

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 Children, Families, and Elder Affairs

BILL: CS/SB 844

INTRODUCER: Infrastructure and Security Committee and Senator Berman

SUBJECT: At-Risk Adult Alert Plan

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Proctor</u>	<u>Miller</u>	<u>IS</u>	<u>Fav/CS</u>
2.	<u>Delia</u>	<u>Hendon</u>	<u>CF</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

The committee substitute (CS) to SB 844 creates the At-Risk Adult Alert Plan which aids in the search for a missing adult:

- Who has an irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability;
- 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 CS also:

- Requires the Florida Department of Law Enforcement (FDLE), in cooperation with the Department of Transportation (DOT), Department of Highway Safety and Motor Vehicles (DHSMV), the Department of the Lottery (DOL) 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 the FDLE's Missing Endangered Persons Information Clearinghouse (MEPIC); and
- Requires the FDLE to adopt rules to implement the plan.

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

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

II. Present Situation:

Missing Person Investigations

All of Florida's state and local law enforcement agencies are required to submit information concerning missing endangered persons to the FDLE's 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.⁵

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:

- the 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.⁶

¹ Section 937.022(3)(b), F.S.

² Florida Department of Law Enforcement, Missing Child Alert, "Missing child" means a person younger than 18 years of age, <http://www.fdle.state.fl.us/AMBER-Plan/Missing-Child-Alert> (last visited March 21, 2019).

³ *Id.*

⁴ Section 937.021(4)(a), F.S.

⁵ Section 937.021(4)(b), F.S.

⁶ 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.

Entities who report, transmit, display, or release information pertaining to a missing person are presumed to have acted in good faith.⁷ 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.⁸

Silver Alert

The Silver Alert Plan broadcasts information to the public about a missing elderly person.⁹ 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.¹⁰

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.¹¹

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" notice to other law enforcement and 911 centers.¹²

If an adult meeting the Silver Alert criteria goes missing in a vehicle, local law enforcement may request that the 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 the FDLE. Once the FDLE confirms the case meets Silver Alert criteria, the FDLE notifies the:

- Florida Highway Patrol to send a statewide officer notification;

⁷ Section 937.021(5)(c), F.S.

⁸ *Id.*

⁹ Florida Department of Law Enforcement, *Silver Activation Steps* (2018), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps> (last visited March 21, 2019).

¹⁰ *Id.* Agency policy determines how the local law enforcement agency verifies that the person suffers from an irreversible deterioration of intellectual faculties.

¹¹ *Id.*

¹² *Id.*

- DOT to activate dynamic message signs¹³ on highways; and
- Department of Elder Affairs to notify the public through an email alert system.¹⁴

As of January 31, 2019, law enforcement has recovered 260 individuals through the use of the Silver Alert activation.¹⁵

Department of the Lottery

The DOL partners with the FDLE to distribute information pertaining to emergency alerts to the public. The alerts include: Amber¹⁶, Silver¹⁷, Blue¹⁸ and Missing Child.¹⁹ Upon notification by the FDLE of an active alert, the DOL disseminates information provided by the FDLE to retailer based terminal systems. All alerts provided through the terminal system discontinue sales and must be acknowledged by the retailer before transactions may continue. At the request of the FDLE, Amber alerts are the only alerts that are currently displayed to the public at lottery ticket sales locations, although the DOL does have the ability to add other alerts for display to the public. At the present, alerts are sent state-wide but can be sent out to specific regions if requested.²⁰

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.²¹ 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.²²

¹³ Dynamic message signs are electronic signs on the highway that typically display information about travel lane blockage information, travel times, scheduled construction activities, safety messages and special events. Florida Department of Transportation, <https://sunguide.info/its-program/dynamic-message-signs-dms/> (last visited March 21, 2019).

¹⁴ Members of the public may sign up to receive Silver Alert email updates on the DOEA website. Department of Elder Affairs, <https://lists.elderaffairs.org/listmanager/listinfo/silveralert> (last visited March 21, 2019).

¹⁵ 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 March 21, 2019).

¹⁶ Section 937.021, F.S.

¹⁷ *Id.*

¹⁸ Section 784.071, F.S.

¹⁹ Section 937.021, F.S.

²⁰ Email from Jake Felder, Legislative Affairs Director, Department of the Lottery, SB 844 Answers (March 13, 2019), (On file with the Committee on Infrastructure and Security).

²¹ Disabled World, *Cognitive Disability: Information on Intellectual Disabilities* (June 4, 2016), <https://www.disabled-world.com/disability/types/cognitive/> (last visited March 21, 2019).

²² Family Caregiver Alliance, *Caring for Adults with Cognitive and Memory Impairment* (2004), <https://www.caregiver.org/caring-adults-cognitive-and-memory-impairment> (last visited March 21, 2019).

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.²³

ASD is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication.²⁴ 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.²⁵ A 2011 British study found ASD rates in adults are similar to the rates observed among children.²⁶

Intellectual Disability

Intellectual disability is significantly sub average intellectual functioning²⁷ existing concurrently with deficits in adaptive behavior²⁸ 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.²⁹ At least 25 percent of individuals with an intellectual disorder also have a psychiatric condition including schizophrenia, depression, or attention deficit hyperactivity disorder.³⁰ About 10 percent of individuals with an intellectual disability also have ASD or autistic traits.³¹

²³ Section 393.063(12), F.S.

²⁴ Center for Disease Control and Prevention, *Facts about ASD*, <https://www.cdc.gov/ncbddd/autism/facts.html> (last visited March 21, 2019).

²⁵ Center for Disease Control and Prevention, *Data & Statistics on Autism Spectrum Disorder*, <https://www.cdc.gov/ncbddd/autism/data.html> (last visited March 21, 2019).

²⁶ 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 March 21, 2019).

²⁷ Significantly sub average 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.

²⁸ 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.

²⁹ 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 March 21, 2019).

³⁰ *Id.*

³¹ The Children's Hospital of Philadelphia, *Intellectual Disability and ASD* (June 29, 2016), <https://www.carautismroadmap.org/intellectual-disability-and-asd/> (last visited March 21, 2019).

Wandering

Wandering is generally characterized by aimless, slow, or pointless movement that is not associated with normal daily activity.³² Twelve to 60 percent of individuals with a cognitive disorder wander and approximately 5 percent of wandering instances result in physical harm.³³ 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.³⁴

Wandering occurs frequently in individuals with ASD, and the risk of wandering behavior increases with autism severity.³⁵ From 2009 to early 2017, 158 individuals with ASD died after wandering from their home, a public place, or a group home.³⁶ 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.³⁷

III. Effect of Proposed Changes:

The CS creates the At-Risk Adult Alert Plan which will aid 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;³⁸
- whose disappearance poses a credible threat to the person's welfare and safety; and
- who does not meet the criteria for the activation of the Silver Alert Plan.

The CS requires the FDLE, in cooperation with the DOT, the DHSMV, the DOL and local law enforcement agencies, to establish and implement the At-Risk Adult Alert Plan. The CS expands the definition of "missing endangered person" to include a missing adult who meets the At-Risk Adult Alert Plan activation criteria. It further requires the At-Risk Adult Alert Plan provide for the protection of the privacy, dignity, independence, and autonomy of the missing adult by

³² Merriam-Webster, <https://www.merriam-webster.com/dictionary/wandering> (last visited Mar. 6, 2019).

³³ 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 Mar. 6, 2019).

Wandering estimates range from 12 to 60 percent due to difficulties defining and recording such instances.

³⁴ *Id.*

³⁵ National Autism Association, *Wandering* (2017), <http://nationalautismassociation.org/resources/awaare-wandering/> (last visited Mar. 6, 2019).

³⁶ 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 Mar. 6, 2019).

³⁷ *Id.*

³⁸ See s. 393.063, F.S., which defines "developmental disability" 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. Defines "intellectual disability" as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior which manifests before the age of 18 and can reasonably be expected to continue indefinitely. For the purposes of the term "intellectual disability", the term: "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community, "Significantly subaverage general intellectual functioning" means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency.

including standards that aim to safeguard their civil liberties through preventing the inadvertent or unnecessary broadcasting or dissemination of sensitive health and diagnostic information.

The CS provides that the broadcasting and dissemination of alerts and related information be limited to the geographic areas where the missing adult could reasonably be, considering the person's circumstances and physical and mental condition, the modes of transportation available to the person, and the circumstances of the person's disappearance.

The CS requires the local law enforcement agency broadcasting information for the At-Risk Adult Alert Plan be the agency that is best able to notify the media and disseminate the information by cellular telephone alerts and other technologies in order to communicate with the residents in the jurisdiction where the missing adult is believed to be, including, but not limited to, the lottery terminals in gas stations, convenience stores, and supermarkets in those areas.

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

- The 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 CS 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. In cases in which a vehicle is involved, 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.

The CS requires the 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 CS also requires the FDLE to adopt rules to implement the plan.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CS may have a negative fiscal impact on state government as the FDLE estimates it may require three Crime Intelligence Analyst I positions (\$164,101 in year one for salary, benefits, expense and human resources services and \$152,836 recurring) to maintain current caseload and alerts while also training, activating and maintaining the newly added alerts. The FDLE may also require the hiring of one programmer which is estimated to cost \$170,000 per year. The total estimated nonrecurring fiscal impact may be up to \$334,101 (\$322,836 recurring).³⁹

The CS may have an indeterminate negative 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This CS substantially amends ss. 937.0201, 937.0205, 937.021, 937.022, 429.918, F.S.

³⁹ Florida Department of Law Enforcement, Agency Analysis of 2019 Senate Bill 844 (February 25, 2019). On file with the Senate Committee on Children, Families, and Elder Affairs.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Infrastructure and Security on March 12, 2019:

- The CS replaces “verified mental or cognitive impairment” with “irreversible cognitive disorder or syndrome or brain injury, including, but not limited to, a developmental disability or an intellectual disability”.
- The CS also adds the DOL to the list of entities that will cooperate with the FDLE, which will allow alert information to be displayed on lottery terminals.

- B. **Amendments:**

None.