

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1043 Interviews of Victims, Suspects, or Defendants with Autism Spectrum Disorder

**SPONSOR(S):** Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Hager and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 936

| REFERENCE                              | ACTION           | ANALYST   | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|-----------|---------------------------------------|
| 1) Criminal Justice Subcommittee       | 7 Y, 0 N, As CS  | Keegan    | White                                 |
| 2) Justice Appropriations Subcommittee | 11 Y, 0 N, As CS | McAuliffe | Lloyd                                 |
| 3) Judiciary Committee                 | 16 Y, 0 N        | Keegan    | Havlicak                              |

### SUMMARY ANALYSIS

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM 5).

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes than other individuals. There is currently no requirement in Florida for any mental health or similar professional to assist during law enforcement interactions with individuals diagnosed with ASD.

The bill requires a law enforcement officer, correctional officer or other public safety official to make a good faith effort to ensure a qualified professional, a relative, or a caretaker is present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a victim, suspect or a defendant in a criminal case;
- The individual has been diagnosed with autism spectrum disorder; and
- The law enforcement officer knows or should know that the individual has been diagnosed with autism spectrum disorder.

The bill requires all expenses related to the attendance of a qualified professional at an interview will be borne by the individual who has been diagnosed with autism spectrum disorder or the parent or guardian of the individual. If the individual is a victim, the defendant must reimburse the victim for such expenses upon conviction.

The bill provides that failure to have a qualified professional, a relative, or a caretaker present as provided is not a basis for suppression of the statement or the contents of the interview or for a cause of action against a law enforcement officer, a correctional officer, or other public safety official, or an agency employing such officer or official. The bill requires each agency employing law enforcement officers, correctional officers, or other public safety officials to develop appropriate policies and procedures to implement this section and provide training to its officers and officials.

The bill may have an indeterminate impact on state and local government expenditures because law enforcement agencies will have to develop appropriate policies and procedures to implement this bill and provide training to its officers.

This bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Autism Spectrum Disorder**

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published.<sup>1</sup>

Florida law defines several terms relating to autism:

- “Autism” is defined in s. 393.063(3), F.S., as “a pervasive, neurologically based developmentally based disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood, individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and non-verbal communication and imaginative ability, and markedly restrictive repertoire of activities and interests.”
- “Developmental disability” is defined in s. 393.063(9), F.S., defines “developmental as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”
- “Autism spectrum disorder” is defined in ss. 627.6686(2)(b) and 641.31098(2)(b), F.S., as “any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: 1. Autistic disorder. 2. Asperger’s syndrome. 3. Pervasive developmental disorder not otherwise specified.”

Although an exact population count of individuals with ASD does not exist, the Centers for Disease Control’s (CDC) Autism Developmental Disabilities Monitoring (ADDM) Network estimates that approximately one in 68 children have been identified with ASD.<sup>2</sup> This estimate is based on surveys of 8-year-old children who were living in 11 communities in the United States in 2010.<sup>3</sup> Boys are five times more likely than girls to be identified with ASD and white children are more likely to be identified than black or Hispanic children.<sup>4</sup>

##### **Law Enforcement and ASD**

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes.<sup>5</sup> These contacts occur under a variety of circumstances. Law enforcement officers often come into contact with persons with ASD through a call reporting a domestic disturbance, a suspicious person who is acting in an unusual manner, or when responding to a medical emergency.<sup>6</sup>

There is currently no requirement in Florida for any mental health or similar professional to assist law enforcement during interactions with individuals diagnosed with ASD.

##### **Effect of the Bill**

The bill cites the act as the “Wes Kleinert Fair Interview Act.”

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<sup>1</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *Facts about ASD*, <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited Jan. 22, 2016); AUTISM SPEAKS, *What is Autism*, <https://www.autismspeaks.org/what-autism> (last visited Jan. 22, 2016).

<sup>2</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *Data and Statistics*, <http://www.cdc.gov/ncbddd/autism/data.html> (last visited Jan. 22, 2016).

<sup>3</sup> CENTERS FOR DISEASE CONTROL & PREVENTION, *10 Things You Need to Know about CDC’s Latest Report from The Autism and Developmental Disabilities Monitoring Network*, <http://www.cdc.gov/features/dsautismdata/index.html> (last visited Jan. 22, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> Pamela Kulbarsh, *Law Enforcement and Autism*, OFFICER.COM (Feb. 15, 2013), <http://www.officer.com/article/10880086/law-enforcement-and-autism> (last visited Jan. 22, 2016).

<sup>6</sup> *Id.*

The bill requires a law enforcement officer, correctional officer or other public safety official to make a good faith effort to ensure a qualified professional, a relative, or a caretaker is present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a victim, suspect or defendant in a criminal case;
- The individual has been diagnosed with autism spectrum disorder; and
- The law enforcement officer knows or should have known that the individual has been diagnosed with autism spectrum disorder.

The bill defines the following key terms:

- “Autism spectrum disorder” has the same meaning as provided in s. 627.6686, F.S.
- “Conviction” means a finding of guilt or the acceptance of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.
- “Correctional officer” has the same meaning as provided in s. 943.10, F.S.
- “Law enforcement officer” has the same meaning as provided in s. 943.10, F.S.
- “Qualified professional” means a mental health counselor, a behavioral therapist, or a related professional with professional experience teaching, treating, or caring for patients or clients who have an autism spectrum disorder, or a psychiatrist or psychologist.

The bill provides that failure to have a qualified professional, a relative, or a caretaker present as provided is not a basis for suppression of the statement or the contents of the interview or for a cause of action against a law enforcement officer, a correctional officer, or other public safety official, or an agency employing such officer or official.

The bill requires each agency employing law enforcement officers, correctional officers, or other public safety officials to develop appropriate policies and procedures to implement this section and provide training to its officers and officials.

The bill provides an effective date of July 1, 2016.

#### B. SECTION DIRECTORY:

Section 1. Creating the “Wes Kleinert Fair Interview Act.”

Section 2. Creating s. 943.0439, F.S., relating to interviews of suspects or defendants with autism spectrum disorder.

Section 3. Providing an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

This bill does not appear to have an impact on state revenues.

##### 2. Expenditures:

The bill may have an indeterminate impact on state government expenditures because state law enforcement agencies will have to develop appropriate policies and procedures to implement this bill and provide training to its officers.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have an indeterminate impact on local government expenditures because local law enforcement agencies will have to develop appropriate policies and procedures to implement this bill and provide training to its officers.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The committee substitute does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Defines key terms; and
- Requires a qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if (1) the individual is a suspect or defendant in a criminal case; (2) the individual has been diagnosed with autism spectrum disorder; and (3) the law enforcement officer knows or should know that the individual has been diagnosed with autism spectrum disorder.

On February 16, 2016, the Justice Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Adds definitions for "conviction" and "correctional officer."
- Requires a law enforcement officer, correctional officer or other public safety official to make a good faith effort to ensure a qualified professional, a relative, or a caretaker is present to assist a law enforcement officer, if practicable, during an interview of an individual.
- Requires each agency employing law enforcement officers, correctional officers, or other public safety officials to develop appropriate policies and procedures to implement this section and provide training to its officers and officials.

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