

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 Judiciary

BILL: CS/SB 330

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: Missing Persons with Special Needs

DATE: March 16, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>CF</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 330 expands the definition of the term “missing endangered person” in ch. 937, F.S., which establishes requirements for state and local law enforcement agencies in responding to and investigating reports of missing endangered persons. Specifically, the definition is expanded 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) if certain conditions are met; and
- Grants civil immunity to specified persons and entities responding to a law enforcement agency’s request to release information relating to a missing person with special needs.

II. Present Situation:

Missing Endangered Person

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. A “missing endangered person” is:

- A missing child;¹
- A missing adult² 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).³

Missing Endangered Person Information Clearinghouse

The Missing Endangered Person Information Clearinghouse (MEPIC) within the FDLE serves as a central repository of information for missing endangered persons. Such information shall be collected and disseminated to assist in the location of missing endangered persons.⁴

The MEPIC must establish a system of intrastate communication of information relating to missing endangered persons; provide a centralized file for the exchange of this information; and collect, process, maintain, and disseminate this information. Every state, county, or municipal law enforcement agency must submit to the MEPIC information concerning missing endangered persons.

Any person having knowledge may submit a missing endangered person report to the MEPIC concerning a child or adult younger than 26 years of age whose whereabouts is unknown, regardless of the circumstances, as long as he or she has reported the child or adult missing to the appropriate law enforcement agency within the county in which the child or adult became

¹ 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.

² 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.

³ Section 937.021(4), F.S. According to the FDLE, “[t]he Florida Silver Alert Plan outlines two levels of Silver Alert activation: Local and State. Local and State Silver Alerts engage the public in the search for the missing person and provide a standardized and coordinated community response.” “Silver Alert Activation,” Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/Content/Silver-Alert-Plan/Menu/Activation-Steps.aspx> (last visited on February 17, 2015). “... [E]ach agency may have their own criteria for activation of a Local Silver Alert,” but “the Florida Silver Alert Support Committee recommends that agencies use” the following criteria “as a guideline when issuing a Local Silver Alert”: “[t]he person is 60 years and older”; “[t]he person 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”; “[t]he person has an irreversible deterioration of intellectual faculties (e.g. Alzheimer’s disease or dementia) that has been verified by law enforcement.” *Id.* Further, there are special criteria that must be met for issuance of a State Silver Alert for persons with dementia who go missing in a vehicle with an identified tag. *Id.*

⁴ Section 937.022, F.S. All additional information in this section of the analysis regarding the MEPIC is from s. 937.022, F.S., unless otherwise noted.

missing, and the law enforcement agency has entered the report into the Florida Crime Information Center (FCIC) and the National Crime Information Center (NCIC) databases. This report is included in the MEPIC database.

Only the law enforcement agency having jurisdiction over the case may:

- Submit a missing endangered person report to the MEPIC involving a missing adult age 26 years or older who is suspected by a law enforcement agency of being endangered or the victim of criminal activity; and
- Make a request to the MEPIC for the activation of a state Silver Alert involving a missing adult if circumstances regarding the disappearance have met the criteria for activation of the Silver Alert Plan.

The person responsible for notifying the MEPIC or a law enforcement agency about a missing endangered person must immediately notify the MEPIC or the agency of any child or adult whose location has been determined.

The law enforcement agency having jurisdiction over a case involving a missing endangered person must, upon locating the child or adult, immediately purge information about the case from the FCIC or the NCIC databases and notify the MEPIC.

The FDLE notes: “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 Missing Person Investigations, the Missing Endangered Persons Information Clearinghouse (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. (see F.S. 937.0201(4)(c)).”⁵

Civil Immunity Relating to Missing Persons Reporting

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 the FDLE.⁶ In an effort to locate the missing person, the law enforcement agency that originally received the report may request other specified entities (e.g., the FDLE, local law enforcement entities, radio and television networks, etc.) to broadcast information about the missing person to the public.⁷

Currently, specified persons or entities responding to such requests are granted immunity from civil liability if the broadcasted information relates to a missing adult, missing child, or a missing

⁵ Analysis of SB 330 (January 28, 2015), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “FDLE Analysis of SB 330.”

⁶ Sections 937.021 and 937.022, F.S.

⁷ The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information. Section 937.021(5)(e), F.S.

adult who meets the criteria for activation of the Silver Alert Plan.⁸ Current law does not specifically provide such civil immunity from damages to persons or entities responding to a request to broadcast information relating to a missing person with special needs (as defined in the bill).

III. Effect of Proposed Changes:

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.” Accordingly, information submitted about missing persons will include information about missing persons with special needs, which will be collected, processed, maintained, and disseminated by the MEPIC.

Any person is authorized to submit a missing endangered person report concerning a missing person with special needs to the MEPIC. Before doing so, the person must report the person with special needs missing to the appropriate law enforcement agency in the county where the person with special needs went missing and the agency must enter the missing person with special needs into the FCIC and NCIC databases.

The bill amends s. 937.021(5), F.S., to grant immunity from civil liability to certain entities responding to a request to release information concerning a missing person with special needs, as defined in statute. The bill mirrors existing immunity provisions contained in the statute and:

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

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁸ 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 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.

C. Trust Funds Restrictions:

None

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the FDLE's analysis of SB 330, "Additional resources need to be acquired to complete the request. This request would require the hiring of one new programmer." Additionally, "[i]mplementation of these changes would require an estimated 2,507 hours to complete at \$215,460." The FDLE requests that the effective date of the bill be changed to August 6, 2016, to implement these changes.⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The FDLE states "[e]xisting definitions in 937.0201(4)(a), (b), (c), and (d), capture all missing persons, children and adults, that may be endangered. Additionally, the Florida Crime Information Center defines missing categories of 'Disabled' or 'Endangered' to specifically identify missing disabled individuals."¹⁰ The department also "currently issues Missing Child Alerts for all missing children with an autism spectrum disorder." The FDLE further comments that "[s]pecifying individual types of disabilities and circumstances that may 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."

⁹ Florida Department of Law Enforcement, *2015 FDLE Legislative Bill Analysis for SB 330* (Feb. 28, 2015)(on file with the Senate Committee on Judiciary).

¹⁰ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 937.0201, 937.021, and 937.022.

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 Criminal Justice on March 2, 2015:

- Removes provisions relating to electronic monitoring of certain persons with special needs.
- Removes a provision requiring the Criminal Justice Standards and Training Commission to incorporate training of law enforcement officers in the retrieval of missing persons with special needs.

- B. **Amendments:**

None.