

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 69 Missing Persons with Special Needs
SPONSOR(S): Criminal Justice Subcommittee; Porter and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Children, Families & Seniors Subcommittee			
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 937, F.S., establishes a variety of requirements relating to how state and local law enforcement agencies respond to and investigate reports of missing endangered persons. Currently, s. 937.0201, F.S., defines "missing endangered person" as:

- A missing child;
- A missing adult younger than 26 years of age;
- 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; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan of the Florida Department of Law Enforcement (FDLE). This generally includes:
 - A person that is 60 years and older, or a person that is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a Local Silver Alert may be the only possible way to rescue the missing person; and
 - The person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia) that has been verified by law enforcement.

The bill expands the definition of the term "missing endangered person" to include "a missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition." The bill also:

- Authorizes any person to submit a missing endangered person report concerning a missing person with special needs to the Missing Endangered Persons Information Clearinghouse (MEPIC) (so long as they have reported the person with special needs missing to a local law enforcement agency and the agency has entered the report into Florida Crime Information Center/National Crime Information Center); and
- Grants civil immunity to specified entities responding to a law enforcement agency's request to broadcast information relating to a missing person with special needs.

As a result of the expanded definition of "endangered person," FDLE will need to modify its MEPIC database, which will likely have an indeterminate negative fiscal impact on FDLE.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Missing Endangered Persons

Generally

Chapter 937, F.S., establishes a variety of requirements relating to how state and local law enforcement agencies respond to and investigate reports of missing endangered persons. For example, the chapter:

- Requires law enforcement agencies to submit information about “missing endangered persons” to the Missing Endangered Persons Information Clearinghouse (MEPIC), housed within the Florida Department of Law Enforcement (FDLE);¹
- Authorizes non-law enforcement entities to submit a missing endangered person report to MEPIC in certain instances;²
- Requires MEPIC to establish a system of intrastate communication of information relating to missing endangered persons;³
- Requires MEPIC to collect, process, maintain, and disseminate information on missing endangered persons;⁴ and
- Requires law enforcement agencies that locate a person previously reported as a missing endangered person” to purge information about the case from Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) and notify MEPIC.⁵

Definitions

Currently, s. 937.0201, F.S., defines “missing endangered person” as:

- A missing child;⁶
- A missing adult⁷ younger than 26 years of age;
- 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; or
- A missing adult who meets the criteria for activation of the Silver Alert Plan⁸ of the Florida Department of Law Enforcement (FDLE). This generally includes:
 - A person that is 60 years and older, or a person that is 18-59 and law enforcement has determined the missing person lacks the capacity to consent and that a Local Silver Alert may be the only possible way to rescue the missing person; and
 - The person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer's disease or dementia) that has been verified by law enforcement.⁹

¹ Section 937.022, F.S.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Section 937.0201(3), F.S., defines the term “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.

⁷ Section 937.0201(2), F.S., defines the term “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.

⁸ The Florida Silver Alert, made effective by an Executive Order signed by Governor Charlie Crist on October 8, 2008, is used to locate missing persons suffering from an irreversible deterioration of intellectual faculties. Local and State Silver Alerts engage the public in the search for the missing person and provide a standardized and coordinated community response.

<http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx> (last visited on January 29, 2015).

⁹ Note that the Florida Silver Alert Plan outlines two levels of Silver Alert activation - local and state. Local agencies may have their own criteria for activation of a Local Silver Alert, but the Florida Silver Alert Support Committee recommends that agencies use the above-listed criteria as a guideline when issuing a Local Silver Alert. State Silver Alerts use the above-listed criteria, but also require that the person be traveling by motor vehicle with an identified license plate number or other vehicle information that has been verified by law enforcement. <http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx> (last visited on January 29, 2015).

Effect of the Bill

The bill expands the definition of the term “missing endangered person” found in s. 937.0201, F.S., to include “a missing person with special needs who is at risk of becoming lost or is prone to wander due to autism spectrum disorder, a developmental disability, or any other disease or condition.”

As a result:

- Law enforcement agencies will be required to submit information about missing persons with special needs to MEPIC;
- Non-law enforcement entities will be authorized to submit information about missing persons with special needs to MEPIC in certain instances; and
- MEPIC will be required to collect, process, maintain, and disseminate information about missing persons with special needs.

Civil Immunity

Law enforcement agencies that receive a report of a missing child, missing adult, or missing endangered person must submit information about the report to other local law enforcement agencies and to FDLE.¹⁰ In an effort to locate the missing person, the law enforcement agency that originally received the report may request other specified entities (e.g., FDLE, local law enforcement entities, radio and television networks, etc.) to broadcast information about the missing person to the public.¹¹

Currently, s. 937.021(5), F.S., grants entities responding to such requests immunity from civil liability if the broadcasted information relates to a missing adult, missing child, or a missing adult who meets the criteria for activation of the Silver Alert Plan.¹² The statute does not specifically provide such immunity to entities responding to a request to broadcast information relating to a missing person with special needs.

Effect of the Bill

The bill amends s. 937.021(5), F.S., to grant immunity from civil liability to specified entities responding to a request to broadcast information relating to a missing person with special needs (as defined above). The bill mirrors the existing immunity provisions by:

- Affording such entities a legal presumption that they acted in good faith in broadcasting the missing person with special needs information;
- Specifying that such presumption is not overcome if a technical or clerical error is made by the entity, or if the information that was broadcasted is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect; and
- Specifying that the entity is not obligated to broadcast information regarding a missing person with special needs.

Missing Endangered Persons Information Clearinghouse

As noted above, the Missing Endangered Persons Information Clearinghouse is housed within FDLE and serves as a central repository for all information regarding missing endangered persons.¹³ MEPIC collects, processes, maintains, and disseminates information on missing endangered persons using an intrastate communication system.¹⁴

Section 937.022, F.S., creates parameters on who can submit a missing endangered person report to MEPIC. For example, any person having knowledge may submit a report to MEPIC regarding a child or adult younger than 26 years old whose whereabouts is unknown, so long as the person has reported the child/adult missing to a local law enforcement agency and the agency has entered the report into

¹⁰ Sections 937.021 and 937.022, F.S.

¹¹ Note that other entities are not obligated to broadcast the missing child, missing adult, or Silver Alert information. The decision to release information is discretionary with the agency, employee, individual, or entity receiving the information. Section 937.021(5)(e), F.S.

¹² These entities are afforded a legal presumption that they acted in good faith in broadcasting the missing person information. This presumption is not overcome if a technical or clerical error is made by any the entity acting at the request of the local law enforcement agency, or if the missing child missing adult, or Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect. Section 937.021(5), F.S.

¹³ <http://www.fdle.state.fl.us/MCICSearch/Index.asp> (last visited January 29, 2015).

¹⁴ Section 937.022(3)(a) and (c), F.S.

FCIC/NCIC.¹⁵ In contrast, only the law enforcement agency having jurisdiction over the case may submit a missing endangered person report for an adult 26 years old or older.¹⁶

Effect of the Bill

The bill amends s. 937.022, F.S., to authorize any person to submit a missing endangered person report concerning a missing person with special needs to MEPIC. Before doing so, the person must have reported the person with special needs missing to a local law enforcement agency and the agency must have entered the report into FCIC/NCIC.

B. SECTION DIRECTORY:

Section 1. Amends s. 937.0201, F.S., relating to definitions.

Section 2. Amends s. 937.021, F.S., relating to missing child and missing adult reports.

Section 3. Amends s. 937.022, F.S., relating to Missing Endangered Persons Information Clearinghouse.

Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

FDLE reports that the bill will have an indeterminate negative fiscal impact because it expands the definition of the term "missing endangered person," which will require FDLE to modify its MEPIC database to collect, process, maintain, and disseminate information about missing persons with special needs.¹⁷

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

This bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁵ This report may be made subsequent to submitting a report to the appropriate law enforcement agency, and subsequent to entry by the law enforcement agency of the child or person into FCIC and NCIC databases. Section 937.022(3)(b)2., F.S.

¹⁶ Section 937.022(3)(b)4., F.S.

¹⁷ Florida Department of Law Enforcement, 2015 Agency Bill Analysis for HB 69 (on file with the Criminal Justice Subcommittee)(FDLE Analysis).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

FDLE notes that while there are no provisions that specifically define “missing person with special needs” or identify a particular protocol regarding such individuals under any section of Chapter 937, MEPIC currently includes within its processes of reporting missing endangered persons any missing individual with any special needs (i.e. any persons with autism spectrum disorder, developmental disability, Alzheimer’s disease or other form of dementia, or any other such disease or condition), or any person missing and suspected by a law enforcement agency of being endangered due to any circumstance or status of being.¹⁸ FDLE also notes that they currently issue Missing Child Alerts for all missing children with autism.¹⁹

According to FLDE, existing definitions in 937.0201(4)(a), (b), (c), and (d), capture all missing persons, children and adults, that may be endangered. Additionally, FCIC defines missing categories of “Disabled” or “Endangered” to specifically identify missing disabled individuals. FDLE is concerned that specifying individual types of disabilities and circumstances to those that limit an individual’s capacity for self-care, ability to make sound choices, seeking help when needed, or protect themselves from harm in statute may result in unintended consequences of restricting certain missing person investigative services from others who do not meet the proposed, specified criteria, but who are nonetheless missing and endangered.²⁰

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 3, 2015, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Deletes the requirement that FDLE and DCF provide electronic monitoring devices to specified individuals with special needs, as well as the requirement for APD to produce of a list of persons eligible for the electronic monitoring devices; and
- Removes the requirement that FDLE incorporate training on retrieving missing persons with special needs in its law enforcement officer training.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*