

FINAL BILL ANALYSIS

BILL #: CS/SB 664

FINAL HOUSE FLOOR ACTION:

118 Y's 0 N's

SPONSOR: Sen. Benacquisto (Rep. Abruzzo)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/HB 513

SUMMARY ANALYSIS

CS/SB 664 passed the House on May 4, 2011. The bill was approved by the Governor on June 24, 2011, chapter 2011-218, Laws of Florida, and becomes effective July 1, 2011.

In October 2008, Governor Charlie Crist signed an Executive Order establishing the Florida Silver Alert Plan. The Silver Alert Plan was developed to broadcast information in a timely manner to the general public about a missing elderly person who suffers from irreversible deterioration of intellectual faculties.

Section 937.022, F.S., creates the Missing Endangered Persons Information Clearinghouse (MEPIC) within the Florida Department of Law Enforcement (FDLE) which serves as a central repository of information regarding missing endangered persons. Upon receiving information about a missing endangered person, MEPIC disseminates the information in an effort to locate the missing endangered person. A "missing endangered person" is defined as a missing child, a missing adult younger than 26 years 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.

Although not specifically included in the definition, FDLE considers a person who meets the criteria for a state Silver Alert to be a "missing endangered person" as defined by s. 937.0201, F.S.

The bill amends the definition of "missing endangered person" in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The bill also provides that only the law enforcement agency having jurisdiction over the case may make a request to MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The bill provides immunity from civil liability to entities who act in good faith when requested to record, report, transmit, display, or release information pertaining to a Silver Alert.

FDLE reports that the bill will have no fiscal impact as statewide Silver Alerts have been issued since October 2008 and FDLE has historically considered a person who meets the criteria for a state Silver Alert to be a "missing endangered person" as defined by s. 937.0201, F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background Information

Silver Alert Plan

In October 2008, Governor Charlie Crist signed an Executive Order establishing the Florida Silver Alert Plan (plan.)¹ The plan was developed to broadcast information in a timely manner to the general public about a missing elderly person who suffers from irreversible deterioration of intellectual faculties.²

A law enforcement agency can issue a *local or regional* Silver Alert³ when a missing person meets the following criteria:

- The missing person must be age 60 or older and there must be a clear indication that the individual has an irreversible deterioration of intellectual faculties, which must be verified⁴ by law enforcement, or
- Under extraordinary circumstances when a person age 18 to 59 has irreversible deterioration of intellectual faculties and law enforcement has determined the individual lacks the capacity to consent and where the use of dynamic message signs may be the only possible way to rescue the missing person.⁵

FDLE's Missing Endangered Person Information Clearinghouse (MEPIC) will activate⁶ a *statewide* Silver Alert, including the Florida Department of Transportation, the Florida Highway Patrol, and FDLE Dynamic Message Sign activation,⁷ if a case meets all of the above criteria, in addition to the following:

- Local law enforcement has already activated a local and regional alert by contacting media outlets.⁸
- The local law enforcement agency's investigation has concluded that the disappearance poses a credible threat to the person's safety.
- A description of the missing person's vehicle and a license plate number is available and has been verified by local law enforcement.
- The local law enforcement agency has entered the missing person into the Florida Crime Information Center and issued a statewide "Be On the Look Out" (BOLO) to other law enforcement and 911 centers.⁹

¹ Office of the Governor, Executive Order Number 08-211.

² Missing/Endangered Persons (AMBER & Silver Alert.) Florida Department of Law Enforcement, Revised June 24, 2010. (On file with Criminal Justice Subcommittee staff).

³ Local law enforcement will take a report of a missing person, issue a Silver Alert if the criteria are met, and notify FDLE if the person is driving a vehicle. The local law enforcement agency determines how long a Silver Alert remains activated. "Florida's Silver Alert Plan Frequently Asked Questions." FDLE.

<http://www.fdle.state.fl.us/MCICSearch/Documents/SilverAlertFAQ.pdf> (Last accessed on March 11, 2011).

⁴ Law enforcement requires the parent, spouse, guardian, legal custodian, or person responsible for the supervision of the missing person to provide specific information which may include documentation from a medical or mental health professional of the person's condition. Missing Endangered Persons Information Clearinghouse Policies and Procedures Manual. FDLE. July 2010. (On file with Criminal Justice Subcommittee staff).

⁵ *Id.*

⁶ *Id.*

⁷ Dynamic message signs are activated regionally or statewide when criteria are met. If road signs are used, they remain activated for a maximum of 6 hours, unless the missing elderly person is rescued or the Florida Department of Transportation is otherwise instructed. *Supra* "Florida's Silver Alert Plan Frequently Asked Questions."

⁸ However, media outlets have the option on whether or not to broadcast Silver Alert information. *Id.*

According to FDLE, since the program's inception, the department has issued 282 statewide Silver Alerts with 42 direct recoveries as a result of the alerts.¹⁰

Missing Person Investigations

Chapter 937, F.S., relates to missing person investigations. Section 937.021, F.S., requires a law enforcement agency, upon receiving a report that a child is missing,¹¹ to immediately inform all on-duty law enforcement officers of the missing child report, communicate the report to every other law enforcement agency having jurisdiction in the county, and within 2 hours after receipt of the report, transmit the report for inclusion within the Florida Crime Information Center and the National Crime Information Center (FCIC/NCIC) databases. Upon the filing of a report that an adult is missing,¹² the law enforcement agency receiving the report must, within 2 hours after receipt of the report, transmit the report for inclusion within the FCIC/NCIC databases.¹³

Section 937.021, F.S., also provides immunity from civil liability for damages to specified entities who have been requested by law enforcement to record, report, transmit, display, or release information pertaining to a missing child or adult if they complied with the request in good faith. These entities include:

- FDLE as the state Amber Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies;
- Any radio or television network, broadcaster, or other media representative;
- Any dealer of communications services as defined in s. 202.11, F.S.; or
- Any agency, employee, individual, or entity.¹⁴

Entities who report, transmit, display, or release information pertaining to a missing child or adult are presumed to have acted in good faith.¹⁵ The presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction or if the missing child or adult information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.¹⁶

Nothing in s. 937.021, F.S., or any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, or missing adult information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.¹⁷

⁹ *Supra* Missing Endangered Persons Information Clearinghouse Policies and Procedures Manual.

¹⁰ Silver Alert Monthly Report. FDLE. February 2011. <http://www.fdle.state.fl.us/Content/getdoc/25c645e1-c20a-47bc-9b69-d23fb4f0c408/SilverAlertReport.aspx> (Last accessed on March 11, 2011).

¹¹ Section 937.021(3), F.S., defines a "missing child" as "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."

¹² Section 937.021(2), F.S., defines a "missing adult" as "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."

¹³ Section 937.021(4), F.S.

¹⁴ Section 937.021(5)(a) and (b), F.S.

¹⁵ *Id.*

¹⁶ Section 937.021(5)(c), F.S.

¹⁷ Section 937.021(5)(d), F.S.

Section 937.0201, F.S., defines a “missing endangered person” as a missing child, a missing adult younger than 26 years 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. Every state, county, and municipal law enforcement agency is required to submit to MEPIC information concerning missing endangered persons.¹⁸ MEPIC serves as the central repository of information regarding missing endangered persons.¹⁹ Upon receiving information about a missing endangered person, MEPIC disseminates the information in an effort to locate the missing endangered person.

Under current law, FDLE considers a person who meets the criteria for a Silver Alert to be a “missing endangered person,”²⁰ although the definition of that term does not specifically include a person who meets the Silver Alert criteria.

Effect of Proposed Bill

CS/SB 664 amends the definition of “missing endangered person” in s. 937.0201, F.S., to specifically include a missing adult who meets the criteria for activation of a Silver Alert. The bill also provides that only the law enforcement agency having jurisdiction over the case may make a request to MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The bill amends s. 937.021, F.S., to provide the same immunity from civil liability as described above to entities who act in good faith when requested to record, report, transmit, display, or release information pertaining to a Silver Alert.

The bill also provides entities who have been requested to record, report, transmit, display, or release Silver Alert information the same presumption of good faith given to those who have been requested to record, report, transmit, display, or release information related to missing children and adults. The bill also specifies that this presumption is not overcome if the law enforcement agency submitting the Silver Alert information made technical or clerical errors or provided incomplete or incorrect information.

The bill specifies that agencies, employees, and individuals do not have a duty to record, report, transmit, display, or release Silver Alert information received from a law enforcement agency. Such decision is discretionary with the entity receiving the information.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁸ Section 937.022(3)(b), F.S.

¹⁹ See ss. 937.0201 and 937.022, F.S.

²⁰ FDLE 2011 Analysis of HB 513.

2. Expenditures:

FDLE reports that the bill will have no fiscal impact as statewide Silver Alerts have been issued since October 2008 and FDLE has historically considered a person who meets the criteria for a state Silver Alert to be a “missing endangered person” as defined by s. 937.0201, F.S.²¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

It appears the bill would have no fiscal impact on local governments as local Silver Alerts have been issued since October 2008 and a person who meets the criteria for a state Silver Alert has been historically considered to be a “missing endangered person” as defined by s. 937.0201, F.S.²²

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²¹ FDLE 2011 Analysis of HB 513.

²² *Id.*