES–AND HOW ABOLITION CAN BUILD A SAFER WORLD 117–22 (2022) [hereinafter ROBERTS, TORN APART].

134. *Id.* at 4–5.

135. Roberts, *Prison, Foster Care*, *supra*, note 132, at 1477.

136. *Id.*; ROBERTS, TORN APART, *supra* note 133, at 261–65, 282.

> populations reflects an alarming abandonment of black mothers. Instead of devoting adequate resources to support their families, the state increasingly shuffles family members into the punitive machinery of law enforcement and child protection. Child protection proceedings are more akin to criminal trials than most civil adjudications because they pit mothers accused of child maltreatment against the state and morally condemn them.[137]

Child protective services can enter people's homes without a warrant or any judicial oversight at any time to ensure child safety.[138] These searches and intrusions disproportionately impact Black families.[139] Parents subjected to these searches are often not aware of their rights or the impact that exercising their rights might have on the situation.[140] These authorities are given the power to tear families apart on a whim with little judicial or legislative oversight, and it is Black families that often disproportionately bear the brunt of these enforcements.[141]

Additionally, these searches give investigators discretion to interpret "conditions of poverty—lack of food, insecure housing, inadequate medical care—as evidence of parental unfitness."[142] Infractions that would go unnoticed or unenforced in white homes, such as having alcohol in the house, are often used as grounds to break Black families apart.[143] This form of heightened family policing is "most intense in communities that exist at the intersection of structural racism and poverty."[144]

Beyond these broad systemic issues in the treatment of Black families, legislation like the Adoption and Safe Families Act of 1997 (ASFA) was recognized as another key moment that contributed to the unequal treatment of Black children.[145] ASFA was enacted in response to

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137. Roberts, *Prison, Foster Care*, *supra* note 132, at 1491–92 (footnote omitted).

138. ROBERTS, TORN APART, *supra* note 133, at 21.

139. *Id.*

140. *Id.* at 22.

141. *Id.* at 21, 23.

142. *Id.* at 21.

143. *See id.* at 21–22.

144. *Id.* at 36.

145. *See* The Safe Families Act, 42 U.S.C. §§ 671–679(b) (1997); Mical Raz, *What We've Learned About the Impact of the Adoption and Safe Families Act 25 Years Later*, CHILD.'S HOSP. OF PHILA.: POL'Y LAB (Feb. 1, 2023), https://policylab.chop.edu/blog/what-weve-learned-about-impact-adoption-and-safe-families-act-25-years-later [https://perma.cc/83QT-WUYC]; Dorothy Roberts, *The Clinton-Era Adoption Law that Still Devastates Black Families Today*, SLATE (Nov. 21, 2022, at 05:50 CT), https://slate.com/news-and-politics/2022/11/racial-justice-bad-clinton-adoption-law.html [https://perma.cc/672Z-KPME]; Christina White, *Federally Mandated Destruction of the Black Family: The Adoption and Safe Families Act*, 1 NW. J.L. & SOC. POL'Y 303, 303 (2006) (criticizing ASFA for removing Black children from

the significant amount of time children spent in foster care.[146] Therefore, it adopted an approach that rushes to find a permanent adoptive home.[147] By doing so, it allowed social workers to reach termination decisions earlier by effectively narrowing the scope of the required "reasonable efforts" to reunify a child in foster care and their families through family-strengthening and preservation.[148] What became clear twenty-five years after its enactment, however, was its disproportionately negative effect on poor Black parents: Black families experienced significantly lower rates of reunification with their children.[149] As such, Black families and children have been, and continue to be, separated permanently from their families, sometimes without these children having another home to go to.[150]

In 2020, Black youth were overrepresented in the foster care system, making up 20 percent of the children in the foster care system overall despite representing only 14 percent of the youth population.[151] NCMEC analyzed children missing from foster care between 2013 and 2022 and found that 66 percent of the missing children reported from this time period went missing from foster care or group homes.[152] Of those children missing from care, 35 percent were white and 35 percent of those children were Black.[153] Among the 1 percent of those missing children who were recovered deceased, 38 percent were Black children and 33 percent were white children.[154] A majority of the children going

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their home as a way to establish permanency); Roberts, *Prison Life, Foster Care*, *supra* note 132, at 1485 (criticizing the ASFA, which was passed concurrently with welfare cuts, for "reducing services to families while intensifying their punitive functions").

146. Raz, *supra* note 145.

147. *Id.*; Washington, *Time and Punishment*, *supra* note 131, at 566–68.

148. *See* Washington, *Time and Punishment*, *supra* note 131, at 597–99; ROBERTS, SHATTERED BONDS *supra* note 132, at 104–12.

149. Raz, *supra* note 145. As Raz indicates in her book, this reality was also documented in the years before the passage of ASFA. MICAL RAZ, ABUSIVE POLICIES: HOW THE AMERICAN CHILD WELFARE SYSTEM LOST ITS WAY 79–80 (2020). Furthermore, concerns about ASFA's likely consequences were also raised during its enactment, but to no avail. *Id.* at 91.

150. *See* Raz, *supra* note 145. And note that this reality also affects children in the foster care system that become parents while in foster care, who according to existing data "are more likely to have their children removed." S. Lisa Washington, *Pathology Logics*, 117 NW. U. L. REV. 1523, 1556 (2023).

151. NAT'L CTR. FOR MISSING & EXPLOITED CHILD., *supra* note 132, at 5; *see also* Denise C. Herz et al., *Dual System Youth and their Pathways: A Comparison of Incidence, Characteristics, and System Experiences Using Linked Administration Data*, 48 J. YOUTH & ADOLESCENCE 2432, 2433–35 (2019) (finding similar evidence for overrepresentation in the foster care system and analyzing the connections between presence in the child welfare system and the juvenile justice system).

152. NAT'L CTR. FOR MISSING & EXPLOITED CHILD., *supra* note 132, at 3.

153. *Id.* at 4.

154. *Id.* at 17.

missing and labeled as Endangered Runaways have mostly all been recovered.[155] This data leads to several conclusions. First, Black youth are overrepresented in the foster care, and such representation is strongly related to their disproportionate missing rates.[156] Second, Black children who go missing are at a disproportionate risk of death compared to white children.[157]

2. Likely Victimization Through Sex Trafficking

NCMEC reports several categories of vulnerability incident to a child going missing, including victimization through child sex trafficking. In America, approximately 30 percent of reported missing children are being trafficked, and of these, 60 percent are foster care youth.[158] In fact, missing children are "propositioned for exploitation within two to fortyeight hours of going missing."[159] According to the data, female children are 27 percent more likely to go missing due to the prevalence of sex trafficking victimization.[160] In 2024 alone, 18 percent of children reported missing from care "were likely victims of child sex trafficking."[161] It is also harder for law enforcement agencies to recover trafficked children who are drawn into the sex work path.[162] Given the

155. *Id.* at 2. While beyond the scope of this Article, the data identified by the NCMEC indicates that additional racial and ethnic groups, particularly Hispanic children, suffer from disproportionate rates of endangerment that should be explored in future research.

156. For a particular illustration on the intersection between Black children's overrepresentation in the foster care system and the deficiencies of the AMBER Alert system, see *supra* notes 131–132 and the discussion of the RILYA alert *infra* Part III.

157. *See* NAT'L CTR. FOR MISSING & EXPLOITED CHILD., *supra* note 132, at 17.

158. Stephanie Myers, *San Diego Needs to End Human Trafficking*, SDMETRO (Jan. 30, 2022), https://www.sandiegometro.com/2022/01/save-our-children/ [https://perma.cc/2UMT-E2DH]; *see also Missing and Minority Report*, *supra* note 16 ("Research indicated up to 40 [percent] of runaways end up being sexually trafficked or exploited.").

159. *Missing and Minority Report*, *supra* note 16.

160. NAT'L CTR. FOR MISSING & EXPLOITED CHILD., *supra* note 132, at 13. Other categories include "previous missing incidents, possessing a weapon, use of alcohol/drugs, possible gang involvement, mental health, pregnancy, self-harm, suicidal tendencies, disabilities, [and] having a medical condition . . . ." *Id.* at 13. About 88 percent of children had at least one endangerment category. *Id.* at 14.

161. *Child Sex Trafficking Overview*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., https://www.missingkids.org/content/dam/missingkids/pdfs/CST-Identification-Resource.pdf [https://perma.cc/MQT3-DCWT] (last visited Sep. 14, 2025).

162. *Id.*; Yvonne Rafferty, *Challenges to the Rapid Identification of Children Who Have Been Trafficked for Commercial Sexual Exploitation*, 52 CHILD ABUSE & NEGLECT 158, 158–66 (2016) (discussing the challenges of identifying children who are trafficked and situating the identification process as the first step in the recovery process); *see also* CTR. FOR THE HUM. RTS. OF CHILD., LOYOLA UNIV. CHI., HUMAN TRAFFICKING AND EXPLOITATION OF CHILDREN AND YOUTH IN THE UNITED STATES 2–3 (Katherine

unique dangers posed by sex traffickers, NCMEC has a specialized response system for children who might be trafficked, providing individuals with law enforcement resources, including case management on cases of missing children who are at risk for trafficking.[163]

A sad and unfortunate revelation is that Black children, especially females, are most vulnerable to exploitation for sex trafficking.[164] As discussed, Black girls are overrepresented in the foster care system and are more likely to run away from care.[165] Thus, they are also more likely to be approached by sex traffickers and taken advantage of due to their vulnerability.[166] Consequently, Black children are more likely to go missing as a result of being trafficked.[167]

The problem of missing Black children, however, is not only a problem of their overrepresentation—compared to white children—among missing children. It is also a problem of how institutional resources are allocated to help in their recovery *after* they go missing. The next section will address this problem.

C. The Unequal Treatment of Black Children Under the AMBER Alert System

This section emphasizes another systemic failure in the treatment of Black children. Not only do they go missing at disproportionate rates, but also, after they go missing, they are treated unequally by law enforcement agencies. It is indeed a sad irony that even though data

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Kaufka & Catherine Lee eds., 2012) (noting that "[c]hildren are hard to find" because those in the commercial sex trade frequently dress and act like adults and also are not interested in being "rescued").

163. *See Child Sex Trafficking*, NAT'L CTR. FOR MISSING & EXPLOITED CHILD., https://www.missingkids.org/theissues/trafficking [https://perma.cc/2389-WXKZ] (last visited Oct. 5, 2025).

164. *See* Samantha Davey, *Snapshot on the State of Black Woman and Girls: Sex Trafficking in the U.S.*, CONG. BLACK CAUCUS FOUND. (2020), https://www.cbcfinc.org/wp-content/uploads/2020/05/SexTraffickingReport3.pdf [https://perma.cc/5FQU-FCHT].

165. *See id.*

166. *See id.*; Cheryl Nelson Butler, *A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America*, 27 YALE J.L. & FEMINISM 95, 132–34 (2015) (discussing how different "forms of structural oppression" contribute to Black females being disproportionately trafficked); Mekeila C. Cook, PhuongThao D. Le & Jennifer Garcia, *Addressing Racism in the Domestic Minor Sex Trafficking of Black Girls: The Role of Public Health Critical Race Praxis*, 137 PUB. HEALTH REPS. 10S, 10S–11S (2022) (advocating for a race-conscious approach to combatting sex trafficking of minors that recognizes "the role of race and racism in contributing to the apparent increased vulnerability of Black females involved in [minor sex trafficking]").

167. At this point, the social detachment from their victimization status further deepens, transitioning toward their criminalization. *See, e.g.*, Cynthia Godsoe, *Punishment as Protection*, 52 HOUS. L. REV. 1313, 1319–22 (2015); Godsoe, *The Victim/Offender Overlap*, *supra* note 63, at 1328–29.

indicates that Black children go missing disproportionally more compared to white children, they are not considered missing "enough" to be recognized by the system that was created to assist in their recovery: the AMBER Alert system. In exploring the available data about AMBER Alert—including conversations with leading civil society organizations—we have identified two main concerns pointing at a disparate treatment of Black children compared to white children under this system.

The first concern, and the concern that is repeatedly emphasized in reports and the conversations we had, focuses on the initial willingness of law enforcement to initiate an AMBER Alert in a certain case. Under the current criteria of AMBER Alert,[168] law enforcement agencies can consider activating an AMBER Alert only if a child is classified under a set of strict criteria.[169] Civil society organizations, like Black and Missing Foundation, one of the leading non-profits devoted to increasing public awareness to the problem of missing Black children, have long been raising awareness that Black children are being unequally categorized as non-deserving of an alert initiation.[170] In particular, and this concern has also been raised by the California Legislature during the discussions that gave rise to the enactment of Ebony, Black children tend to be disproportionately classified as "runaways."[171] A child who is categorized as a runaway does not receive the same type of attention from law enforcement that they would have received if they had gone missing under the circumstances giving rise to an AMBER Alert.[172] More

168. *See supra* Section I.C.

169. *See Guidelines for Issuing Amber Alerts*, *supra* note 83.

170. *See About the Black & Missing Foundation*, BLACK AND MISSING FOUND., INC., https://blackandmissinginc.com/about/ [https://perma.cc/7QEV-ZKF4] (last visited Oct. 14, 2025). In a recent interview we conducted with Natalie Wilson, Co-Founder and Chief Operating Officer of the Black and Missing Foundation, she has reiterated this concern, suggesting this might even be the case for Black children that in fact fulfill the criteria. Zoom Interview with Natalie Wilson, Co-Founder, The Black & Missing Found. Inc. (Feb. 21, 2025).

171. *See* Kelsey Vlamis, *Police Need to Stop Classifying Missing 'Black' People as 'Runaways', Subjects of HBO's 'Black and Missing' Say*, BUS. INSIDER (Nov. 28, 2021, at 18:49 CT), https://www.businessinsider.com/hbo-black-and-missing-stop-classifying-missing-people-as-runaways-2021-11 [https://perma.cc/GY4H-4U9F]; *Missing Persons Statistics 2023*, BLACK & MISSING FOUND., INC., https://www.blackandmissinginc.com/statistics/ [https://perma.cc/C3R4-F8HZ] (last visited Oct. 14, 2025); *see also* Griffin and Wiecko, *supra* note 95, at 159–60 (discussing the potential effect of racial biases on the decision to initiate an alert) As the sources mentioned above indicate, the categorization as runaways likely reflects such bias. S.B. 673, 2023–24 Leg., Reg. Sess. § 1 (a)(13) (Cal. 2023) (codified at CAL. GOV'T CODE § 8594.14 (West 2024)) (mentioning the tendency to classify Black children as runaways).

172. Jada Moss, *The Forgotten Victims of Missing White Woman Syndrome: An Examination of Legal Measures That Contribute to the Lack of Search and Recovery of Missing Black Girls and Women*, 25 WM. & MARY J. RACE, GENDER, & SOC. JUST. 737, 737, 753–55 (2019) (discussing the missing white woman syndrome and its relations to the ill treatment of Black women who are going missing); Preston Mitchum, *The*

accurately, those classified as "runaways" simply do not receive the benefits of having an AMBER Alert activated to assist law enforcement in recovering them. There are two related concerns in this context. First, that Black children are wrongly classified as runaways, like in the case of Jholie Moussa, and second, that they remain at risk despite such categorization, for example due to sex trafficking.

There are a number of factors that potentially contribute to this classification. First, as discussed, Black children are overrepresented in foster care, and children who go missing from foster care are frequently classified as runaways.[173] Second, Black children suffer from a classification bias that psychologists have termed "adultification." Adultification is a social bias through which Black children are perceived as more adult, and thus less vulnerable, than white children.[174] Adultification contributes to additional bias against Black children, including police brutality.[175] Therefore, adultification, presenting as a

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Danger of Forcing the 'Runaway' Label on the Missing DC Girls, ROOT (Mar. 30, 2017), https://www.theroot.com/the-danger-of-forcing-the-runaway-label-on-the-missin-1793799915 [https://perma.cc/FA9G-A28N]; Sonia Ayanna Stovall, *Why Do We Seldom Hear About Missing Black Children?*, DENV. POST (June 6, 2016, at 12:44 MT), https://www.denverpost.com/2013/02/14/why-do-we-seldom-hear-about-missing-black-children [https://perma.cc/Q55S-XSBF].

173. Morris, *supra* note 131; Fred Wulczyn, *Race/Ethnicity and Running Away from Foster Care*, 119 CHILD. & YOUTH SERS. REV. 105504, 1–2 (2020) ("Running away from foster care is fairly common," but see also some nuances discussed in the Wulczyn's work.); Amy Dworsky, Fred Wulczyn & Lilian Huang, *Predictors of Running Away from Out-of-Home Care: Does County Context Matter?*, 20 CITYSCAPE 101, 101–02 (2018); Samuel J. Fasulo, Theodore P. Cross, Peggy Mosley & Joseph Leavey, *Adolescent Runaway Behavior in Specialized Foster Care*, 24 CHILD. & YOUTH SERVS. REV. 623, 623 (2002) (reporting that "[f]orty-four percent of adolescents ran away at least once during" their time at foster care).

174. *See generally* Phillip Atiba Goff, Matthew Christian Jackson, Brooke Allison Lewis Di Leone, Carmen Marie Culotta & Natalie Ann DiTomasso, *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526 (2014) (linking the adultification process with dehumanization of Black individuals, and studying the negative effects of adultification on Black male children); Aneeta Rattan, Cynthia C. Levin, Carol C. Dweck & Jennifer E. Eberhardt, *Race and the Fragility of the Legal Distinction Between Juveniles and Adults*, 7 PLOS ONE 1, 1, 4 (2012) (finding that a single word racial prime (suggesting either Black or white) influenced study participants to view juveniles as more similar to adults and express greater support for severe punishments.). *See also The Adultification of Black Children*, CTR. FOR POLICING EQUITY (Jan. 19, 2023), https://policingequity.org/resources/blog/the-adultification-of-black-children [https://perma.cc/E4CC-DYFJ] (discussing adultification effects across different settings including policing, courts, and schools). For the adultification of Black girls, see generally JAMILIA J. BLAKE & REBECCA EPSTEIN, GEO. L. CTR. ON POVERTY & INEQ., LISTENING TO BLACK WOMEN AND GIRLS: LIVED EXPERIENCES AND ADULTIFICATION BIAS (2017).

175. *See generally* Sandra Graham, & Brian S. Lowery, *Priming Unconscious Racial Stereotypes About Adolescent Offenders*, 28 L. & HUM. BEHAV. 483 (2004) (identifying priming effects against Black youth among police officers and juvenile probation officers); Goff, Jackson, Di Leone, Culotta & DiTomasso, *supra* note 174, at

racial bias which perceives Black children as less in need of protection, can potentially also affect decisions related to AMBER Alerts, as AMBER Alert is purport to provide protection for children in need when they go missing.[176]

Third, more broadly, Black children also unfortunately fall victim to racist policing that occurs in America.[177] Black children are treated more unfairly than other children and even face excessive force by police, despite being vulnerable minors.[178] Black families similarly suffer from racially disparate treatment by law enforcement.[179] This racial bias also contributes to how police officers respond to Black families when their children go missing. Rather than invest all resources to determine genuinely whether a missing child is in imminent risk of harm or abducted—as warranted by the Amber Alert criteria—police seem to be quick to reach potentially racially biased determinations that many Black missing children are simply runaways.[180]

526; Catina Miller & Brigitte Vittrup, *The Indirect Effects of Police Racial Bias on African-American Families*, 41 J. FAM. ISSUES 1699, 1701 (2020) ("Sadly, African-American children are not exempt from police brutality either. They are often viewed as being less innocent than their Caucasian peers, more likely to be misjudged for being older and perceived to be guilty, and more likely to become victims of police brutality if they are accused of participating in a crime."). For the effects of adultification on Black girls in the juvenile justice system, see I. India Tusi, *Girls, Assaulted*, 116 NW. U. L. REV. 911, 925 (2022).

176. Goff, Jackson, Di Leone, Culotta & DiTomasso, *supra* note 174, at 526; Kiara Alfonseca, *Ralph Yarl Case Highlights 'Adultification' of Black Children, Researchers Say*, ABC NEWS (Apr. 19, 2023, at 14:06 CT), https://abcnews.go.com/US/ralph-yarl-case-highlights-adultification-black-children-researchers/story?id=98662646 [https://perma.cc/A7PC-7AM8].

177. *See, e.g.*, Miller and Vittrup, *supra* note 175, at 1701; Anne McGlynn-Wright, Robert D. Crutchfield, Martie L. Skinner & Kevin P. Haggerty, *The Usual, Racialized Suspects: The Consequence of Police Contacts with Black and White Youth on Adult Arrest*, 69 SOC. PROBS. 299, 302 (2022) (finding that police encounters in childhood increase the risk of arrest in young adulthood); Goff, Jackson, Di Leone, Culotta & DiTomasso, *supra* note 174, at 526; Drew Desilver, Michael Lipka & Dalia Fahmy, *10 Things We Know About Race and Policing in the U.S.*, PEW RSCH. CTR. (June 3, 2020), https://www.pewresearch.org/short-reads/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/; Sarah McCammon, Gabe O'Connor & Ashley Brown, *Black Children Make Up More than Half of the Incidents of Police Using Force on Kids*, NPR (Oct. 21, 2021, at 16:56 ET), https://www.npr.org/2021/10/21/1048130246/black-children-make-up-more-than-half-of-the-incidents-of-police-using-force-on-.

178. *See* McCammon, O'Connor & Brown, *supra* note 177.

179. *See generally* ROBERTS, TORN APART, *supra* note 133 (discussing the racially unequal treatment of Black families under what she defines as the family-policing system); Cynthia Godsoe, *The Place of the Prosecutor in Abolitionist Praxis*, 69 UCLA L. REV. 164, 200–01 (2022) (discussing the family regulation system as a tool to preserve white supremacy); S. Lisa Washington, *Survived & Coerced: Epistemic Injustice in the Family Regulation System*, 122 COLUM. L. REV. 1097, 1103 (2022) (discussing the racialization of the family regulation system).

180. *See supra* note 172 and related references.

It is important to note, however, that the available data on the issuance of AMBER Alert makes it challenging to accurately assess racial disparities in the *issuance* of AMBER Alert. This challenge exists because data on decisions not to issue an alert is less systematically collected and because there are difficulties in obtaining a more robust analysis of AMBER Alert issuance based on age, among additional reasons.[181] However, a recent study has attempted to address the question of racial disparity in the issuance of AMBER Alerts.[182] While the study did identify what it describes as "slight bias" against Black children, the authors argue that overall AMBER Alert "decisions are not clearly or substantially tainted by favoritism toward white victims."[183]

Our independent analysis of the NCMEC data from the years 2002 to 2012 equally indicates that, particularly in the early years of the data (2012 to 2017), more alerts were issued for white children than for Black children. This gap, however, seems to narrow after 2017. We urge serious caution regarding these findings, however. First, the authors of the study themselves recognize some limitations and address their findings as "tentative."[184] Second, because in conversations we had with a representative of the Black and Missing Foundation and another social activist,[185] issues related to racially unequal issuance of AMBER Alert, mostly through the runaway categorization, were consistently emphasized. Third, because even if the data is more indicative of alert issuance of very young children, it fails to reflect issuance in cases of older children and youth, particularly Black women. This latter group is not only particularly sensitive to categorization such as runaways and the effects of adultification, but it is also more vulnerable to issues such as sex trafficking as discussed earlier and emphasized during the legislative process of Ebony.[186]

Furthermore, even if we may be witnessing some improvement in the racial disparity in the issuance of an alert (a proposition we approach with meaningful caution), recent data indicate that the disparate treatment

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181. Timothy Griffin, Colleen Kedleck & Katie Houk, *AMBER Alert: An Ironic Antidote to "Missing White Girl Syndrome"?*, 50 CRIM. JUST. REV. 333, 333, 338–40, 344–46 (2024). There are also additional caveats related to the existing data. *See Missing and Minority Report*, *supra* note 16 ("The reality is we do not know how severe the true minority and missing problem is nationally due to inconsistent demographic data and different reporting standards across the country.").

182. Griffin, Kedleck & Houk, *supra* note 181.

183. *Id.* at 341–43.

184. *Id.* at 344–46.

185. Zoom Interview with Natalie Wilson, *supra* note 170; Zoom Interview with Ebony Gray, Social Activist (Feb. 22, 2025). For Ebony Gray's social media page that she runs related to Black missing children and youth, see Exposure for Missing POC (@findourmissingpoc), INSTAGRAM, https://www.instagram.com/findourmissingpoc/ (on file with the Wisconsin Law Review).

186. *See supra* Section II.B.2 and *infra* Section III.A.

of AMBER does not end at the entry gate. In 2023, as part of a larger project investigating "disparities in how cases of missing children are handled," a team of journalists from *USA Today* conducted independent research on the success of AMBER Alerts for different racial groups between 2017 and 2023.[187] The findings reiterated the potential racially proportional issuance of alerts, but identified a new disturbing pattern: striking racial disparities in the *success rates* of AMBER Alerts. While the alerts helped recover one in three white and Hispanic children, they only helped recover one in seven Black children.[188] This *USA Today* study sheds light on another concern relating to the effects of AMBER on Black communities—its actual success in recovering missing children. That is, even if one wishes to argue that there is some improvement in the racial disparity in the issuance of alerts, this by itself is insufficient to eliminate the system-wide racial disparities in the utilization and success of AMBER. Indeed, aligned with our argument regarding Griffin, Kedleck and Houk's study, there is still much to explore regarding AMBER's disproportionately negative effect on Black communities, and we still encounter meaningful data limitations in that process. However, we believe that the overall reality of AMBER Alert demonstrates a meaningful institutional failure regarding the treatment of Black children and their communities.

When AMBER Alert was adopted, it was touted as a revolutionary tool to assist law enforcement agencies in recovering missing children. While the overall efficacy of the AMBER system can be challenged, this Article argues that AMBER's allegedly colorblind procedure is not applied equally to all children. Indeed, Black children are mistreated by the AMBER system compared to their white counterparts. The consequences of such disparate treatment are clear: Less law enforcement resources are being utilized in the process of recovering Black children, despite the fact that Black children are going missing at disproportionate rates compared to their percentage in the population. Black children, then, are deprived of the advantages of AMBER, including the possibility of faster recovery pace due to crowdsourcing of information from the public. Ebony Law and related legislation acknowledge this racialized reality and take meaningful steps toward combatting it through targeted, race-conscious initiatives.

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187. Doug Caruso, N'dea Yancey-Bragg & Rachel Looker, *Do Amber Alerts Work? Data Shows How Often They Help Bring Missing Kids Home*, USA TODAY (Feb. 23, 2023, at 11:45 ET), https://www.usatoday.com/in-depth/news/investigations/2023/02/23/amber-alert-missing-children-usa-today-data-analysis-finds-kids-rarely-helped/11089397002/ [https://perma.cc/5GT7-2KMF].

188. *Id.* Doug Caruso, Senior Data Editor at USA Today, has responded to our request and kindly shared the data utilized during the study.

III. ADDRESSING AMBER'S UNEQUAL TREATMENT OF BLACK CHILDREN THROUGH STATE LEGISLATION

The concerning reality of Black missing children and the systemic disparate treatment they receive under the AMBER Alert system has slowly grabbed the attention of stakeholders in different states. In response, some states have started introducing new legislation that could address these concerns. First was Florida, which in 2003 introduced the RILYA Alert.[189] RILYA Alert "was created in response to the disappearance" of four-year-old Rilya Wilson.[190] Rilya was missing for almost two years before anyone noticed her disappearance, all while she was in the care of Florida's Department of Children and Families.[191] A non-profit organization, Peas In Their Pods, created the RILYA Alert to expand the stringent requirements of AMBER and to include missing children in the foster care system even if they were classified as runaways.[192] The RILYA Alert's requirements are that the abducted child must be seventeen or younger, the parent must have contacted police to report their child missing, and police must believe that the child is in "imminent danger of serious bodily injury or death."[193] The alert is electronic and intended to "bridge the gap of information that AMBER Alert fails to capture in its program criteria."[194] The Florida Legislature codified the Rilya Wilson Act that seeks to protect children in care "to help ameliorate the negative consequences of abuse, neglect, and abandonment."[195] As the organization that initiated RILYA Alert emphasized, "[n]o missing child is excluded from receiving the RILYA Alert."[196]

While RILYA Alert was the first attempt to address the problem of AMBER's disproportionately negative effect on Black children, it did not fundamentally challenge the AMBER Alert criteria. Further, RILYA failed to galvanize other states in addressing this problem—that is, until California entered the fray with its promising Ebony Law.

A. Ebony Law: Legislative History

As expressed in the text of Ebony Law itself, the dilemma which led to Ebony mirrors the nationwide problem of missing Black children

189. *See* Moss, *supra* note 172, at 757.

190. *Id.* at 756.

191. *Id.*

192. PEAS IN THEIR PODS, https://www.peasintheirpods.com/rilya-alert-history [https://perma.cc/BYW6-MNTU] (last visited Oct. 1, 2025).

193. *Id.*

194. Moss, *supra* note 172, at 757; PEAS IN THEIR PODS, *supra* note 192.

195. FLA. STAT. § 39.604(2) (2024).

196. PEAS IN THEIR PODS, *supra* note 192.

discussed in Part II. First, Black youth make up about 38 percent of all missing persons and "Black children make up about 33 percent of all missing child cases" despite making up only 13.4 percent of the population.[197] Moreover, the Congressional Black Caucus Foundation has found that Black women and girls are especially at an increased risk of being harmed—40 percent of sex trafficking victims were identified as Black women, and 53 percent of all minors arrested for "juvenile prostitution" were Black children.[198] Last, it was emphasized that Black children "are disproportionately classified as 'runaways'" for the purposes of AMBER.[199] While these figures represent a national disparity, Black children and young women are disproportionately missing in California as well.[200] As such, missing Black children in California are less likely to receive an AMBER Alert and benefit from the enhanced media and law enforcement attention that goes along with it.

To address this reality, Democratic California Senator, Steven Bradford, proposed the Ebony Alert system in February 2023.[201] In essence, the Ebony Alert is a state-level alert system which authorizes law enforcement agencies to request the California Highway Patrol (CHP) to issue an alert, similar to AMBER Alert, for the disappearance of Black youth and young adults. The proposal to enact the Ebony Alert was sponsored by the National Association for the Advancement of Colored People (NAACP) California-Hawaii State Conference. According to the legislative proposal, Ebony Alert is intended to address the unique vulnerabilities faced by Black missing girls and young women, leading to de facto disparities in how they are treated by law enforcement agencies.[202] Ebony Alert is intended "to address the often ignored or lack of attention given to Black children and young Black women that are missing in California."[203] Ebony Alert is thus "intend[ed] to provide law

197. S.B. 673, 2023–24 Leg., Reg. Sess. § 1 (a)(3), (5) (Cal. 2023) (codified at CAL. GOV'T CODE § 8594.14 (West 2024)).

198. *Id.* § 1(a)(7)–(8).

199. *See id.* § 1(b).

200. *Id.* § 1(a)(13).

201. *See Bill History: SB-673 Emergency Notification: Ebony Alert, Missing Black Youth.*, CAL. LEGIS. INFO. [hereinafter *SB-673 Bill History*], https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=202320240SB673 [https://perma.cc/3TU7-G73H] (last visited Sep. 14, 2025); Antonio Ray Harvey, *Gov. Newsom Signs Sen. Steve Bradford's Ebony Alert Bill into Law*, SUITE LIFE SOCAL (Oct. 9, 2023), https://www.suitelifesocal.com/categories/magazine/community/gov-newsom-signs-sen-steve-bradford-s-ebony-alert-bill-into-law [https://perma.cc/FM38-2ZJ8].

202. S.B. 673, 2023–24 Leg., Reg. Sess. (Cal. 2023).

203. Harvey, *supra* note 201.

enforcement with additional tools" to alert and locate disproportionately missing Black children and young women.[204]

Senate Bill No. 673, Emergency Notification: Ebony Alert, was introduced into the California Senate in February 2023 and received no opposition from Democrats or Republicans throughout its legislative history.[205] In April 2023, Senator Bradford and the NAACP California-Hawaii State Conference spoke at the hearing in front of the Senate Committee on Public Safety and explained the need for Ebony Law, emphasizing the disproportionate number of missing Black children and their unique vulnerabilities, including their risk of being trafficked.[206] In particular, the NAACP emphasized the over categorization of Black children as runaways for the purposes of AMBER, ultimately pushing Black children away from the protection system it offers compared to white children.[207]

S.B. 673 consistently received unanimous support as it advanced through various stages of the legislative process.[208] In August 2023, the Assembly Committee on Appropriations determined that there would be "(m)inor and absorbable" costs to CHP to build out the Ebony Alert system.[209] However, some concerns were raised regarding the potentially significant operational costs of activating the Ebony Alert.[210] Despite these concerns, the bill still received no opposition and was referred for a third reading by the Senate floor.[211] On September 1, 2023, the bill was amended by the Assembly, making the activation of the alert and

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204. S.B. 673, 2023–24 Leg., Reg. Sess. § 1(b) (Cal. 2023). It should be noted that California has introduced similar alert notification systems for attacks upon a police officer, a missing person of 65 years or older, and a reported missing Indigenous person, respectively, the Blue Alert, Silver Alert, and Feather Alert. *See Emergency Notification: Ebony Alert: Missing Black Youth: Hearing on S.B. 673 Before the S. Comm. on Pub. Safety*, 2023–24 Reg. Sess. 2–3 (Cal. 2023) [hereinafter *S. Pub. Safety Hearing*] (statement of Sen. Steven Bradford). All these alerts attempt to address different circumstances in which a person goes missing based on their characteristics while utilizing California's already established Emergency Alert System. *Id.*

205. *SB 673: Emergency Notification: Ebony Alert: Missing Black Youth.*, CALMATTERS: DIGIT. DEM., https://calmatters.digitaldemocracy.org/bills/ca_202320240sb673 [https://perma.cc/Z5UN-ECPE] (last visited Oct. 1, 2025).

206. *S. Pub. Safety Hearing*, *supra* note 204, at 5 (statement of Sen. Steven Bradford).

207. *Id.* at 8 (statement of Sen. Steven Bradford).

208. *See Emergency Notification: Ebony Alert: Missing Black Youth: Hearing on S.B. 673 Before the S. Rules Comm.*, 2023–24 Reg. Sess. 1 (Cal. 2023) [hereinafter *S. Rules Comm. Hearing*].

209. *Hearing on S.B. 673 Before the Assemb. Comm. on Appropriations*, 2023–24 Reg. Sess. 1 (Cal. 2023).

210. *Id.*

211. *See id.*

investigation permissive, as opposed to initial suggestion to mandate it.[212] The Assembly also amended the bill to include "at risk, developmentally disabled, or cognitively impaired individuals, or individuals that have been abducted."[213] On September 13, 2023, the Senate conducted its third reading and, once again, the proposal received no opposition and was ordered to the Senate.[214] There was no opposition by the Senate either, and the Assembly amendments were concurred in. On September 21, 2023, S.B. 673 was presented to Governor Gavin Newsom,[215] who acknowledged the disproportionate number of missing Black children and signed the Ebony Alert into legislation on October 8, 2023.[216]

On January 1, 2024, California officially launched new legislation which created the Ebony Alert.[217] The legislation provides the following factors that are considered in issuing an alert for missing Black youth, including Black women and girls:

> (1) The missing person is between 12 to 25 years of age, inclusive.
> (2) The investigating law enforcement agency has used all available local resources and at least one of the following conditions are met:
> (A) The law enforcement agency determines that the person has gone missing under unexplained or suspicious circumstances, including circumstances that indicate any of the following:
> (i) The missing person's physical safety may be endangered.
> (ii) The missing person may be subject to trafficking.
> (B) The law enforcement agency believes that the person is in danger because of age, health, mental or physical disability, environmental or weather conditions, that the person is in the company of a potentially dangerous person,

212. *S. Rules Comm. Hearing*, *supra* note 208, at 1 ("*Assembly Amendments* make activation of the alert and investigation by CHP permissive rather than mandatory and clarify the definition of 'Ebony Alert' to include at risk, developmentally disabled, or cognitively impaired individuals, or individuals that have been abducted.").

213. *Id.*

214. *Id.* at 1, 8.

215. *See Bill History*, *supra* note 201 (showing that the Ebony Law was presented to the Governor on September 21, 2023).

216. Harvey, *supra* note 201.

217. Lynn La, *California New Laws for 2024: Alerts for Missing Black Children*, CALMATTERS (Dec. 29, 2023), https://calmatters.org/politics/2023/12/missing-children-new-law-california-2024/ [https://perma.cc/38FL-U6PH].

> or that there are other factors indicating that the person may be in peril.[218]

There are several differences between the AMBER Alert and Ebony Alert, and these will be discussed later.[219]

B. Political and Public Responses to Ebony

As mentioned there was no opposition from either side of the political map in the California Senate, allowing S.B. 673 to pass with overwhelming bipartisan support. Ebony also received some support from the public, which was mostly expressed through social media channels. Proponents of Ebony, including community leaders and leaders of several organizations, acknowledged the need for the Alert and commended California for taking decisive action to find missing Black women and girls. For example, The Black and Missing Foundation, a nonprofit organization seeking to bring awareness to missing persons of color, stated that the Ebony Alert is a "step in the right direction" and hopes it encourages similar legislation throughout the nation.[220] The founder of Voice of the Youth, a nonprofit that provides mentorship to youth and adults in California, praised the Ebony Alert as an important tool to address the challenges faced by Black women and girls.[221] Former Oakland Councilmember Treva Reid supported Ebony Alert stating that "[a] troubling number of our daughters, sisters, aunts, and mothers go missing throughout our community and they must be protected and safe in our city."[222] Notably, all of these community leaders are people of color, speaking intimately about what the Ebony Alert means to their community. In addition to these community leaders, some members of the general public responded positively to the Ebony Law.[223]

However, many other politicians and members of the public criticized Ebony Law, starting with its name and ending with its provisions. Just to illustrate: An NBC News article posted by their official account about Ebony received almost 5,000 responses, many of

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218. CAL. GOV'T CODE § 8594.14(c) (West 2024).

219. *See infra* Section IV.B.

220. Campa, *supra* note 28.

221. James Taylor, *What's an Ebony Alert? California's New Tool Aims to Help Track Down Missing Black Youth*, CBS NEWS (Oct. 9, 2023, at 22:57 PT), https://www.cbsnews.com/sacramento/news/californias-new-tool-aims-to-help-track-down-missing-black-youth/ [https://perma.cc/4G7M-PTXZ] ("With this [Alert], the attention, the need, the urgency . . . will be met and it's going to be a game changer.").

222. Harvey, *supra* note 201.

223. *See, e.g.*, @jakki2004 LOVE BLM (@jakki2004), X (Oct. 10, 2023, at 21:28 CT), https://x.com/jakki2004/status/1711931735703728155 [https://perma.cc/RC93-27JJ]; Likki.bsky.social (@Likki), X (October 8, 2023, at 18:11 CT), https://x.com/Likki/status/1711157322280513553 [https://perma.cc/45S7-WXYF].

which were negative.[224] For example, Tomi Lahren, a conservative political commentator, responded to the post by asserting that the Ebony Alert is "pure virtue signaling discrimination."[225] Similar responses were proffered by the public. At the heart of the critique were arguments primarily related to the legislation's racial classification, which was perceived as discriminatory. For example, some argued that the law prioritized Black children at the expense of children of other races.[226] Social media users argued that Ebony Law is "racist," and that there should be an "Ivory" Alert next, insinuating that it would be reserved for white children.[227] TMZ, a popular tabloid, also posted on one of their official X accounts about California's new legislation and interviewed Senator Bradford about why the Ebony Alert is necessary despite the backlash.[228] Users responded similarly to the TMZ post, once again raising arguments that the law is racist and that white children are being disregarded.[229]

The critique of Ebony resurfaced in February 2024 after the second Ebony Alert was initiated. The alert was posted in a now-deleted post by CHP from its official CHP Alerts account. The alert was for missing fourteen-year-old Raniyah Moorehead.[230] It was then when Ebony Alert truly received the attention of millions of X users.[231] The post received over 36.1 million impressions on X and went viral.[232] Once again, many responses to the post were negative. Unfortunately, responses did not focus on locating the missing young girl. Many users repeated similar

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224. NBC News (@NBCNews), X (Oct. 10, 2023, at 16:30 CT), https://x.com/NBCNews/status/1711856880731988182 [https://perma.cc/P4K2-3765].

225. Tomi Lahren (@TomiLahren), X, *"Prioritize the search for Black youth gone missing." This supposed to be equality or equity or just pure virtue signaling discrimination?* (Oct. 10, 2023, at 17:06 CT), https://x.com/TomiLahren/status/1711865850976682138 [https://perma.cc/8ST3-UPQ2].

226. *See infra* notes 232–236 and accompanying text.

227. Unbiased Crime Report (@UnbiasedCrime), X (Oct. 10, 2023, at 21:11 CT), https://x.com/UnbiasedCrime/status/1711927429722444096 [https://perma.cc/B4TD-HPVM].

228. Video posted by TMZ Live (@TMZLive), X (Oct. 11, 2023, at 09:00 CT), https://x.com/TMZLive/status/1712105775282212880 [https://perma.cc/K53H-XYQU].

229. ILJoeDS (@ILJoeDS1), X, *Missing white kids don't matter. Have the balls and call it what it is. Racism.* (Oct. 11, 2023, at 10:19 CT), https://x.com/ILJoeDS1/status/1712125895928881240 [https://perma.cc/DU6A-KB3Y]; Luke Kornet Fan Account (@GangGreenSports), X, *Screw missing white kids? Got it...* (Oct. 11, 2023, at 14:34 CT), https://x.com/GangGreenSports/status/1712189979151966535 [https://perma.cc/32LR-ZX4P].

230. CHP - Alerts (@CHPAlerts), X (Feb. 16, 2024, at 12:58 CT), https://twitter.com/CHPAlerts/status/1758385411280474448 (screenshot of the original tweet on file with authors).

231. *See id.* This tweet was later deleted by @CHPAlerts.

232. *Id.*

arguments against Ebony to those expressed after its enactment, that is, that this was "segregation" and "reverse racism."[233] Some users directly challenged the constitutionality of Ebony, calling for it to be challenged in court.[234] Other users did not understand the difference between the Ebony Alert and AMBER Alert, believing that an Ebony Alert was simply an AMBER Alert for Black children.[235] One user even thanked Ebony Alert—not for amplifying the voices of Black children, but for helping him know which alerts to "silence/[]ignore."[236]

Just after Governor Newsom signed Ebony Alert into law, Senator Bradford was interviewed by NPR and responded to criticism of the legislation.[237] In response to concerns about the age range adopted by the legislation, Senator Bradford explained that the ultimately selected age range was a product of a compromise with different stakeholders.[238] In

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233. RealVinnieJames (@RealVinnieJames), X, *Democrats = Jim Crow. Segregation is back with a vengeance. Black people aren't good enough for amber alert? So we get Ebony Alert? This is just another "Martin Luther King Jr. Boulevard in the ghetto." California, for the sake of your CHILDREN… PLEASE STOP voting Democrat! -VJ* (Feb. 17, 2024, at 07:45 CT), https://x.com/RealVinnieJames/status/1758850032361410610 [https://perma.cc/2DLQ-L2VG]; Sil (@SilviaGonMar), X, *This is segregation all over again. I had to look up what Ebony Alert was.* (Feb. 16, 2024, at 01:51 CT), https://x.com/SilviaGonMar/status/1758398566958256488 [https://perma.cc/NPL5-HDCW]; Patriot Muffy (@inextension), X (Feb. 16, 2024, at 19:42 CT), https://x.com/inextension/status/1758668205445505076 [https://perma.cc/JX43H2ME]; IndThinkr (@avilajj881), X (Feb. 16, 2024, at 01:25 CT), https://x.com/avilajj881/status/1758392151489266162 [https://perma.cc/YFN3-PFHY].

234. DaddyDawg2 (@DaddyDawg_2), X, *A law like that would be subject to constitutional challenges based on equal protection and due process of law! Time to serve Gavin Newsom with a lawsuit challenging the "ebony alert."* (Oct. 10, 2023, at 20:54 CT), https://x.com/DaddyDawg_2/status/1711923117231133013 [https://perma.cc/FL45-RB28].

235. Swann Marcus (@SwannMarcus89), X, *Creating an Amber Alert specifically for black kids and calling it an "Ebony Alert" was an incredible choice by the State of California* (Feb. 16, 2024, at 18:39 CT), https://twitter.com/SwannMarcus89/status/1758652285838610735 [https://perma.cc/684V-ADTR]; SAY CHEESE! (@SaycheeseDGTL), X, *In California, a new law passed that creates a separate alert when Black kids go missing called an "Ebony Alert". Now, we already have an Ambert alert that took care of all kids, yet now we have a separate one for Black individuals.* (Oct. 23, 2023, at 10:16 CT), https://x.com/SaycheeseDGTL/status/1716473579116618061 [https://perma.cc/KC6N-CK64]; 20DaysofJune (@20daysofJune), X (Feb. 16, 2024, at 16:45 CT), https://x.com/20daysofJune/status/1758623655657914868 [https://perma.cc/94AH-3EW6]; Erik-Conservative In Cali (@caliucconserv), X (Dec. 30, 2023, at 10:30 CT), https://x.com/caliucconserv/status/1741134778135683166 [https://perma.cc/4YM2-FHG2].

236. *DOCTOR*r *NO STEP* (@tinfoilmask), X (Feb. 16, 2024, at 14:55 CT), https://x.com/tinfoilmask/status/1758595886467142083 [https://perma.cc/GL3T-ZEQE].

237. Ayesha Rascoe, *In a First, California's 'Ebony Alert' will Help Find Missing Black People*, NPR (Oct. 15, 2023, at 8:00 ET), https://www.npr.org/transcripts/1205950946 [https://perma.cc/S7XP-2NBF].

238. *Id.*

response to questions about the need for a race-conscious alert, Senator Bradford emphasized the disproportionate number of missing Black youth and women in California and discussed the alert's role in "level[ing] the playing field" of the child recovery system.[239] The interview with Senator Bradford illuminated Ebony's core rationale: to address AMBER's racially imbalanced treatment by attacking the disproportionate number of missing Black children in California head-on.

While it is still early to draw conclusions regarding Ebony's success rate, it appears that the Ebony Alert has already proven to be meaningful in recovering missing individuals. In a news story from March 2024, Senator Bradford reported two instances in which the Alert was initiated and contributed to the recovery of two young Black women.[240] However, as of March 2024, two other cases in which Ebony was initiated did not lead to the recovery of the missing individuals.[241] Another news article reported that, as of October 2024, Ebony Alert had been initiated thirty-one times, recovering twenty-seven people.[242] The article also discussed some critique of the Ebony Alert system.[243]

While California was a pioneer in introducing Ebony, it is certainly not the only state deciding to address the problem of missing Black children. Since California introduced Ebony in early 2023, several additional states have started advancing similar legislation, including Alabama,[244] Massachusetts,[245] Pennsylvania,[246] Illinois,[247] and New York (which ultimately did not proceed with the legislation).[248] Furthermore, in 2023, the Minnesota Department of Public Safety established the Missing and Murdered Black Women and Girls Office (MMBWG) "to reduce and end the systemic neglect and violence faced by Black women

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239. *Id.*

240. Tanu Henry, Antonio Ray Harvey & Joe W. Bowers, Jr., *Sen. Steve Bradford: "New Ebony System Is Working"*, L.A. FOCUS (Mar. 15, 2024), https://www.lafocusnews.com/sen-steve-bradford-new-ebony-alert-system-is-working/ [https://perma.cc/8LG8-6M6K].

241. *See id.*

242. Marquise Francis, *One Year Later, California's System to Find Missing Black People Is Working Through Its Challenges*, NBC News (October 10, 2024, at 04:00 CT), https://www.nbcnews.com/news/nbcblk/ebony-alert-one-year-later-helping-find-missing-black-youth-rcna174561.

243. *See id.*

244. H.B. 19, 2025 Leg., Reg. Sess. (Ala. 2025).

245. H.B. 3913, 193d Gen. Ct., Reg. Sess. (Mass. 2023).

246. H.B. 2461, 2023–24 Gen. Assemb., Reg. Sess. (Pa. 2024).

247. H.B. 4295, 103d Gen. Assemb., Reg. Sess. (Ill. 2023).

248. S.B. 8345, 2023–24 Leg., Reg. Sess. (N.Y. 2024). The law was later stricken. *Senate Bill S8345*, N.Y. ST. SENATE, https://www.nysenate.gov/legislation/bills/2023/S8345 [https://perma.cc/CQY5-QGFW] (last visited Sep. 15, 2025).

and girls in Minnesota."[249] This brief summary of state actions since the introduction of Ebony illustrates both the prevalence of the problem and states' interest in addressing it.

Ebony Law is controversial. As the data suggests, it has a solid rationale and aspires to correct years of racially unequal treatment of missing Black children by law enforcement, an issue of particular concern given the disproportionate number of Black children going missing compared to their white counterparts. We have also seen that while the California legislature—from left to right—fully endorsed the legislation, public responses were mixed. While many leaders of the Black community endorsed and praised the legislation, responses on social media were negative and challenged the legislation's constitutionality. At the same time, we have seen other states follow suit, introducing either similar legislation or other initiatives to address the problem. This Article will offer a detailed analysis of the different arguments supporting and opposing Ebony. Before doing so, however, we would like to establish what we believe is a crucial preliminary argument in the context of Ebony: Ebony and Ebony-like provisions are important.

C. Why is Ebony Important?

Ebony Law is an important legislation. It is important not only for practical reasons, but it also carries a meaningful expressive value that goes beyond its immediate outcome-driven rationale. On the immediate-practical side, Ebony is important because it represents rare state-level acknowledgement of the idiosyncratic nature of the problem of missing Black children. It recognizes that existing legislation has limited capacity to address the problem, and that such recognition also requires legislative solutions that are tailored toward the Black community and its children. These solutions are designed first and foremost to challenge the existing criteria that gatekeep the initiation of an AMBER Alert and that have led to unequal application of the system and, too often, the exclusion of Black children from its benefits. But they further recognize that law enforcement agencies should more broadly reevaluate their practices for treating Black missing children. By doing so, Ebony offers a promising path to finally start tackling the current system's failure in recovering Black children that go missing—a first step in recognizing, but also attempting to address, the devastating effects of this phenomenon on these children, their families, and their communities.

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249. *Missing and Murdered Black Women and Girls Office (MMBWG)*, MINN. DEP'T OF PUB. SAFETY: OFF. OF JUST. PROGRAMS, https://dps.mn.gov/divisions/ojp/offices-missing-murdered/mmbwg-mmbwg [https://perma.cc/HTU3-9CMK] (last visited Sep. 13, 2025).

But Ebony's impact goes beyond the immediate, and important, practical aspects which break legislative or procedural barriers to guarantee that Black communities will also be the beneficiaries of a state-led system to recover missing children. It also carries a meaningful expressive—or symbolic—value that impacts Black communities more broadly and society at large. The expressive theory of law emphasizes the law's power to communicate certain normative standards and values to society.[250] To that end, "people interpret law as a source of information about social norms, state beliefs about risks and benefits, the prevalence of behavior among a regulated population, and the relationship between citizens and the state,"[251] and about the relative standing of social groups and, to some extent, the state's views about certain individuals and groups personally.[252] Under this theory, Ebony conveys a range of expressive messages.

First, Ebony recognizes yet another domain in which the colorblindness fallacy leads to a de facto unequal treatment of Black individuals—this time, it is missing Black children.[253] It demonstrates,

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250. *See* Wibren Van Der Burg, *The Expressive and Communicative Functions of Law, Especially with Regard to Moral Issues*, 20 L. & PHIL. 31, 41 (2001); *see also* Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2050–51 (1996) (discussing the connections between "the social meaning of law" and its legitimization and arguing that "'law's 'statement' . . . [can] move norms in fresh directions"). But see Matthew D. Adler, *Expressive Theories of Law: A Skeptical Overview*, 148 U. PA. L. REV. 1363, 1429–36, 1462–92 (2000), for a critique of expressivism, including in constitutional law contexts.

251. Kristen Underhill, *"Everybody Knows I'm Not Lazy": Medicaid Work Requirements and the Expressive Content of Law*, 20 YALE J. HEALTH POL'Y, L., & ETHICS 225, 293 (2021).

252. *Id.* at 293–94 (explaining the law as a type of attitude signaling that conveys a particular message from the legislator to the people). In the equal protection context, see Paul Brest, *The Supreme Court, 1975 Term — Foreword: In Defense of the Antidiscrimination Principle*, 90 HARV. L. REV. 1, 8 (1976).

253. *See* EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLORBLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 53–55 (5th ed. 2017) (tracing the emergence of colorblindness as a new racial ideology from the early sixties to these days of Trump's America, and claiming that "Jim Crow's Racial Structure has been replaced by a 'new racism,' . . . a new powerful ideology [that] has emerged to defend the contemporary racial order"). For additional settings in which racial inequalities persist despite colorblind policies, see generally DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS (10th ed. 2003) (illustrating the reality of deliberate segregation that black communities experience in American cities); AMANDA E. LEWIS & JOHN B. DIAMOND, DESPITE THE BEST INTENTIONS: WHY RACIAL INEQUALITY THRIVES IN GOOD SCHOOLS (2015) (showing how black students are being punished more frequently and more severely). Voting encompasses other methods that were adopted over the years aiming to disenfranchise Black individuals from equally participating in politics, including gerrymandering, voter identification laws, and election runoff. *See, e.g.*, Benjamin Cover, *Quantifying Partisan Gerrymandering: An Evaluation of the Efficiency Gap Proposal*, 70 STAN. L. REV. 1131, 1152–53 (2018).

for example, how the objective criteria for the application of AMBER Laws, particularly the exclusion of "runaways," ultimately precludes missing Black children from receiving equal treatment from law enforcement agencies compared to their white counterparts. It further recognizes that the overall treatment of Black children and their communities, even beyond the decision to initiate an alert, is biased against these communities. This is a powerful recognition that legitimizes the systemic issues faced by Black families and communities in modern-day America. It recognizes the vulnerability of Black families, their disproportionate participation in the foster care system, and the unique risks faced by Black children, many of which relate to deep socio-economic disparities.[254]

Acknowledging the deeply imbedded systemic inequalities faced by Black communities is important from an institutional perspective. It requires state governments to engage with the unique challenges faced by Black communities and to think about remedies to these challenges—remedies that reach beyond the specific dilemma of missing Black children and open the gate to discuss, evaluate, and attack the root causes of other challenges faced by Black children.[255] Further, as studies have discussed, AMBER Alert had additional second-order effects on law enforcement agencies. For example, it improved the available technology and mechanisms to assist in recovering missing children.[256] Legislation uniquely tailored to address the problem of missing Black children will likely do the same in the particular context of these children. Equally important, AMBER Alert was found to change the mindset of police officers, including increasing their involvement in the process of recovering children receiving the alert.[257] Such a change also highlights Ebony's potential to increase police involvement in the process of recovering Black children, while also overcoming current biases in existing police practices. As discussed, such biases seem to pervade the current system, but by shedding light on their existence, Ebony has the potential to advance some change.

This recognition is also important from the perspective of the Black communities affected by it. As discussed elsewhere, a lack of institutional

254. *See supra* Section II.B.

255. *See generally* ANDERSON, *supra* note 128, at 32–34 (discussing "alienation from mainstream society and its institutions" as a root cause of challenges faced by Black children in poor inner-city communities). *See also* Ravid, *supra* note 55, at 539–42 (discussing the racialized nature of victimhood in the United States as a "dynamic social structure" that has traditionally "preserve[d] racial hierarchies and inequalities among the subjects of the criminal justice system"). Both authors situate the practical challenges faced by young Black Americans in the context of biased societal structures that systematically disadvantage non-whites.

256. *See supra* note 117 and accompany text.

257. Griffin & Wiecko, *supra* note 95, at 171–72.

recognition of victimization status can be internalized by non-ideal victims, contributing to their own belief of their unworthy recognition.[258] Similarly, an institutional recognition in the unique issues surrounding the problem of missing Black children, often victims of crime, increases internal sense of value among these children and their families.[259] In a society that consistently distinguishes between non-ideal and ideal victims, with only the latter considered as worthy of full recognition in gaining the status of "victim,"[260] legislation like Ebony offers an important symbolic recognition in such status for those traditionally excluded from it.

Relatedly, legislation like Ebony has an expressive value from a broader societal perspective. As mentioned, AMBER's innovation was in its ability to create a tool that increases community involvement in the process of recovering missing children.[261] Such an involvement has an important role in community building and tightening human connections between different members through support and empathy.[262] Support in the process of finding the missing child, and even more deeply, empathy toward that child, their family and community more broadly. Moreover, as discussed, AMBER had priming effects on community members, that is, it prompted more participation from community members compared to "a generic missing child alert."[263] Similarly, Ebony has the potential to galvanize general public participation—this time in the recovering of Black children.

As discussed, this is practically meaningful but, and maybe equally so, symbolically meaningful. Black communities in the U.S. have suffered from decades of unequal treatment by federal and state governments, and more broadly, from a lack of social recognition as individuals, subjects of empathy, "vulnerable human beings who sustain pain and love and hatreds and fears and joy and sorrows and degradations and triumphs."[264] To a certain extent, the disproportionate effects of

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258. Ravid, *supra* note 55, at 533.

259. And compare to studies about the effects of inclusive and respectful victims' rights policies, which, among other things, improved "sense of inclusion and empowerment" among these victims. These studies also document more broadly better mental health outcomes among these victims. Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. TRAUMATIC STRESS 159, 162–63 (2003). Ebony has the potential to offer equivalent recognition in the problem of missing Black children from both the perspectives of the children themselves and from the perspective of their families and communities.

260. *See* Ravid, *supra* note 55, at 540–42 ("Minority groups, mostly Black individuals, are often excluded from the ideal victim paradigm.").

261. *See supra* note 117 and accompany text.

262. *See supra* note 117 and sources cited therein.

263. Greer, Pan, Flores & Collins, *supra* note 117, at 301–02.

264. Jewel Handy Gresham, *White Patriarchal Supremacy; The Politics of Family in America*, THE NATION, July 24, 1989, at 116, 120.

AMBER on Black children—whether through differences in alert initiation or de facto treatment even after an alert has been issued—reflect that same issue. Based on the effects AMBER has had on community involvement and collaboration in the process of findings missing children, creating a unique "AMBER-like" path to Black children has the potential to be a valuable empathy-enhancing tool for the Black community.

To be clear, and as we will address later, Ebony is likely not a panacea for the problem of Black missing children in America. As the recent Missing and Minority Report indicated, there are additional issues that require further attention in this context that Ebony can improve but likely not resolve.[265] For example, there are other issues related to consistency in reporting on missing children, particularly children of color, including insufficient training, protocols, and resources to support both law enforcement and communities.[266] Indeed, while data indicates that Ebony was able to recover a significant number of Black youth, it is still being criticized for not doing enough, particularly with regard to the challenges related to police training.[267] However, as discussed previously and will be further discussed in Section IV.C, Ebony and Ebony-like provisions have the potential to meaningfully transform the current recovery system of missing Black children. But before doing so, we should also recognize that, with all of its importance, Ebony also raises substantial constitutional challenges.

D. Why is Ebony Constitutionally Challenging?

As mentioned, at least in California, Ebony Law passed without any political opposition to its constitutionality and was signed into law.[268] In other states, the legislation is still in process.[269] Public responses in California were mixed. Some—including community leaders—praised the law and its potential contribution to tackle the enduring problem of missing Black children.[270] Others, however, mostly from the conservative end of the political map, have raised constitutional

265. *See Missing and Minority Report*, *supra* note 16.

266. *Id.*

267. Francis, *supra* note 242.

268. The law also passed without any other substance-related opposition. Budgetary issues were discussed during the legislation process, but an agreement was reached to limit the budgetary scope of the new legislation which allowed its passage. *See supra* Section III.A.

269. And it was stricken in New York. *See supra* note 248 and accompanying text.

270. *See supra* Section III.B.

concerns, mostly arguing that the law is a "reverse racism" against other, non-Black, children.[271]

Despite Ebony's practical and expressive importance and contribution to addressing the problem of missing Black children under the AMBER Alert regime, Ebony is also race-conscious legislation. As such, under our equal protection jurisprudence, Ebony Law falls squarely within what the Supreme Court has identified as generally forbidden racial classification. As Chief Justice Roberts put in *Parents Involved in Community Schools v. Seattle School District No. 1*,[272] "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[273] Therefore, it is subject to the strict scrutiny standard, an almost impassable hurdle for the challenged law.[274] This anticlassification interpretation of the strict scrutiny standard has been applied in a host of cases, particularly in higher education and employment contexts, leading many to consider it the Supreme Court's dominant approach.[275] And if one needed more support for this approach, the recent decision in *SFFA* indeed clarified the dominance of the anticlassification interpretation of the strict scrutiny standard.[276]

The anticlassification approach is particularly hostile to affirmative race-conscious remedies, and indeed, the Court recognized that race classification is generally prohibited even when the law benefits traditionally marginalized communities.[277] Under such view of the standard, Ebony Law is likely to face constitutional challenges.[278] As we

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271. *See supra* Section III.B.

272. 551 U.S. 701 (2007).

273. *Id.* at 748.

274. *See* Gerald Gunther, *The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 8 (1972) (noting strict scrutiny was fatal in fact).

275. *See Gratz v. Bollinger*, 539 U.S. 244, 270 (2003). *See generally* Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over Brown,* 117 HARV. L. REV. 1470 (suggesting that while the dominant rhetoric in the Court's decisions (*Bakke* in particular) was of "anticlassification", the court de-facto recognized "antisubordination" values under its application of the Equal Protection Clause).

276. *See SFFA*, 143 S. Ct. 2141, 2161–62 (2023) ("Eliminating racial discrimination means eliminating all of it. And the Equal Protection Clause, we have accordingly held, applies 'without regard to any differences of race, of color, or of nationality'—it is 'universal in [its] application.'" (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886))).

277. *Rice v. Cayetano*, 528 U.S. 495, 517 (2000); *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 490–94 (1989); Darren Lenard Hutchinson, *Progressive Race Blindness?: Individual Identity, Group Politics, and Reform*, 49 UCLA L. REV. 1455, 1456 (2002) ("The Court has also held that it must have a consistent approach to racial classification: Racial classifications trigger strict scrutiny whether they are intended to harm persons of color or to remedy the effects of racial discrimination.")

278. As we will discuss later, this proposition not only ignores years of unequal treatment of Black communities by the white majority but also offers a constitutional

will discuss later, in the context of missing children who are victims of crimes, however, there are several potential arguments as for why Ebony can survive the strict scrutiny application.[279] Furthermore, the antisubordination interpretation of the strict scrutiny standard, while contested, offers a more promising path to recognize government interests that "can be solved with race-based remedies,"[280] particularly in the context of missing children. This context-based approach also reflects what Meyn defined as a middle-ground approach to the recognition of race-based remedies under the Equal Protection Clause.[281] We will address these arguments next.

There is a clear tension in the context of Ebony. On the one hand, Ebony is important and groundbreaking legislation. It offers a practical solution to the problem of missing Black children and also carries an expressive value with potentially meaningful implications for law enforcement agencies, the Black community, and society at large. On the other hand, it does raise difficult constitutional challenges, which are likely becoming more challenging under the current equal protection jurisprudence in the days after *SFFA*.

In balancing this tension, this Article will not immediately offer counterarguments to the constitutional challenges posed by Ebony. This is not because we think these cannot—and should not be—raised.[282] Quite the contrary: Because Ebony is such an important and groundbreaking attempt to address a longstanding and pervasive problem, this Article first aspires to offer a practical and relatively simple policy path that can avoid the need to address these challenging constitutional issues while allowing Ebony's principles to be applied and executed. In practice, such a path is likely the most promising for Ebony and future Ebony-like legislation to be implemented and start addressing the failures of AMBER Alert in treating Black children and their communities.

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recognition of white resentment of Black communities. *See* Siegel, *supra* note 275, at 1475, 1540, 1544–45; Yuvraj Joshi, *The Law of Racial Resentment*, 72 UCLA L. REV. 424, 427–28 (2025).

279. *See infra* Part V.

280. Ion Meyn, *Race-Based Remedies in Criminal Law*, 63 WM. & MARY L. REV. 219, 257 (2021) (explaining that the antisubordination approach extends some deference to "government efforts to account for racial harm"). Meyn notes that proponents of the antisubordination approach view the Equal Protection Clause as a "corrective" measure and are amenable to racial classifications aimed at remedying past discrimination. *Id.* Proponents are comfortable distinguishing these progressive initiatives from invidious "efforts to maintain racial oppression, like Jim Crow and redlining conditions." *Id.*

281. *Id.* at 258.

282. And see *infra* Part V, offering a constitutional analysis of Ebony and arguing that there are at least a few potential arguments worth raising regarding whether Ebony can be considered a "narrowly tailored intervention to address a compelling state interest."

IV. RESOLVING THE TENSION

This Part examines how the Ebony Alert system addresses AMBER's shortcomings in serving Black children. It compares the two alert systems' provisions and identifies three central structural differences that we define as: (1) holistic consideration of factors rather than strict cumulative conditions, (2) broader definitions of child risk, and (3) a shifted burden on law enforcement decision-making. Finally, it proposes that states can use Ebony as a springboard to reform their existing AMBER Alert legislation, thereby addressing racial disparities while avoiding potential constitutional challenges.

A. The Policy Path–Comparing AMBER to Ebony

Ebony was created as a response to AMBER's failure. The strict guidelines and categorization required for the initiation of an AMBER Alert were simply insufficient to address the idiosyncrasy of Black children and families, leaving them untreated by the system. In analyzing Ebony's provisions in comparison to AMBER's, one can point at several meaningful differences including, but not limited to, age limitations and criteria.

First, regarding differences in age limitations, AMBER in California, just like the federal requirement, is intended for children that are seventeen or younger, and other states differ on their age requirements.[283] Ebony, on the contrary, is intended for children and young adults between the ages twelve and twenty-five.[284]

Second, regarding differences in criteria, AMBER's language suggests that to initiate an alert, a set of five cumulative conditions must be established. One of the conditions relates to the relevant age of the missing child.[285] Another requirement, also included in Ebony, is that

283. *Frequently Asked Questions*, *supra* note 5; *see Guidelines for Issuing Amber Alerts*, *supra* note 83.

284. CAL. GOV'T CODE § 8594.14(c)(1) (West 2024). The expansion of Ebony beyond the age of eighteen was a political compromise in the Californian context. For the purposes of this Article, we focus on the age group between zero and seventeen—the age group which, as we have seen in Part II, is most vulnerable to the problem of missing children. This does not suggest that issues related to Black women above the age of eighteen do not deserve interventions as well. In fact, the federal government in 2018 recognized the vulnerability of additional age groups and the limitations of AMBER Alert addressing these groups and enacted the Ashanti Alert Act named after Ashanti Billie who was found dead in 2017 in Charlotte, North Carolina. *See About Ashanti Alert*, U.S. DEP'T OF JUST.: ASHANTI ALERT (Apr. 29, 2024), https://ashanti.bja.ojp.gov/about-ashanti-alert [https://perma.cc/KV8J-APVX]; Ashanti Alert Act of 2018, Pub. L. No. 115-401, 132 Stat. 5336. Ashanti Alert is intended to cover *all* individuals that fall outside of AMBER's scope.

285. *Guidelines for Issuing Amber Alerts*, *supra* note 83.

"[t]here is enough descriptive information about the victim and the abduction for law enforcement to issue an AMBER Alert to assist in the recovery of the child."[286] Other conditions require, for example, "reasonable belief by law enforcement that an abduction has occurred" and "that the child is in imminent danger of serious bodily injury or death."[287] These strict criteria are a major source of AMBER's disproportionate impact, as law enforcement agents tend not to classify Black children under these categories.

Ebony is different. First, and unlike AMBER, it does not include a list of cumulative conditions. Instead, it includes a set of factors that law enforcement agencies can consider holistically when deciding whether to initiate an Ebony Alert. Second, the danger to children that could potentially justify the initiation of the alert is defined more broadly. For example, it offers to initiate the alert in situations where "the missing person's physical safety may be endangered," that is, not necessarily requiring serious bodily injury or death as a condition.[288] It also recognizes "unexplained or suspicious circumstances" as factors that might justify an alert.[289] Ebony also includes language which clearly demonstrates willingness to activate the alert in a variety of settings, specifically when "the person is in danger because of age, health, mental or physical disability, environmental or weather conditions, that the person is in the company of a potentially dangerous person, or that there are other factors indicating that the person may be in peril."[290] Third, Ebony's factors recognize mental and physical disability as an independent factor to be considered in the decision-making process.[291] Fourth, some of Ebony's factors are uniquely tailored to address concerns related to Black youth's vulnerability, such as trafficking.[292]

It should be noted that both Ebony and AMBER require law enforcement to consider whether there is sufficient information that, if shared with the public, could assist in recovering the child.

B. Structural Differences

Reviewing the differences between AMBER and Ebony points at a few areas that Ebony sought to change, which from the perspective of its creators, might improve law enforcement's ability to recover missing

286. *Id.*
287. *Id.*
288. CAL. GOV'T CODE § 8594.14(c)(2)(A)(i) (West 2024).
289. § 8594.14(c)(2)(A).
290. § 8594.14(c)(2)(B).
291. *Id.*
292. § 8594.14(c)(2)(A)(ii).

Black children as opposed to the current AMBER regime. Based on the analysis, we offer three central domains of reform.

1. Holistic Consideration of Factors as Opposed to Strict Cumulative Conditions

As discussed, one of the main reasons for the exclusion of Black children from the AMBER system is their categorization as "runaways," that is, children that do not fall under the strict conditions of AMBER. Irrespective of the conditions themselves, which we will now address, moving into a system that holistically considers a set of factors, as opposed to requirements to fulfill all conditions, of course offers more discretion in decisions to activate an alert but also provides an opportunity to consider more nuanced and complex settings tailored to different children, their needs, and the needs of their communities.

2. Different Conceptions of Risk

AMBER's conceptions of risk seem to focus on the most radical set of circumstances, specifically abductions that put "the child . . . in imminent danger of serious bodily injury or death."[293] No doubt, these conditions should certainly be part of the alert consideration. But Ebony reveals that there could be additional conditions under which children might be at risk that justifies the intervention of the public in their recovery. For example, according to Ebony, any concerns for physical safety could justify the activation of an alert. In fact, any concerns that the person is in danger (broadly defined) could justify the alert. As such, Ebony offers a different conception of risk that could indeed stem from the abductor, but also from the child's own disabilities or from external factors unrelated to either of the first two categories. Offering such definitions recognizes a broader spectrum of risk-related conditions. In fact, Ebony clearly guides law enforcement agencies to construe the term "unexplained and suspicious circumstances" broadly.[294] As such, it sends a different message of institutional commitment toward our children, recognizing the trauma children endure when they go missing, even when they are in less-than-life-threatening situations.[295] Beyond the general

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293. *Guidelines for Issuing Amber Alerts*, *supra* note 83.

294. CAL. GOV'T CODE § 8594.14(a).

295. Penny S. Woolnough & Shiela Cunningham, *Developmental Perspectives on the Behaviour of Missing Children: Exploring Changes from Early Childhood to Adolescence*, 27 PSYCH., CRIME & L. 539, 540 (2020) ("When a child is missing, there can be a considerable impact on the child, their family and the wider community. Children are at risk when isolated from their home environment, with a lack of independent access to basic resources like housing and monetary supplies, combining with immaturity and inexperience to create a dangerous vulnerability."); Julie Taylor et

broader conceptions of risk, Ebony also recognizes communities' idiosyncratic risk factors, including risks related to Black communities. For example, recognizing the risk of trafficking corresponds with data suggesting that Black youth, particularly girls and young women, are more prone to being trafficked.[296] Similarly, the tendency to categorize Black children as "runaways" is challenged by the broader conceptions of risk offered under Ebony. Even if a child is potentially a "runaway," they can still fall under the existing categories, for example, due to their disability or because there are indicators suggesting they might be in peril.[297]

3. Different Burdens on Law Enforcement's Decision to Activate an Alert

AMBER's reasonable belief standard and the language surrounding the guidelines suggest that an affirmative belief should be established before AMBER is to be activated. This language suggests that uncertain cases would likely result in a decision not to activate an alert. When such standard is juxtaposed with the existing reality of dominant racial bias in law enforcement decision making processes, one can better understand why Black children tend to be categorized as "runaways" and excluded from the system. Ebony, on the contrary, endorses the potential uncertainties surrounding situations of missing children. It guides law enforcement agents to positively consider the activation of Ebony Alert in situations where a person "has gone missing under unexplained or suspicious circumstances,"[298] and even guides law enforcement agencies to "broadly" construe this subsection. Therefore, when law enforcement agencies cannot explain circumstances behind a child going missing, they can decide to activate the alert. By doing so, Ebony flips the burden onto law enforcement agencies. Only when they have sufficient evidence to refute any concerns for the child's peril should they not activate an alert.

The different burdens regime under Ebony ultimately expands the alert's potential scope, but we argue it is also uniquely tailored to address

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al., *Young People's Experiences of Going Missing from Care: a Qualitative Investigation Using Peer Researchers*, 23 CHILD ABUSE REV. 387, 388 (2014); STEPHEN MOREWITZ, KIDNAPPING AND VIOLENCE: NEW RESEARCH AND CLINICAL PERSPECTIVES 23, 32 (2019) (discussing the traumatic effects of family abductions on children). For a discussion of the dangers to missing children, including those who run away, see generally *Our Impact: 2024*, *supra* note 14. For a discussion of childhood trauma and its causes, see generally *About Child Trauma,* NAT'L CHILD TRAUMATIC STRESS NETWORK, https://www.nctsn.org/what-is-child-trauma/about-child-trauma [https://perma.cc/77H5-TDHV] (last visited Oct. 7, 2025).

296. *See supra* Section II.B.2.

297. § 8594.14(c)(2)(B).

298. § 8594.14(c)(2)(A).

the systemic problems related to the recovering of Black children: racial bias and Black communities' distrust of the police.

First, it tackles potential concerns for racial bias in determining whether to activate an alert, an issue consistently raised by civil society organizations.[299] The shift in burden, of course, cannot disseminate the presence of racial bias, but it primes agents to consider activating alerts even in the face of greater uncertainties. AMBER, on the contrary, primes agents *not* to activate alerts, potentially allowing more adherences to bias in the decision-making process.

Second, recognizing the uncertainties in collecting information related to the missing child also represents a recognition in the complicated relationship between law enforcement agencies and the Black community.[300] Collecting information related to the circumstances surrounding a missing child case requires law enforcement to have access to the child's community. Beyond access, it requires willingness to work together. It also requires a certain type of knowledge about the community that can assist law enforcement agencies to efficiently gather the information under tight time constraints. The reality regarding the relationship between police and the Black community is just the opposite.[301] As Monica Bell emphasizes: "For as long as scholars have studied the relationship between African-Americans and criminal justice, they have documented deep distrust of the system."[302] Many scholars portray this distrust through the lens of police legitimacy, that is suggesting that Black communities are less likely to perceive police as a legitimate authority, and thus, less "worthy of obedience and assistance."[303] But the distrust in police should not only be understood as a hurdle for practical collaboration between police and Black communities, or to normatively justify the use of police power.[304] It also reflects a deeper sense of alienation of Black communities from society and its institutions, what Bell referred to as "legal estrangement."[305] Legal estrangement captures an important element that goes beyond

299. *See infra* Section II.C.

300. *See* ANDERSON, *supra* note 128, at 321 ("In the inner-city community there is a generalized belief that the police simply do not care about black people, that when a crime is committed in the black community, little notice will be taken."); *see also Missing and Minority Report*, *supra* note 16 ("Populations of color are most skeptical of law enforcement fingerprinting or keeping fingerprints of our children.").

301. ANDERSON, *supra* note 128, at 320–21 (observing a lack of cooperation between inner-city residents and the police because residents "believe that the police are unlikely to come or, if they do come, may even harass the very people who called them").

302. Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054, 2068 (2017).

303. *Id.* at 2073.

304. *Id.* at 2075.

305. *Id.* at 2066–67.

attitudinal approaches toward the police held by Black communities. It illustrates the "cultural and systemic mechanism that exists" within the law and the legal system and the sense of lawlessness and societal belonging—or lack thereof—a group feels, regardless of their perceptions of police legitimacy.[306] The history of treatment of missing Black children by law enforcement agencies exemplifies such communal feelings of alienation.

The deep distrust between Black communities and law enforcement agencies, understood both through traditional legitimacy arguments or through the legal estrangement framework, might indeed make the task of collecting information that can affirmatively establish the AMBER burden difficult. However, AMBER does not seem to take these considerations into account, placing the burden on Black communities while ignoring the deeper social contexts related to the relationship between the police and the Black community. The concerns related to the unequal treatment of Black children under AMBER emphasize this problem.[307] Same goes for the data related to the disparity in success rates even after AMBER is initiated.[308] Ebony, on the contrary, starts recognizing the challenges related to the collection of information under a reality of mistrust. Recognizing that effective police work within the community is a collaborative endeavor between the police and the community, it leaves the door open to activate an alert even when there are uncertainties regarding to the circumstances related to the missing child. Further, it has the potential to affect the mindsets of both law enforcement agencies and the communities when working toward the goal of locating the missing individual.[309] By shifting the burdens, and at a deeper level, Ebony seems to acknowledge that Black communities should not pay the price of the mistrust between them and the police.

The key structural differences identified allow us to start assessing what Ebony is trying to achieve. Beyond the obvious fact that it is intended to improve the recovery of missing Black youth, it also deviates from AMBER's criteria in a few important ways. These ways can illustrate the set of factors that can be taken into account under a regime that recognizes the unique circumstances related to Black communities, their children, and their relationship with law enforcement. The Ebony criteria thus has the potential to break some of the barriers under the current AMBER Alert regime, barriers that ultimately lead to the disparity in treatment of Black children under AMBER. The troubling statistic regarding Black missing children indeed suggests that states and

306. *Id.* at 2086–87.
307. *See supra* Section II.C.
308. *See supra* Section II.C.
309. *See supra* Section I.C.2.

the federal government should consider affirmative steps to tackle this reality.

C. Ebony as an Inspiration to Alter AMBER Criteria and Avoid Constitutional Challenges

Given the clear interest in addressing the problem of AMBER's racially imbalanced treatment and the disproportional number of Black children going missing compared to white children, one straightforward—and practical—solution could be redesigning the AMBER provisions along the lines suggested in Ebony and offering one central legislation to address the problem of missing children. AMBER laws, as discussed, were inspired by the federal guidelines first introduced in 2003,[310] but ultimately, were independently adopted into state law by each state. Indeed, some states modified the provisions as they saw fit. As such, states, like California, with an interest in addressing the problem of missing Black children, can see in Ebony an opportunity to reevaluate their AMBER laws along the three dimensions suggested: (1) a holistic set of considerations as opposed to cumulative requirements, (2) a reassessment of their conceptions of risk under AMBER, and (3) a change in the burdens on law enforcement agencies deciding to activate an alert. Needless to say, that by modifying existing AMBER criteria in lieu of passing new legislation like Ebony, states can avoid the need to address the difficult constitutional questions previously discussed, while not neglecting, once again, the dire need to address the current institutional failure in recovering missing Black children.

Allowing Ebony-inspired provisions to be included under a new AMBER Alert regime will result in a potential expansion of AMBER. This expansion will likely face some rejections, grounded by AMBER's original provisions and guidance. Exploring the Department of Justice's guidelines to the criteria points to an approach that wishes to narrow AMBER's scope, raising concerns that with less strict criteria the system will be "abuse[d]," which will "ultimately weaken its effectiveness."[311] While these are valid concerns, they ultimately lend themselves to an empirical assessment. Given the competing interests at stake—the potential improvement of the recovery of missing Black children—these generalized concerns, not backed by relevant data, cannot substantiate a prima facie rejection of AMBER's reevaluation and even expansion. And just to illustrate—exploring the California case indicates that since Ebony's became an effective law, agencies in California did not experience a flood in Ebony alerts. In fact, a relatively small number of

310. *See supra* Section I.C.1.

311. *Guidelines for Issuing AMBER Alerts*, *supra* note 83.

Ebony alerts were activated since January 2024.[312] While this clearly provides one data point, it indicates that any general claims about the system's abuse should first be meaningfully scrutinized.

Additional, related concerns about adopting the Ebony provisions are budgetary. These concerns were also raised during the California legislative process, and the final legislation offers a balanced arrangement which guaranteed no budgetary overreach.[313] These are plausible concerns, but here as well, any conversations about budgetary concerns should be raised with adequate data for its support. The limited existing data, based mostly on the Ebony experience, suggest budgetary concerns in and of themselves should not stand in the way for future Ebony-like legislation.

In any event, while the analysis offered positively addresses the new criteria inspired by Ebony and appreciates the attempts to include arrangements that consider the idiosyncrasies related to the problem of missing Black children, we do not claim that the Ebony structure is the only, or even necessarily the best solution to the problem. There are potentially other alternative arrangements that offer a different balance of interests while achieving similar goals. But as this Article demonstrates, Ebony offers both an opportunity and a springboard to start having these conversations among state leaders and the communities they (are supposed to) represent. After more than twenty years under the AMBER Alert system and recognizing its flaws and disproportionate negative impact it has on Black communities, holding off on these conversations is nothing short of an institutional failure.

Furthermore, as we emphasized, adopting these changes is likely not the only measure states should adopt to address the broad problem of missing Black children. The additional issues raised by the Missing and Minority Report—for example, discrepancies in data reporting, lack of training and protocols for law enforcement agents working with Black communities and more—should be considered in tandem in hopes of offering an even more comprehensive solution.[314] There is, however, an overlap between the criteria we recommend, which focus on initiation of alerts and the treatment of cases under such alerts, and the additional steps discussed in the report, particularly because the practical and

312. DeNeeka Hill, *How Effective are Ebony Alerts in California Since They Started? What Advocates, Law Enforcement Say*, KCRA (July 26, 2024, at 12:07 PT), https://www.kcra.com/article/california-ebony-alert-system-how-it-works/61704291 [https://perma.cc/R9X4-267K] (stating that "[t]wenty-eight Ebony Alerts have been issued statewide since January 2024"). *See* Francis, *supra* note 242 ("A year after the system was approved by lawmakers statewide, the Ebony Alert has been deployed 31 times, recovering 27 people, according to the California Highway Patrol, which ultimately issues the alerts.")

313. *See supra* Section III.A.

314. Francis, *supra* note 242.

expressive values of Ebony can contribute to a broader transformation in the treatment of missing Black children.

V. CONSTITUTIONAL LAW: EBONY LAW & THE STRICT SCRUTINY STANDARD

For some, the suggested policy analysis could be the end of this Article. It raised the challenges of existing legislation, synthesized current provisions, and offered guidelines for policy makers on how to reform existing legislation dedicated to recovering missing children to address its disproportional effects on Black communities—all without the need to address the constitutional challenges Ebony and Ebony-like legislation might face.

Yet, the policy arguments, calling to alter the existing AMBER regime and to apply the new provision to all children, are essentially colorblind. As such, while they may offer some practical relief to Black communities by better addressing the disproportionate number of Black children who go missing, they neglect the important expressive impact that a race-conscious law like Ebony can achieve. The broader social benefits of recognizing past wrongs in the treatment of Black families and children, potentially altering the mindsets of racially biased law enforcement agencies, and raising empathy toward Black victimization will be all washed under the colorblind policy solutions.

Such an outcome reflects our current equal protection jurisprudence. As mentioned, the conventional wisdom is that the Supreme Court has embraced an anticlassification interpretation of the strict scrutiny standard which renders almost any classification based on forbidden categories—race for our purposes—unconstitutional.[315] The recent *SFFA* decision has only contributed to the conceptualization of the equal protection doctrine as within anticlassification borders.[316]

The anticlassification approach indeed embodies the Court's adherence to colorblindness as a leading constitutional principle. Therefore, as others have argued, the strict scrutiny test fails to advance "racial inclusion."[317] More specifically, the Court engages with what Ian Haney Lopéz defined as "reactionary colorblindness" by framing race-conscious remedies as equivalent to laws intended to subordinate

315. Jack M. Balkin & Reva B. Siegel, *The American Civil Rights Traditions: Anticlassification or Antisubordination?*, 58 U. MIA. L. REV. 9, 10 (2003) (recognizing the general view regarding the dominance of the anticlassification approach but challenging it by suggesting antisubordination values were still present in Supreme Court decisions).

316. *See supra* note 33 and accompanying text.

317. Roy L. Brooks, *Racial Subordination Through Formal Equal Opportunity*, 25 S.D. L. REV. 879, 943 (1988).

minorities.[318] Therefore, the Court's colorblindness doctrine has been heavily criticized, and was described, for example, by critical race theorists as an oppressive tool[319] that inhibits attempts "to redistribute social resources in a more egalitarian fashion."[320] Furthermore, the Court's reactionary colorblindness approach tends to inflame claims made by white individuals—who have benefitted from the long-standing history of racism in America—that they are themselves victims of reversed racism.[321]

In sum, the policy solutions suggested, if adopted, would once again require adherence to white principles of neutrality,[322] neglecting to offer "any path to[ward] accountability for racial harms."[323] At the same time, the antisubordination interpretation, which potentially considers the Equal Protection Clause a tool to "reform institutions and practices that enforce the secondary social status of historically oppressed groups,"[324] "finds no traction in the doctrine."[325]

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318. Ian F. Haney López, *"A Nation of Minorities": Race, Ethnicity, and Reactionary Colorblindness*, 59 STAN. L. REV. 985, 988 (2007) (defines reactionary colorblindness as "an anticlassification understanding of the Equal Protection Clause that accords race-conscious remedies and racial subjugation the same level of constitutional hostility").

319. Neil Gotanda, *A Critique of "Our Constitution is Color-Blind"*, 44 STAN. L. REV. 1, 2 (1991) (arguing that color-blind constitutionalism "fosters white racial domination"). Gotanda explains that the color-blind approach implicitly endorses "the social superiority of mainstream white culture" through its nonrecognition of race. *Id.* at 53–54. By prioritizing inherently biased and historically white "meritocratic systems" as the primary vehicle for social progress, the colorblind approach forces people of color to conform and assimilate with the white social norm to achieve upward mobility. *Id.* at 54.

320. Hutchinson, *supra* note 277, at 1457.

321. Osamudia R. James, *White Like Me: The Negative Impact of the Diversity Rationale on White Identity Formation*, 89 N.Y.U. L. REV. 425, 431–432 (2014) (contending that Court's embrace of a colorblind equal protection jurisprudence has invited criticism of remedial racial policies by framing "Whites as innocent victims in an unfair system that awards handouts to undeserving non-Whites"); Darren Lenard Hutchinson, *"Unexplainable on Grounds other than Race": The Inversion of Privilege and Subordination in Equal Protection Jurisprudence*, 2003 U. ILL. L. REV. 615, 618 (contending that under existing equal protection jurisprudence "the Court has effectively inverted the concepts of privilege and subordination; it treats advantaged classes as if they were vulnerable and in need of heightened judicial protection, and it views socially disadvantaged classes as privileged and unworthy of judicial solicitude").

322. *See* Siegel, *supra* note 275, at 1489–90; Meyn, *supra* note 280, at 257.

323. Meyn, *supra* note 280, at 257; R. Richard Banks, *Race-Based Suspect Selection and Colorblind Equal Protection Doctrine and Discourse*, 48 UCLA L. REV. 1075, 1075 (2001) (contending that a colorblind approach neuters the remedial promise of the Equal Protection Clause by requiring the "suppression of the race-based nature of . . . state practices").

324. Balkin & Siegel, *supra* note 315, at 9 (discussing the evolution of anticlassification-antisubordination discourse).

325. Meyn, *supra* note 280, at 258. Meyn's work on race-based remedies in criminal law is instrumental in our analysis.

An equal protection jurisprudence dominated by anticlassification principles poses challenges for legislation like Ebony—which was "designed to issue and coordinate alerts with respect to Black youth"[326]—to withstand constitutional scrutiny. However, this Section will build on the narrow recognition of "compelling interests" in the Supreme Court's precedents to raise an important question: whether Ebony's unique context could potentially allow it to be considered a narrowly tailored intervention to address a compelling state interest. This Section will offer a range of arguments to support this proposition.

At the same time, and in recognition of the rigidity of the strict scrutiny standard, this Section will conclude by raising a difficult question: If Ebony Law—despite its importance—faces such hurdles in satisfying the requirements of constitutional doctrine, perhaps it is the scope of constitutional law itself that ought to be reconsidered. Pozen and Samaha's important work on the anti-modalities of constitutional interpretation will allow us to begin exploring this question.

A. The Idiosyncrasy of Race-Based Remedies in Criminal Law

In assessing the constitutionality of Ebony, one should first recognize that courts' willingness to apply the strict scrutiny standard in criminal law or public safety contexts differs from its applicability in, for example, settings of higher education or employment. *SFFA*'s holding, and its analysis of the strict scrutiny standard, should thus be understood in the context in which it was rendered: admission policies in higher education with the compelling interest being diversity in higher education. Ebony Law, however, is different. At its core, Ebony is a law-enforcement-oriented legislation intended to protect children who are victims of crime. In related settings, equal protection challenges to race-based interventions were not generally successful, allowing more judicial deference in applying these interventions.[327] This deference was mostly attributed to broader judicial recognition in law enforcement agents—including police and prosecutors—expertise and professional

326. CAL. GOV'T CODE § 8594.14(a) (West 2024).

327. *See Johnson v. California*, 543 U.S. 499, 509, 512–13 (2005) (recognizing imminent and serious risks to human safety in prisons as a compelling interest for the purposes of the strict scrutiny standard); *SFFA*, 143 S. Ct. 2141, 2167 (2023) (acknowledging that preventing prison violence is a concrete, compelling interest that may justify "temporary racial segregation of inmates"); *Wittmer v. Peters*, 87 F.3d 916, 918, 920–21 (7th Cir. 1996) (finding that inmate perceptions of operational fairness can justify hiring Black supervisors); Meyn, *supra* note 280, at 223; Sarah Spiegel, Comment, *Prison "Race Riots": An Easy Case for Segregation?*, 95 CALIF. L. REV. 2261, 2263–67, 2289–90 (2007) (surveying, but challenging, legal academia and the Supreme Court's treatment of prison segregation as an "easy case" for allowing racial classification).

judgment.[328] Any application of the compelling interest standard should thus be assessed in this particular context.

B. Compelling Interest

Unsurprisingly, the question of what may constitute a compelling interest under current doctrine is far from settled.[329] Exploring case law, one can find several interests that can be considered,[330] including guaranteeing diversity in employment or higher education,[331] fighting existing discrimination with or without relations to past acts of discrimination,[332] and achieving an institution's objective or mission.[333] The potentially compelling value of an interest, however, is by itself insufficient, as the Court requires the establishment of the interest in the particular context.[334] To establish that the interest is compelling, it is necessary to demonstrate several factors. These include clearly articulating the interest, ensuring a close alignment between the interest and the institution's objectives, obtaining expert support for the interest, and considering both current and past actions of the institution, among other considerations.[335]

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328. Spiegel, *supra* note 327, at 2270, 2291–92.

329. Meyn, *supra* note 280, at 260.

330. *Id.*; Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 UCLA L. REV. 1267, 1321–22 (2007) (noting that "the Supreme Court [sometimes] labels interests as compelling on the basis of little or no textual inquiry," such as protecting children from injury or "preserving the lives of viable fetuses").

331. *See Fullilove v. Klutznick*, 448 U.S. 448, 453–54 (1980) (racial diversity in the workplace); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978) (racial diversity in higher education).

332. *See SFFA*, 143 S. Ct. at 2162 ("[O]ur precedents have identified only two compelling interests that permit resort to race-based government action. One is remediating specific, identified instances of past discrimination that violated the Constitution or a statute."); *United States v. Paradise*, 480 U.S. 149, 185–86 (1987) (upholding a temporary race-conscious system for promoting state troopers where black troopers had previously been systematically disadvantaged); *Shaw v. Hunt*, 517 U.S. 899, 909 (1996) ("A State's interest in remedying the effects of past or present racial discrimination may in the proper case justify a government's use of racial distinctions."). However, the Court struck down a race-conscious redistricting plan in *Shaw* because it was not "narrowly tailored to the asserted end" of remedying past discrimination. *Id.* at 915.

333. *See Johnson v. California*, 543 U.S. 499, 514–15 (2005) (recognizing the unique missions of prisons as dangerous places); *see also Barhold v. Rodriguez*, 863 F.2d 233, 238 (2d Cir. 1988) (discussing the importance of unbiased appearance of the institutions as part of effective accomplishment of its mission).

334. *See, e.g.*, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720–21 (2007) (recognizing the interest of past discrimination in the abstract but requiring proof of such reality in actuality).

335. Meyn, *supra* note 280, at 261–62.

Applying these standards in the context of Ebony Law raises several potential arguments concerning the reception of its race-conscious remedies. First, what is the compelling interest? Courts, and most recently, the Supreme Court in *SFFA* have emphasized the importance of establishing clear and measurable goals for a race-conscious remedy.[336] In the context of *SFFA*, Chief Justice Roberts found that the interests introduced by Harvard were "elusive" and "not sufficiently coherent for purposes of strict scrutiny."[337] Roberts further emphasized the Court's inability to measure these interests as an indicator of their incoherence.[338]

Ebony does not seem to raise similar concerns. In the Ebony context, one can identify multiple, related interests. First is the failure of recovering missing Black children. Courts have consistently recognized that "'safeguarding the physical and psychological well-being of a minor' is 'compelling.'"[339] Second is addressing the racial disparities affecting the current AMBER regime. Both issues inhibit the ability of the criminal legal system to achieve its core public safety objectives. These two interests are compelling. They are first and foremost intended to save the lives of children victims of crimes while addressing racial disparities in the current AMBER regime. Ebony can potentially facilitate a reduction in the unequal treatment caused by inefficiencies in existing legislation by offering a race-based mechanism that will yield an outcome that "is compar[able] to what it would have been in absence of such constitutional violation."[340] These interests are concrete and measurable as states can follow the application of Ebony and perceive whether it is successful in recovering Black children while narrowing the racial gap between them and the recovery rates of white children.

Further, the current reality under the AMBER regime limits the system's ability to ensure public safety and gain the trust and confidence of the communities it serves. As courts recognize, race-based policy can claim a compelling interest if it contributes to the system's ability to achieve its operational needs, including those "essential to accomplishing

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336. *SFFA*, 143 S. Ct. at 2166.

337. *Id.* at 2166–67.

338. *Id.* at 2166; *see also* Joshi, *supra* note 278, at 465–66 (summarizing Roberts' majority opinion).

339. *New York v. Ferber*, 458 U.S. 747, 756–57 (1982) (quoting *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982)) ("Accordingly, we have sustained legislation aimed at protecting the physical and emotional well-being of youth even when the laws have operated in the sensitive area of constitutionally protected rights.").

340. *Dayton Bd. of Ed. v. Brinkman*, 433 U.S. 406, 420 (1977) (holding that a race-conscious school re-districting plan violated the Equal Protection Clause when it imposed a disproportionate "systemwide remedy" in the absence of a "systemwide impact" of racial discrimination).

criminal system objectives within a community served."[341] Courts have recognized that achieving deliverable law enforcement outcomes and also maintaining the community's perceptions of fairness increase trust in the criminal legal system.[342] As such, both were recognized as compelling operational needs deserving of race-based remedies.[343] These might point to Ebony's idiosyncrasy.

The system's failure to treat the enduring problem of missing Black children clearly affects its ability to achieve core public safety objectives. Further, among the elements that stand in the way of establishing trust in the criminal legal system are racial disparities,[344] including those we witness in the context of AMBER. Therefore, to bolster the case for Ebony, one can point to clear, previously recognized interests that may justify diverting from race-neutral measures.[345]

Additionally, an interest is more likely to be recognized as compelling when it is related to the institution's mission and to the institution's area of expertise (a close fit).[346] In the context of criminal law, courts are inclined—maybe too inclined—to defer to law enforcement in defining their goals and assessing their needs based on expertise.[347] Such tendency represents a broader appreciation and trust

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341. Meyn, *supra* note 280, at 262 (citing *Barhold v. Rodriguez*, 863 F.2d 233, 238 (2d Cir. 1988)).

342. *Barhold*, 863 F.2d at 238 (recognizing that the "operational need" to develop "a workforce that appears unbiased, is able to communicate with the public and is respected by the community it serves" may be a compelling state interest). The Second Circuit explained that a "balanced" and "integrate[d]" workforce may be necessary for a law enforcement body to "carry out its mission effectively." *Id.*; *see also* Joshua Kleinfeld & Hadar Dancig-Rosenberg, *Social Trust in Criminal Justice: A Metric*, 98 NOTRE DAME L. REV. 815, 845, 854 (2022) (discussing the connections between the fairness of the criminal legal system and the trust it gains from its constituents).

343. *Barhold*, 863 F.2d at 238; *Talbert v. City of Richmond*, 648 F.2d 925, 931 (4th Cir. 1981) (upholding the Richmond Police Department's race-conscious promotion program because the "attainment of racial diversity" served legitimate operational needs by increasing respect and confidence in law enforcement); *Detroit Police Officers' Ass'n v. Young*, 608 F.2d 671, 695–96 (6th Cir. 1979) (explaining that affirmative action programs in law enforcement contribute to "effective crime prevention and solution" by improving "the public's perception of law enforcement officials and institutions").

344. *McCleskey v. Kemp*, 481 U.S. 279, 312–13 (1987) (holding that a racial disparity in application of the death penalty was insufficient to establish a violation of the Equal Protection Clause because the disparity was "'a far cry from . . . [a] systemic defect[]'" (quoting *Pulley v. Harris*, 465 U.S. 37, 54 (1984))).

345. *See Wittmer v. Peters*, 87 F.3d 916, 919 (7th Cir. 1996) (acknowledging "law enforcement and correctional settings as the very *clearest* examples of cases in which departures from racial neutrality are permissible").

346. Meyn, *supra* note 280, at 267–68; *see also Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 313 (1978); *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003). Similarly, courts will adhere to experts explaining why an interest is compelling. Meyn, *supra* note 280, at 267–68.

347. For example, in the criminal law context, the courts in *Barhold* recognized "that racial diversity on the force is essential to security or public safety." Meyn, *supra*

that courts have in experience-based arguments brought by stakeholders in the criminal legal system.[348] Ebony's rationale is strongly tied to the criminal legal system's mission: recovering missing children, tackling racial disparities within existing legal regime, and by doing both, maintaining trust and the core public safety mission of the criminal legal system more broadly. The assessment that the interests behind Ebony are potentially compelling is also well within the system's area of expertise (children's public safety, building trust, and conceptions of fairness among communities).

Last, the past, and existing, patterns of discrimination against Black children make the interest more compelling and urgent.[349] As the Court stated in *United States v. Paradise*,[350] any showing of "pervasive, systematic, and obstinate discriminatory conduct" potentially opens the door to recognize a need for a race-conscious remedy.[351] Empirical data contributes to the court's recognition in these patterns of discrimination.[352] As previously discussed, existing data indicate how current child recovery mechanisms under the AMBER Alert system have a discriminatory effect on Black children. For example, the current criteria systemically exclude Black children, often victims of crime, from the protections of AMBER by tending to categorize them as runaways. As such, they are not equally benefiting from the infrastructure of AMBER, nor from law enforcement and public engagement with their cases. That seems to be the case also in situations when an alert is initiated. Black children are thus mistreated by the AMBER Alert system compared to their white counterparts. More broadly, due to a host of systemic inequalities, Black children are also disproportionately going missing compared to white children. It is hard not to recognize the

note 280, at 267. As for expertise, see the court in *Grutter*, deferring to the institution's expertise in determining the interest in diversity.

348. Anna Lvovsky, *The Judicial Presumption of Police Expertise*, 130 HARV. L. REV. 1995, 1998–99 (2017) (observing the tendency of courts to defer to "police expertise — the notion that trained, experienced officers develop rarefied and reliable insight into crime"); James D. Nelson, Note, *Incarceration, Accommodation, and Strict Scrutiny*, 95 VA. L. REV. 2053, 2080–82 (2009) (recognizing a pattern of deference by courts to the "experience and expertise of prison and jail administrators" who claim that a challenged policy is supported by a compelling interest (quoting 146 Cong. Rec. S7775 (July 27, 2000) (joint statement of Sens. Hatch and Kennedy on RLUIPA)); *see* Paul Butler, *Affirmative Action and the Criminal Law* 68 U. COLO. L. REV. 841, 870–72 (1997) (identifying similar deference in the context of constitutional interpretation). While we join the general critique of the courts' strong deference to police expertise, we recognize it is likely the norm—and that in the context of Ebony, it could strengthen the "compelling interest" arguments.

349. *See SFFA*, 143 S. Ct. 2141, 2162 (2023).

350. 480 U.S. 149 (1987).

351. *Id.* at 167.

352. *See* Meyn, *supra* note 280, at 270–72.

urgency in addressing these disparities, which is exactly what Ebony aspires to achieve.

C. The Intervention Is Narrowly Tailored

To pass the strict scrutiny test, any race-conscious remedy must also be narrowly tailored.[353] Here, in assessing this test, the Court investigates several key factors: determining if the institution has previously implemented race-neutral efforts to achieve the interest; assessing whether the race-conscious remedy is appropriately related and proportional to the interest; ensuring the remedy has a clear, measurable end-point and undergoes regular reevaluation; and considering the potential harm to those not benefiting from the remedy.[354] This Article raises several arguments to engage with an intriguing question: whether Ebony Law, and related legislation, can be understood as narrowly tailored intervention.

First, in the context of recovering missing children, the presently implemented AMBER Alert offers a race-neutral mechanism to address the problem, including of missing Black children. As demonstrated, AMBER colorblind categorization has resulted in the exclusion of Black children from its reach and the furtherance of their mistreatment, contributing to the current reality of disproportionate numbers of Black children going missing without recovery.[355]

Second, the remedy offered in Ebony directly responds to the compelling need: It focuses on the failures of AMBER Alerts to address the unique needs of Black children and their families and offers a set of new criteria to directly remedy these failures in hopes of reversing their current exclusion from the missing children recovery system. By offering these new criteria, law enforcement can de facto increase public safety while tackling the current racial disparities, consequently also achieving the broader compelling interests of community trust and legitimacy.

Third, under the proportionality requirement, courts assess whether the means chosen are such a good fit as to eliminate any concerns for

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353. *SFFA*, 143 S. Ct. at 1262 ("Second, . . . we ask whether the government's use of race is 'narrowly tailored'—meaning 'necessary'—to achieve that interest." (quoting *Fisher v. Univ. of Tex. at Austin* (*Fisher I*), 570 U.S. 297, 311–12 (2013))).

354. Meyn, *supra* note 280, at 272 (first citing *Fisher v. Univ. of Tex. at Austin* (*Fisher II*), 579 U.S. 365, 377, 379–382 (2016); and then citing *Grutter v. Bollinger*, 539 U.S. 306, 341 (2003)).

355. Our analysis refers to both of the concerns discussed earlier regarding AMBER's implementation: either the early stage of initiation and the categorization of Black children as runaways, or the treatment of a missing request of Black children in cases where an alert was initiated. As discussed earlier, this Article posits that they are related so that initiating Ebony alerts can potentially impact the interaction between law enforcement and Black communities and improve the process of recovering Black children more broadly.

illegitimate racial classification.[356] One way to establish the proportionality requirement would be a showing of a "light touch,"[357] that is, when race is considered alongside additional factors.[358] Quotas, for example, often signal to courts that race is heavily weighted vis-à-vis other factors and may suggest that the remedy is disproportionate to the compelling need.[359] Relatedly, the impact of the remedy on final outcomes has also been considered under the proportionality analysis.[360] However, when the remedy is intended to resolve severe and urgent racial harm, courts are willing to balance such severity with heavily-weighted race considerations.[361]

In the context of Ebony, there is no doubt that the remedy is intended to fix an urgent and persistent discrimination in the application of existing AMBER legislation, either through initiation of an alert or in treatment of cases after an alert is initiated. Such an unequal application of AMBER affects how missing Black children who are potentially victims of crimes are treated under the mechanisms law enforcement put in place exactly for these purposes. Therefore, current practices clearly threaten these children's lives. At the same time, when considering the impact of race on the final outcome—the potential recovery of a missing child—one should take into account the fact that Ebony does not affect or replace the AMBER Alert system, whose main beneficiaries are white children. Therefore, while there is no doubt that race is a significant component in the application of Ebony, there are plausible arguments why it can still potentially satisfy the proportionality requirement.

This last point relates to the fourth factor considered by courts under the narrowly tailored analysis: the burden of the race-based remedy on other racial groups. Reviewing the Court's approach to this factor indicates that, traditionally, the comparison group against which the

356. *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493 (1989).

357. Meyn, *supra* note 280, at 276.

358. The race-based intervention discussed in *Fisher II* illustrates such "light touch" approach: Race was only considered alongside additional factors and was considered a plus only to the last twenty-five percent of class openings. *Fisher II*, 579 U.S. 365, 372–75 (2016).

359. *See* Meyn, *supra* note 280, at 277. For example, keeping certain number of slots for minority applicants as in *Bakke* or certain percent of contractors as in *Croson*. *See Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 319–20 (1978); *J. A. Croson Co.*, 488 U.S. at 499–500.

360. For example, in *Fisher II*, the Court found that "the front-end adjustment [of race] was not so significant to be determinative of one's admission to or rejection from the university." Meyn, *supra* note 280, at 277–78.

361. Meyn, *supra* note 280, at 278; *United States v. Paradise*, 480 U.S. 149, 167 (1987) (upholding a decision to implement a race-based remedy for hiring, among a few more considerations, based on the severity of existing discrimination and the urgency in correcting it).

burden is assessed is white individuals.[362] As previously mentioned, in the context of Ebony, applying the race-based remedies it offers will likely not impact white children negatively. A crucial component of the Court's holding in *SFFA* was its view of college admissions as a "zero-sum" process.[363] Through this lens, the Court established that a benefit given to one necessarily excludes giving it to another.[364] Irrespective of whether one agrees with this proposition in the context of university admissions, Ebony simply does not lend itself to a similar analysis. It does not replace AMBER Alert or narrow its scope, and that system remains intact. As the data presented before indicates, white children are already the main beneficiaries of the AMBER Alert system, and there is no reason to suggest they will not continue to be also after the legislation of Ebony.[365] As discussed earlier, states can address concerns related to source allocation and budgetary constraints from implementing Ebony-like mechanisms, as was done in California, and by doing so guaranteeing that white children will not be burdened from the race-conscious remedy offered in Ebony.

The fifth consideration under the narrowly tailored assessment seemed to have been at the focus of Chief Justice Robert's recent decision in *SFFA* to declare unconstitutional race-based policies in higher education admissions.[366] Courts have stressed the importance of continuous assessment of the race-based remedy and its necessity to achieve its goals.[367] Relatedly, as discussed, courts have emphasized the burden put on institutions to present goals that are both sufficiently defined and measurable but also have a clear end point.[368] Indeed, in *SFFA*, Chief Justice Roberts found that Harvard College's and the University of North Carolina's admissions policies did not satisfy these requirements.[369] Particularly, by building on Justice O'Connor's opinion in *Grutter v. Bollinger*[370] that predicted that race-conscious admissions

362. *See, e.g.*, *Fisher II*, 579 U.S. at 375 (considering the burden of the measures adopted on white applicants); *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 282–83 (1986) (addressing the burden on white employees).

363. Avital Fried, *Equal Standards for Equal Protection: Revisiting Race Discrimination in Jury Selection After* SFFA, 134 YALE L.J.F. 709, 713 (2025) (quoting *SFFA*, 143 S. Ct. 2141, 2169 (2023)), https://www.yalelawjournal.org/pdf/FriedYLJForumEssay_edfjd5qa.pdf [https://perma.cc/43FA-UZFU].

364. *SFFA*, 143 S. Ct. at 2169.

365. It is thus unlikely that Ebony will lead to a worse treatment of non-Black children because of their race—a concern that Gorsuch emphasized. *See id.* at 2215 (Gorsuch, J., concurring).

366. *See SFFA*, 143 S. Ct. at 2166; Joshi, *supra* note 278, at 455–56.

367. *See* Meyn, *supra* note 280, at 272, 283.

368. *See, e.g.*, *SFFA*, 143 S. Ct. at 2166.

369. *Id.*

370. 539 U.S. 306 (2003).

will no longer be needed in twenty-five years,[371] Roberts emphasized that, despite such prediction, "no end is in sight" for the race-conscious admission programs of Harvard College and the University of North Carolina, which was part of his rationale for their failure to satisfy the strict scrutiny standard.[372]

It is questionable whether the interests behind Ebony raise similar concerns. As discussed, they are very concrete—narrowing down the disproportionate number of unrecovered missing Black children compared to white children. While Ebony indeed aspires to correct past injury, one read of the legislation would suggest such correction is not ageless, but rather, focuses on correcting the disproportionate effects of AMBER, nothing more. Therefore, if sufficient data will be introduced to suggest that Ebony is succeeding in narrowing the recovery gap between Black and white missing children, it can be potentially terminated. There is thus at least a plausible argument that the identified interests behind Ebony are not limitless and "have a [measurable] 'logical end point.'"[373]

In sum, the analysis offered suggests that Ebony's idiosyncratic nature raises a set of questions that could potentially challenge arguments why it cannot survive constitutional scrutiny, even in the post-*SFFA* era of equal protection jurisprudence. Ebony's race-conscious remedy demonstrates potential compelling interests: saving lives of Black children, narrowing the racially disparate gap in missing child recovery, and consequently building trust and legitimacy of the community, all to guarantee the accomplishment of law enforcement's public safety mission. The intervention is also potentially narrowly tailored based on existing precedents. In other words, Ebony operates within very different context and set of circumstances from those before the Supreme Court in *SFFA*, and these differences can potentially affect its analysis. Clearly, the particular assessment of Ebony, or Ebony-like provisions, will ultimately be determined on a case-by-case basis. However, this Article aspires to contribute to the conversation by raising a host of constitutional questions and potential arguments that could allow jurisdictions to tackle the enduring problem of missing Black children through race-conscious legislation.

At the same time, one cannot help but wonder whether the potential challenges Ebony might be facing in the current era—dominated by anticlassification rhetoric—raise another, more profound question about the capacity of existing constitutional doctrine to address entrenched racial disparities and effect social change. In other words, maybe we have been asking the wrong questions. Instead of analyzing Ebony strictly

371. *Id.* at 343.

372. *SFFA*, 143 S. Ct. at 2165–66.

373. *Id.* at 2165 (quoting *Grutter*, 539 U.S. at 342).

within the framework of existing equal protection jurisprudence, we may want to consider its provisions from an external perspective.

Specifically, Ebony and Ebony-like legislation illustrate what Pozen and Samaha identified as "constitutional law's resonance gap," that is, the detachment of constitutional law reasoning from "values and concerns of ordinary people and policymakers."[374] Pozen and Samaha explain this gap through their distinction between modalities of constitutional arguments and anti-modalities, that is, accepted forms of arguments among constitutional decision makers as opposed to illegitimate forms of arguments.[375] Among these anti-modalities, they identify policy arguments, including data-driven analysis, partisan arguments, popularity arguments, logrolling arguments, emotional arguments, and fundamentalist arguments.[376]

The constitutional debate pertaining to equal protection we discussed similarly limits itself to these accepted modalities, excluding important factors—particularly data-driven policy considerations—from constitutional reasoning.[377] As Pozen and Samaha aptly recognize, however, anti-modalities sometimes do penetrate constitutional discourse, but they must do so camouflaged, hiding behind other accepted forms of constitutional argumentation.[378] This disguise flattens the discourse. As such, for an anti-modality argument to successfully enter constitutional discourse, it would require "simplification, truncation, adulteration, or a combination thereof" of the arguments, so that they would be "sufficiently superficial" to be allowed entry.[379] For policy arguments, for example, this could involve the flattening of complexities, undervaluing the data presented or simply avoiding quantification and concretization.[380]

In the context of Ebony—and perhaps equal protection discourse around racial inequalities more broadly—the inability to introduce complex realities based on data and nuanced policy considerations presents a significant challenge to advancing equality through the existing constitutional framework. As this Article has illustrated, the racial inequalities revealed by current AMBER Alert laws reflect a complex history of the unequal treatment of Black children and their families—a history that warrants deep engagement through policy-based, partisan,

374. David E. Pozen & Adam M. Samaha, *Anti-Modalities*, 119 MICH. L. REV. 729, 768–69 (2021).

375. *See id.* at 732.

376. *Id.* at 746–65.

377. *Id.* at 746, 748–50; *see also* Lawrence Lessig, *Constitution and Code*, 27 CUMB. L. REV. 1, 14 (1997) (explaining that "a policy argument is not a constitutional argument").

378. Pozen & Samaha, *supra* note 374, at 772–73.

379. *Id.* at 774.

380. *Id.* at 775.

emotional, empathetic, and moral arguments. Yet, these are precisely the kinds of arguments that are either excluded from constitutional discourse altogether or enter it only after being stripped of their complexity.

With that, Ebony Law can offer a new venue through which to assess the limits of the current Supreme Court's jurisprudence to deeply challenge entrenched racial disparities and affect social change, even when the lives of our children are at stake. It illustrates the potential harms from sticking to the doctrine of colorblindness and its detachment from complex political discourse. By doing so, and rejecting the subordination interpretation of the strict scrutiny standard, courts stand in the way of meaningful mobilization and deeper recognition in the history and politics of racial treatment of Black communities in the U.S. Indeed, as Pozen and Samaha indicate, "in recognition of the limited affordances of orthodox constitutional logic," one option for confronting the exclusion of anti-modalities and the resonance gap is to narrow constitutional law's reach itself.[381] Our analysis suggests that the issue of the unequal treatment of Black missing children might be an area in which Pozen and Samaha's thesis could be further explored.[382]

CONCLUSION

So far, the problem of missing Black children and its effects on Black communities has not received adequate scholarly attention. This is unfortunate, as this issue has been burdening Black communities for decades now. Furthermore, this issue offers another domain in which Black communities suffer from unequal treatment by law enforcement agencies, the media, and the public. It also exposes once again the colorblindness fallacy, showing how colorblind legislation is applied unequally in a way that disadvantages Black communities. This conversation is particularly important given the current stage of our equal protection jurisprudence which sanctifies colorblindness and rejects race-conscious attempts to address discriminatory patterns.

This Article thus aspires to serve as a guide for jurisdictions aiming to address the problem of missing Black children in their communities. It offers a set of factors to be considered when advancing solutions to this problem. But it goes beyond the immediate, policy-based resolutions. Recognizing the increasingly limited capabilities of our colorblind Constitution to acknowledge past wrongs and mobilize racial minorities,

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381. *Id.* at 792.

382. Pozen and Samaha leave open the difficult question of "which substantive issues should be constitutionalized." *Id.* at 793. This Article does not aim to answer that question in the context of equal protection. It merely highlights the pathologies of constitutional law in the context of Ebony law and, through a critique of existing equal protection jurisprudence and an anti-modalities analysis, reflects on the doctrine's potential incompatibility with addressing this problem.

the Article further raises a set of constitutional arguments that could encourage the potential advancement of race-conscious legislation, even after *SFFA*. Indeed, the constitutional analysis offered here might raise challenges in the current era dominated by anticlassification rhetoric. However, such a disruption in current doctrine could be deemed essential for those striving to challenge the fallacy of the colorblind narrative. The problem of missing Black children and the urgent need to offer institutional solutions to address it could contribute to catalyzing these attempts.