

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 305 At-Risk Adult Alert Plan
SPONSOR(S): Criminal Justice Subcommittee, Ausley
TIED BILLS: **IDEN./SIM. BILLS:** SB 844

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N, As CS	Rochester	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Cognitive disorder can impair a person's thinking, communication, understanding and memory. Wandering, or repetitive walking or travel that is not associated with normal daily activity, occurs frequently in people with a cognitive disorder. It is estimated that five percent of wandering cases result in physical harm to the person.

Developed to assist another vulnerable population, the Silver Alert Plan broadcasts information to the general public about a missing elderly person. To qualify for a local or regional Silver Alert, an adult must be 60 or older and suffer from an irreversible deterioration of intellectual faculties. The person's condition must be verified by law enforcement. Law enforcement activation of a Silver Alert may result in an agency:

- Entering the missing adult's identifying information into the Florida Crime Information Center database;
- Contacting media outlets in the area and surrounding jurisdictions; and
- Issuing a statewide "Be On The Look Out" (BOLO) notice to other law enforcement and 911 centers.

CS/HB 305 creates the At-Risk Adult Alert Plan which aids in the search for a missing adult:

- With an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability, as those terms are defined in s. 393.063, F.S.;
- Whose disappearance poses a credible threat to the person's welfare and safety; and
- Who does not meet the criteria for activation of the Silver Alert Plan.

The bill also:

- Requires the Florida Department of Law Enforcement (FDLE), in cooperation with the Department of Transportation, Department of Highway Safety and Motor Vehicles, and local law enforcement agencies, to establish and implement the plan;
- Requires a local law enforcement agency to broadcast information to the public and media about certain missing adults;
- Allows local law enforcement to request a case to be opened with FDLE's Missing Endangered Persons Information Clearinghouse, the central repository of missing endangered person information that provides analytical services to law enforcement agencies and engages the public in a missing person search; and
- Requires FDLE to adopt rules to implement the plan.

The bill may have a negative fiscal impact on state government due to increased FDLE technological and hiring expenditures.

The bill provides an effective date of July 1, 2019.

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

STORAGE NAME: h0305a.CRJ

DATE: 2/22/2019

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Missing Person Investigations

Every Florida state, county, and municipal law enforcement agency is required to submit information concerning missing endangered persons to Florida Department of Law Enforcement's (FDLE) Missing Endangered Person Information Clearinghouse (MEPIC).¹ MEPIC serves as the 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 person.

A "missing endangered person" is:

- A missing child;²
- 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 FDLE Silver Alert Plan.³

Upon receiving a report that a child is missing, a law enforcement agency must inform all on-duty officers of the report, communicate the report to every other law enforcement agency having jurisdiction in the county where the child was last seen, and transmit the report for inclusion within the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases within two hours.⁴ When a missing adult report is filed, the law enforcement agency receiving the report must transmit the report for inclusion within the FCIC and NCIC databases within two hours.

Section 937.021, F.S., provides civil immunity for specified entities requested by law enforcement to record, report, transmit, display, or release information pertaining to a missing person if such entity complied with the request in good faith. These entities include:

- FDLE, a state or local law enforcement agency, and agency personnel;
- A radio or television network, broadcaster, or other media representative; or
- A dealer of communications services as defined in s. 202.11, F.S.⁵

Entities who report, transmit, display, or release information pertaining to a missing person are presumed to have acted in good faith.⁶ The presumption of good faith is not overcome if a technical or clerical error is made by an agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction or if the missing person information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.⁷

¹ S. 937.022(3)(b), F.S.

² *Id.* "Missing child" means a person younger than 18 years of age.

³ *Id.*

⁴ Florida Department of Law Enforcement, *Frequently Asked Questions* (2018), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Frequently-Asked-Questions.aspx> (last visited Feb. 10, 2019). S. 937.021, F.S.

⁵ Examples of a dealer of communications services include a cable or satellite television service provider, a telephone service provider, or a mobile communication service provider. S. 937.021, F.S.

⁶ S. 937.021(5)(c), F.S.

⁷ *Id.*

Silver Alert

The Silver Alert Plan broadcasts information to the public about a missing elderly person.⁸ A law enforcement agency can issue a local or regional Silver Alert when a missing person:

- Is age 60 or older; and
- Suffers from a verified irreversible deterioration of intellectual faculties.⁹

To maintain the integrity of the system and not dilute its effectiveness, law enforcement issues a Silver Alert primarily for this narrow population. However, a Silver Alert may be issued in rare instances when:

- A missing adult is 18 to 59 years old and has irreversible deterioration of intellectual faculties;
- Law enforcement has determined the individual lacks the capacity to consent; and
- The use of dynamic message signs may be the only possible way to rescue the missing person.¹⁰

The Silver Alert Plan has two levels of activation: local and state. If an adult meeting the Silver Alert criteria goes missing on foot, local law enforcement will activate a local Silver Alert. Although each agency has its own criteria for activation of a local Silver Alert, law enforcement generally:

- Conducts a preliminary investigation to conclude that the disappearance poses a credible threat to the person's welfare and safety;
- Enters the missing adult's identifying information into FCIC;
- Contacts media outlets in the area and surrounding jurisdictions; and
- Issues a statewide "Be On The Look Out" (BOLO) notice to other law enforcement and 911 centers.¹¹

If an adult meeting the Silver Alert criteria goes missing in a vehicle, local law enforcement may request that FDLE activate a statewide Silver Alert. After local law enforcement determines that the disappearance poses a credible threat to the person's welfare and safety and enters the missing adult into FCIC, the agency contacts MEPIC at FDLE. Once FDLE confirms the case meets Silver Alert criteria, FDLE notifies the:

- Florida Highway Patrol to send a statewide officer notification;
- Florida Department of Transportation to activate dynamic message signs¹² on highways; and
- Department of Elder Affairs to notify the public through an email alert system.¹³

As of January 31, 2019, law enforcement has recovered 260 individuals through the use of the Silver Alert activation.¹⁴

⁸ Florida Department of Law Enforcement, *Silver Activation Steps* (2018), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps.aspx> (last visited Feb. 10, 2019).

⁹ Agency policy determines how the local law enforcement agency verifies that the person suffers from an irreversible deterioration of intellectual faculties. *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Dynamic message signs are the electronic signs that appear along major highways and typically display information about traffic conditions, travel times, construction, and road incidents. Florida Department of Transportation, *Highway Signing Program* (2018), <https://www.fdot.gov/traffic/TrafficServices/Signing.shtm> (last visited Feb. 12, 2019).

¹³ Members of the public may sign up to receive Silver Alert email updates on the DOEA website. Department of Elder Affairs, *When Someone Goes Missing* (2015), http://elderaffairs.state.fl.us/doea/silver_alert_goes_missing.html (last visited Feb. 12, 2019).

¹⁴ Law enforcement has directly recovered 215 individuals and indirectly recovered 45 individuals due to the Silver Alert activation. A direct recovery is recovery due to the activation of the State Silver Alert, primarily through state agency action. An indirect recovery is recovery through local agency actions in coordination with the Silver Alert Plan. Florida Department of Law Enforcement, *Silver Alert Monthly Report* (Jan. 2019), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Monthly-Reports/2019-Monthly-Reports/January-2019> (last visited Feb. 13, 2019).

Cognitive Disorder

Cognitive disorder includes a wide range of mental deficits in adults and children and can impair a person's thinking, communication, understanding and memory.¹⁵ A person may suffer from an illness creating progressive impairment, or have lower levels of ability to learn or remember that will remain constant throughout life. Common cognitive disorders include Alzheimer's disease and related dementias, Parkinson's disease, brain injury, brain tumor, developmental and intellectual disability, and HIV-associated dementia.¹⁶

Developmental Disability

Developmental disability is a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, Autism Spectrum Disorder (ASD), spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before age 18; and constitutes a substantial handicap that can reasonably be expected to continue indefinitely.¹⁷

ASD is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication.¹⁸ 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. Although there has been little research on the prevalence of ASD in adults, analysis from the Centers for Disease Control and Prevention estimates that approximately one in 59 children have been identified with ASD.¹⁹ A 2011 British study found ASD rates in adults are similar to the rates observed among children.²⁰

Intellectual Disability

Intellectual disability is significantly subaverage intellectual functioning²¹ existing concurrently with deficits in adaptive behavior²² which manifests before age 18 and can reasonably be expected to continue indefinitely. An individual with an intellectual disability is more likely to have a coexisting psychiatric or cognitive condition than a member of the general population.²³ At least 25 percent of individuals with an intellectual disorder also have a psychiatric condition including schizophrenia, depression, or attention deficit hyperactivity disorder.²⁴ About 10 percent of individuals with an intellectual disability also have ASD or autistic traits.²⁵

¹⁵ Disabled World, *Cognitive Disability: Information on Intellectual Disabilities* (June 4, 2016), <https://www.disabled-world.com/disability/types/cognitive/> (last visited Feb. 10, 2019).

¹⁶ Family Caregiver Alliance, *Caring for Adults with Cognitive and Memory Impairment* (2004), <https://www.caregiver.org/caring-adults-cognitive-and-memory-impairment> (last visited Feb. 10, 2019).

¹⁷ S. 393.063(12), F.S.

¹⁸ Center for Disease Control and Prevention, *Facts about ASD*, <https://www.cdc.gov/ncbddd/autism/facts.html> (last visited Feb. 12, 2019).

¹⁹ Center for Disease Control and Prevention, *Data & Statistics on Autism Spectrum Disorder*, <https://www.cdc.gov/ncbddd/autism/data.html> (last visited Feb. 12, 2019).

²⁰ Gael Orsmond et al., *Social Participation Among Young Adults with an Autism Spectrum Disorder* (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3795788/> (last visited Feb. 13, 2019).

²¹ Significantly subaverage general intellectual functioning is performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the Agency for Persons with Disabilities rules. S. 393.063(24), F.S.

²² Adaptive behavior is the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of their age, cultural group, and community. S. 393.063(24), F.S.

²³ Committee to Evaluate the Supplemental Security Income Disability Program for Children with Mental Disorders, *Mental Disorders and Disabilities Among Low-Income Children* (Oct. 28, 2015), <https://www.ncbi.nlm.nih.gov/books/NBK332877/> (last visited Feb. 22, 2019).

²⁴ *Id.*

²⁵ The Children's Hospital of Philadelphia, *Intellectual Disability and ASD* (June 29, 2016), <https://www.carautismroadmap.org/intellectual-disability-and-asd/> (last visited Feb. 22, 2019).

Wandering

Wandering generally refers to repetitive walking or travel that is not associated with normal daily activity.²⁶ Twelve to 60 percent of individuals with a cognitive disorder wander and approximately 5 percent of wandering instances result in physical harm.²⁷ Missing incidents can be life-threatening and an impaired person is at risk even in a closely monitored setting. For those missing more than 24 hours, the death rate can be as high as 50 percent, with the most common causes of death being exposure to natural elements, drowning and vehicular accidents.²⁸

Wandering occurs frequently in individuals with ASD, and the risk of wandering behavior increases with autism severity.²⁹ From 2009 to early 2017, 158 individuals with ASD died after wandering from their home, a public place, or a group home.³⁰ Although children represent the largest percentage of reported ASD missing person cases, over 30 percent of reported ASD wandering cases involve individuals 20 or older.³¹

Effect of Proposed Changes

CS/HB 305 creates the At-Risk Adult Alert Plan which aids in the search for a missing adult:

- With an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability, as those terms are defined in s. 393.063, F.S.;³²
- Whose disappearance poses a credible threat to the person's welfare and safety; and
- Who does not meet the criteria for Silver Alert Plan activation.

The bill requires FDLE, in cooperation with DOT, the Department of Highway Safety and Motor Vehicles (DHSMV), and local law enforcement agencies, to establish and implement the At-Risk Adult Alert Plan. The bill expands the definition of "missing endangered person" to include a missing adult who meets the At-Risk Adult Alert Plan activation criteria.

Under the bill, the following entities are immune from civil liability for performing actions related to an At-Risk Adult Alert in good faith:

- FDLE, a state or local law enforcement agency, and the personnel of these agencies;
- A radio or television network, broadcaster, or other media representative; or
- A dealer of communications services, such as a cable television provider, as defined in s. 202.11, F.S.

The bill authorizes a local law enforcement agency to open an At-Risk Adult Alert case with the FDLE's MEPIC, the central repository of missing endangered person information that provides analytical services to law enforcement agencies and engages the public in a missing person search. The clearinghouse must coordinate with the DOT and the DHSMV for the activation of dynamic message signs on state highways and the broadcast of critical information to the public about the missing adult.

²⁶ Tampa VA Research and Education Foundation, *Hazardous Wandering* (2011), <http://www.tampavaref.org/safe-patient-handling/Hazardous%20Wandering.pdf> (last visited Feb. 10, 2019).

²⁷ Joseph Wherton et al., *Wandering as a Sociomaterial Practice: Extending the Theorization of GPS Tracking in Cognitive Impairment*, *Qualitative Health Research* (2019), <https://journals.sagepub.com/doi/10.1177/1049732318798358#articleCitationDownloadContainer> (last visited Feb. 10, 2019). Wandering estimates range from 12 to 60 percent due to difficulties defining and recording such instances.

²⁸ *Id.*

²⁹ National Autism Association, *Wandering* (2017), <http://nationalautismassociation.org/resources/aware-wandering/> (last visited Feb. 12, 2019).

³⁰ National Autism Association, *Mortality & Risk in ASD Wandering/Elopement 2011-2016* (March 2017), <http://nationalautismassociation.org/wp-content/uploads/2017/04/NAAMortalityRiskASDElopement.pdf> (last visited Feb. 12, 2019).

³¹ *Id.*

³² A developmental disability is defined as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down Syndrome, Phelan-McDermid syndrome, 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. An intellectual disability is defined as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that manifests before the age of 18 and can reasonably be expected to continue indefinitely.

The bill requires FDLE to develop procedures to monitor the use and activation of the plan and the results from its use. The At-Risk Adult Alert Plan must also include a strategy for informing and educating law enforcement, the media, and other stakeholders about the plan. The bill also requires FDLE to adopt rules to implement the plan.

B. SECTION DIRECTORY:

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

Section 2: Creates s. 937.0205, F.S., relating to At-Risk Adult Alert Plan.

Section 3: Amends s. 937.021, F.S., relating to missing child and missing adult reports.

Section 4: Amends s. 937.022, F.S., relating to missing Endangered Persons Information Clearinghouse.

Section 5: Amends s. 429.918, F.S., relating to licensure designation as a specialized Alzheimer's services adult day care center.

Section 6: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on state government as FDLE estimates it would require three Crime Intelligence Analyst I positions to maintain current caseload and alerts while also training, activating and maintaining the newly added alerts. (\$164,101 in year one for salary, benefits, expense and human resources services and \$152,836 recurring). FDLE also requires hiring one programmer which is estimated to cost \$170,000 per year. The total estimated fiscal impact is \$334,101 (\$322,836 recurring).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact to local law enforcement agencies to develop policies, train staff, including dispatchers and officers, establish or enhance necessary systems to perform mandated notifications and maintain readiness to issue At-Risk Adult Alerts.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

FDLE has sufficient rulemaking authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 21, 2019, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specified alert criteria for a missing adult with an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability, as those terms are defined in s. 393.063, F.S.

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