

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 502

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Constantine and others

SUBJECT: Missing Persons

DATE: March 26, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.	Dugger	Cannon	CJ	Favorable
3.			JA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 502 creates a definition section for ch. 937, F.S., providing definitions for a missing adult, missing child, and missing endangered person. The bill amends s. 937.021, F.S., making its provisions applicable not only to missing children, but also to missing adults.

The bill requires law enforcement agencies to adopt written policies regarding the procedures to be used to investigate reports of missing children and adults, and provides that an entry concerning a missing child or missing adult may not be removed from the criminal databases solely on the basis of the age of the missing person.

The bill provides that a report that a child or an adult is missing must be filed with and accepted by the law enforcement agency with jurisdiction in the locale where the person was last seen.

The bill clarifies that a law enforcement agency must transmit a report of a missing child to the state and federal criminal databases within two hours of receipt of the report, and must transmit a *credible* report of a missing adult to the databases within two hours of receipt of the report.

The bill provides immunity, similar to the immunity granted to individuals who release information during an AMBER Alert, for individuals who release information and photographs pertaining to missing adults.

The bill provides that if a missing child or missing adult is not located within 90 days, the law enforcement agency that accepted the report must pursue DNA analysis. The bill requires FDLE to adopt rules establishing procedures for DNA analysis in cases involving missing children and missing adults, and specifies that the DNA provisions of the bill are contingent upon the availability of federal funding.

The bill amends s. 937.022, F.S., renaming and expanding the scope of the existing Missing Children Information Clearinghouse to include all missing endangered persons as defined by the bill. The bill addresses how reports are to be submitted to the clearinghouse, and requires the law enforcement agency with jurisdiction to immediately notify the clearinghouse and purge the databases upon location of a missing endangered person.

This bill substantially amends the following sections of the Florida Statutes: 937.021, 937.022.

II. Present Situation

Missing Child Reports

Chapter 937, F.S., prescribes Florida's law concerning missing person investigations. Except for one section concerning dental records,¹ these statutes deal exclusively with missing children.

Section 937.021, F.S., specifies actions to be taken when a parent or guardian reports that a child under the age of 18 is missing. The law enforcement agency to which the report is made must immediately inform all of its on-duty officers of the report, communicate the report to all other law enforcement agencies in the county, and transmit² the information to be included in the Florida Crime Information Center (FCIC) computer.³ The FCIC then automatically transmits the information into the Federal Bureau of Investigation's National Crime Information Center (NCIC).⁴

¹ Section 937.031, F.S., requires an investigating law enforcement agency to request and enter into the criminal databases the dental records of a person who has been reported missing and who has not been located after 30 days, for the purpose of comparing the records to those of unidentified deceased persons.

² Section 937.021(1), F.S. Federal law requires that all law enforcement agencies enter information about missing children under the age of 21 into the NCIC database within two hours of receiving a report. *See* the National Child Search Assistance Act of 1990, 42 U.S.C.A. ss. 5779-5780 (2006), which requires all law enforcement agencies to enter information about missing children into NCIC; Suzanne's Law, Pub.L. 108-21 Title II, s. 204 (2003) which requires all law enforcement agencies to enter information about missing children under the age of 21 into NCIC; and the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, s. 154 (2006) which requires all law enforcement agencies to enter information about missing children (under the age of 21) into NCIC within 2 hours of receipt of a report, and prohibits law enforcement agencies from removing any person from the databases solely on the basis of age.

³ The FCIC II System provides Florida's criminal justice agencies with access to on-line information about criminals and criminal activity. It also serves as the link to criminal justice information in other states and the federal government. *See* http://www.fdle.state.fl.us/publications/tech_success_stories/FCIC-II.htm (last visited March 9, 2008).

⁴ NCIC is a database that allows access by any federal, state or local criminal justice agency to information from other criminal justice agencies about crimes and criminals. *See* <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm> (last visited March 9, 2008).

If the report of a missing child meets certain criteria, the Florida Department of Law Enforcement (FDLE) will activate an AMBER Alert or Missing Child Alert, the purpose of which is to broadcast critical information about a missing child who is believed to be in danger, in a timely manner, to the public via radio and television.⁵ The statute provides immunity from civil liability for agencies, media, and their personnel who comply in good faith with a request relating to an AMBER Alert or Missing Child Alert information.⁶

Missing Children Information Clearinghouse

Once a report of a missing child has been entered into NCIC, Florida's Missing Children Information Clearinghouse (MCIC) will also open a case on the child. The MCIC is a central repository for information regarding missing children in Florida. The MCIC collects and disseminates information to assist law enforcement agencies and others in their efforts to locate missing children.⁷ The MCIC also provides technical assistance and training, and works with the Office of Vital Statistics and the missing child's school to ensure that the child's birth and school records are flagged and that requests for the flagged records are reported.⁸ The MCIC is intended to serve as a complement to state and federal computerized missing persons files.

The statutory mission of MCIC is limited to missing children. Section 937.022, F.S., defines "missing child" as a person:

- Under the age of 18;
- Whose temporary or permanent residence is in, or is believed to be in, this state;
- Whose location has not been determined; and
- Who has been reported as missing to a law enforcement agency.

In some cases, the National Center for Missing and Exploited Children (NCMEC) also assists MCIC and local law enforcement in the location of a missing child.⁹

Missing Adults

Investigations concerning missing adults are conducted as criminal investigations if the law enforcement agency with jurisdiction believes that foul play or fraud has occurred. Otherwise, law enforcement agencies must be aware of privacy issues, including the fact that mentally competent adults can legally choose to relocate or disappear without informing their loved ones. This can lead to frustration and additional grief for family members and friends who are left behind.

⁵ See <http://www.fdle.state.fl.us/AmberPlan/> (last visited March 9, 2008). To activate the AMBER alert, the child must be under 18 years of age, there must be a clear indication of abduction, the child's life must be in danger, there must be a detailed description of child and/or abductor/vehicle and the activation must be recommended by the local law enforcement agency of jurisdiction.

⁶ Section 937.021(3), F.S.

⁷ Section 937.022, F.S., establishes the MCIC within the Florida Department of Law Enforcement (FDLE). See <http://www.fdle.state.fl.us/MCICSearch/> (last visited March 9, 2008).

⁸ Sections 937.024 and 937.025, F.S.

⁹ NCMEC is a private, non-profit organization that serves as a national clearinghouse for information about missing children and provides technical assistance and training to individuals, law enforcement, and social service agencies. See <http://www.missingkids.com> (last visited March 9, 2008).

The FDLE provides the Florida Crime Information Center: Public Access System (PAS), which is a web-based database designed to provide the public with the opportunity to assist law enforcement agencies in locating (not reporting) stolen property, missing persons, and persons wanted in connection with ongoing investigations.¹⁰ The PAS database contains information about Florida missing persons, as reported to FDLE by law enforcement agencies throughout the state and authorized for release to the public, but it does not confirm that any missing person report is current, active, or complete.¹¹

The National Center for Missing Adults (NCMA) was established by federal law in 2000. The NCMA operates as the national clearinghouse for missing adults, providing services and coordination between various government agencies, law enforcement, media, and the families of missing adults. The NCMA also maintains a national database of missing adults determined to be “endangered” or otherwise at-risk.¹²

Missing Persons and Unidentified Remains

On any given day, there are as many as 100,000 active missing persons cases in the United States. Every year, tens of thousands of people vanish under suspicious circumstances. Viewed over a 20-year period, the number of missing persons can be estimated in the hundreds of thousands.¹³

Due in part to sheer volume, missing persons and unidentified human remains cases are a tremendous challenge to state and local law enforcement agencies. The workload for these agencies is staggering: more than 40,000 sets of human remains that cannot be identified through conventional means are held in the evidence rooms of medical examiners throughout the country.¹⁴

Efforts to solve missing persons cases are further hindered because many cities and counties continue to bury unidentified remains without attempting to collect DNA samples. Many labs are not equipped to perform DNA analysis of human remains, especially when the samples are old or degraded. In addition, many law enforcement agencies aren't familiar with, or don't have the resources to utilize, state and federal databases to assist in missing person investigations.¹⁵

Identification of Human Remains in Florida

In May 2006, the Commissioner of FDLE and the Chairman of the Florida Medical Examiner's Commission (MEC) sent a letter to all district medical examiners concerning a joint MCIC/MEC initiative to identify Florida's homeless deceased. The letter noted that Florida has over 500 unidentified deceased person cases entered into the NCIC database, and that each of those

¹⁰ See <http://pas.fdle.state.fl.us/pas/pashome.a> (last visited March 9, 2008).

¹¹ See <http://pas.fdle.state.fl.us/pas/person/displayMissingPersonsSearch.a> (last visited March 9, 2008).

¹² See http://www.theyaremissd.org/ncma/content.php?webid=about_ncma (last visited March 9, 2008).

¹³ Nancy Ritter, *Missing Persons and Unidentified Remains: The Nation's Silent Mass Disaster*, NIJ Journal No. 256 (January 2007) at p.1.

¹⁴ *Id.*

¹⁵ *Id.* at p. 6. In addition to NCIC, there are three other federal databases that are useful in investigations of missing persons: CODIS(mp) (Combined DNA Index System for Missing Persons) is database specifically designed to assemble data on missing persons and unidentified human remains cases; IAFIS (Integrated Automated Fingerprint Identification System) is a national fingerprint and criminal history database; and ViCAP (Violent Criminal Apprehension Program) is a nationwide data center designed to collect, collate, and analyze information on crimes of violence.

represents a family that lost a loved one and received no closure. The initiative is modeled after the District 13 Medical Examiner's Office (Hillsborough County) effort that resulted in resolving 14 of 25 unidentified deceased cases. The letter urged medical examiners to become familiar with and take advantage of new technologies.¹⁶ Among the resources and strategies that are identified on the MEC website are:

- NCIC;
- Fingerprints;
- Dental records;
- DNA analysis;
- Forensic composite sketches;
- Florida Unidentified Decedents Database; and
- Forensic anthropology.¹⁷

Section 406.14, F.S., requires an investigating law enforcement officer to make any evidence that is material to the cause of death available to the medical examiner. If the law enforcement officer is unable to immediately identify the body, s. 406.145, F.S., requires the law enforcement investigator to enter an Unidentified Person Report through FCIC into NCIC. The procedures for medical examiners to follow in identifying a body are set out in the Medical Examiner's Commission rules. These rules also require preservation of remains pending identification and return to the next of kin.¹⁸

President's DNA Initiative: Advancing Justice through DNA Technology

Recognizing that DNA technology is increasingly vital to ensuring accuracy and fairness in the criminal justice system, President Bush announced, on March 11, 2003, a 5-year, one-billion-dollar initiative to improve the use of DNA in the criminal justice system. The Initiative calls for increased funding, training, and assistance to federal, state, and local forensic labs, police, medical professionals, victim service providers, prosecutors, defense lawyers, and judges, intended to ensure that DNA technology reaches its full potential to solve crimes, protect the innocent, and identify missing persons.¹⁹ It is unclear how much (if any) funding for this Initiative will be available after March 2008.

Florida has received funding pursuant to this Initiative as follows:

- Backlog Reduction Funding \$2,953,313;
- Forensic Casework Funding \$5,968,126;
- Capacity Enhancement Funding \$7,482,330;²⁰ and
- Cold Case DNA Funding \$2,237,937 (FY 05 and FY 07).²¹

¹⁶ Available at <http://www.fdle.state.fl.us/cjst/mec/identifyingunidentifieddeceased/Cover%20letter%20w%20signatures.pdf> (last visited March 9, 2008).

¹⁷ Available at <http://www.fdle.state.fl.us/cjst/mec/identifyingunidentifieddeceased/Strategies%20and%20Current%20Available%20Resources%20FINAL.pdf> (last visited March 9, 2008).

¹⁸ Fla. Admin. Code r. 11G-1.001, *et. seq.* (2007).

¹⁹ See <http://www.dna.gov/info/>.

²⁰ See http://www.dna.gov/state_profiles/Florida/#funding.

²¹ See http://www.dna.gov/funding/cold_case.

III. Effect of Proposed Changes:

Section 1

The bill creates a definition section, providing, *inter alia*, the following definitions applicable to ch. 937, F.S.:

- “Missing adult” means a person 18 years of age or older whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.
- “Missing child” means a person younger than 18 years of age whose temporary or permanent residence is in, or is believed to be in, this state, whose location has not been determined, and who has been reported as missing to a law enforcement agency.
- “Missing endangered person” means a missing child, a missing adult younger than 26 years²² of age or a missing adult 26 years of age or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity.

The bill amends s. 937.021, F.S., relating to missing person investigations, making its provisions generally applicable not only to missing children, but also to missing adults.

The bill requires law enforcement agencies to adopt written policies regarding the procedures to be used to investigate reports of missing children and adults, and provides that the policies must include:

- Requirements for accepting missing child and missing adult reports;
- Procedures for initiating, maintaining, closing, or referring missing child and missing adult investigations; and
- Standards for maintaining computer data for missing child and missing adult investigations which must require, at a minimum, a monthly review of each case.

The bill provides that an entry concerning a missing child or missing adult may not be removed from FCIC or NCIC solely because of the age of the missing person.

The bill provides that a report that a child or an adult is missing must be filed with and accepted by the law enforcement agency with jurisdiction in the locale where the person was last seen.

The bill clarifies that a law enforcement agency must transmit a report of a missing child to NCIC (in addition to FCIC) within two hours of receipt of the report. Current law imposes additional requirements on law enforcement agencies to initiate an investigation when a child is reported missing.

²² According to FDLE, the intent of this bill is, in part, to respond to recent, high-profile cases of college-aged young people who have been victimized by violent offenders. FDLE used the age limitation (younger than 26) used by the insurance industry to determine dependency. *See* Florida Department of Law Enforcement, Analysis of Senate Bill 502 (revised March 4, 2008).

The bill provides that a law enforcement agency must also transmit a *credible* report of a missing adult to NCIC (in addition to FCIC) within two hours of receipt of the report.

The bill emphasizes that AMBER Alerts and Missing Child Alerts may be issued only for missing children (under the age of 18), and provides immunity for individuals who release information and photographs pertaining to missing adults. The immunity granted is identical to that provided for individuals releasing AMBER Alert or Missing Child Alert information although, under current law, the AMBER Alert immunity does not extend to photographs.

The bill provides that if a missing child or missing adult is not located within 90 days, the law enforcement agency that accepted the report shall attempt to obtain a biological specimen for DNA analysis from the missing person or from appropriate family members, as well as any documentation necessary to enable the agency to use the specimens in conducting searches of DNA databases.

The bill requires FDLE to adopt rules establishing procedures specific to cases involving missing children and missing adults. The rules must:

- Identify biological specimens that are approved by FDLE for DNA analysis;
- Identify the documentation necessary for FDLE to use the biological specimens for DNA analysis;
- Establish procedures for the collection of biological specimens by law enforcement agencies; and
- Establish procedures for forwarding biological specimens by law enforcement agencies to FDLE.

The bill specifies that the DNA provisions are contingent upon the availability of federal funding.

Section 2

The bill amends s. 937.022, F.S., expanding the scope of the existing Missing Children Information Clearinghouse to include all missing endangered persons as defined by the bill. The bill renames the clearinghouse “Missing Endangered Persons Information Clearinghouse.”

The bill allows any person with knowledge (rather than only the parent, guardian or legal custodian) to submit, to the clearinghouse, reports involving children or adults under the age of 26, but requires the law enforcement agency with jurisdiction to submit reports involving adults over the age of 26 who are suspected to be in danger.

The bill requires the law enforcement agency with jurisdiction to purge information from the FCIC and NCIC databases and immediately notify the clearinghouse upon location of a missing endangered person.

The bill provides an effective date of July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

FDLE initially estimated a fiscal impact of \$170,288 for year one, with recurring costs of \$116,512. The majority of the dollars requested were for two positions to assist FDLE in coordinating DNA collection with local law enforcement agencies and performing the analytical work on the additional cases anticipated by the change in age limits for cases submitted to MCIC (an estimated 47 percent increase in total cases).

Since FDLE submitted its fiscal note to the Legislature, the Governor's office included two positions in FDLE's submitted budget. Anticipating funding through the LBR process, FDLE now estimates that the bill will have a fiscal impact of \$52,500 in programming costs, which it will absorb, partly by altering the current database to assist in offsetting the costs.²³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²³ *Id.*

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families and Elder Affairs Committee on March 19, 2008:

Provides a definition section and clarifies that s. 937.021, F.S., as amended, applies to all cases involving missing persons, adults, and children, and s. 937.022, F.S., as amended, expands the responsibilities of the clearinghouse to include (besides children) young adults under the age of 26 and any person who is or may be endangered. Makes technical and conforming changes.

- B. **Amendments:**

None.