

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 Committee on Appropriations

BILL: CS/CS/SB 936

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Criminal and Civil Justice); Criminal Justice Committee; and Senator Ring

SUBJECT: Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability

DATE: March 1, 2016

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|--------------------------|
| 1. | <u>Sumner</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 2. | <u>Harkness</u> | <u>Sadberry</u> | <u>ACJ</u> | <u>Recommend: Fav/CS</u> |
| 3. | <u>Harkness</u> | <u>Kynoch</u> | <u>AP</u> | <u>Fav/CS</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 936 provides that a law enforcement officer, correctional officer or public safety officer shall, upon the request of an individual with autism (or an autism spectrum disorder) or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The bill describes the qualifications the professional must have to serve in this capacity. In addition, the bill provides that the failure to have a professional present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the officer or agency. The bill requires that law enforcement agencies develop appropriate policies to implement bill's provisions and that officers be trained based on these policies.

The bill does not have a fiscal impact; the cost of the autism professional is borne by the requesting individual.¹

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

¹ However, the bill requires a defendant who is convicted of an offense to reimburse a requesting individual who is the victim of the offense for all expenses related to attendance of the professional at the interview.

II. Present Situation:

The Center for Disease Control (CDC) estimates that one in 68 children have been identified with Autism Spectrum Disorder (ASD).² The CDC defines “Autism spectrum disorder” as a developmental disability that can cause significant social, communication, and behavioral challenges. Though there is nothing about how persons who have been diagnosed with ASD look that sets them apart from other people, the CDC states that people with ASD may communicate, interact, behave, and learn in ways that are different from most other people. The range of abilities of people with ASD can span from gifted to severely challenged.³

Though formerly diagnosed separately, autistic disorder, pervasive developmental disorder, and Asperger syndrome are now included in the diagnosis of ASD.⁴

Florida law includes the following definitions:

“Autism” is a pervasive, neurologically based developmental 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 nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.⁵

“Developmental disability” is 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.⁶

“Autism spectrum disorder” is 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:

- Autistic disorder;
- Asperger’s syndrome; and
- Pervasive developmental disorder not otherwise specified.⁷

III. Effect of Proposed Changes:

The bill, cited as the “Wes Kleinert Fair Interview Act,” provides that a law enforcement officer, correctional officer or public safety officer must, upon the request of an individual with autism (or an autism spectrum disorder) or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The

² Data from the Autism and Developmental Disabilities Monitoring (ADDM) Network. <http://www.cdc.gov/ncbddd/autism/research.html> (last visited January 26, 2016).

³ <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited January 26, 2016).

⁴ Id.

⁵ Section 393.063(3), F.S.

⁶ Section 393.063(9), F.S.

⁷ Sections 627.6686(2)(b) and 641.31098(2), F.S.

bill describes the qualifications the professional must have to serve in this capacity – experience in treating, teaching, or assisting clients diagnosed with autism or related disability or a certification in special education focused on autism.

The bill also provides that the expenses related to the professional must be borne by the requesting parent, guardian, or individual⁸ and that the failure to have a professional present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the law enforcement officer or agency.

Finally, the bill requires that law enforcement agencies develop appropriate policies to implement bill's provisions and that officers be trained based on these policies.

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:

An individual with autism, an autism spectrum disorder or a related developmental disability will be responsible for the expenses of the requested professional, but the victim of an offense may receive reimbursement of these expenses from a defendant who is convicted of the offense. The cost of a professional required by CS/CS/SB 936 is unknown.

C. Government Sector Impact:

None.

⁸ If the requesting individual is the victim of an offense, the bill requires a defendant who is convicted of committing the offense to reimburse the requesting individual for all expenses related to attendance of an autism professional at the interview.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.0439 of the Florida Statutes.

This bill creates an undesignated section of Florida law.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations March 1, 2016:

The committee substitute:

- Provides that an autism professional shall be provided by law enforcement only upon request of the individual with autism.
- Amends the current bill to provide that the law enforcement agency make a “good faith effort” to ensure an autism professional is present during the interview.
- Provides that failure to have a professional present at the time of the interview is not a basis for suppression of the statement or contents of the interview or for a cause of action against the law enforcement officer or agency.
- Provides that law enforcement agencies develop appropriate policies to implement bill’s provisions and that officers are trained based on these policies.
- Requires a defendant who is convicted of an offense to reimburse a requesting individual who is the victim of the offense for all expenses related to attendance of an autism professional at the interview.

CS by Criminal Justice on February 1, 2016:

The Committee Substitute includes speech therapists in the list of trained professionals that can be present to assist law enforcement and other public safety officials whether the individual being interviewed is the victim of a crime, the suspect in a crime, or the defendant formally accused of a crime. It provides for law enforcement officers or other public safety officers to document the interview in writing when a professional is not available and make a professional available as soon as practicable. It provides that the cost of the professional shall be borne by the individual.

B. Amendments:

None.