

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 Criminal Justice Committee

BILL: SB 664

INTRODUCER: Senator Benacquisto

SUBJECT: Missing Person Investigations/Silver Alert

DATE: March 1, 2011

REVISED: 03/09/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Fav/1 amendment
2.			JU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input checked="" type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill provides that the Florida Department of Law Enforcement (FDLE), other agencies, and specified entities and persons who are responsible for complying with a request to release Silver Alert information are immune from civil liability for damages for complying in good faith with the request and presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing person.

The bill adds specific reference to a missing adult who meets the criteria for activation of the Silver Alert Plan to the definition of “missing endangered person” and adds reference to the Silver Alert Plan to several statutory provisions relevant to reporting information on missing endangered persons.

The bill also specifies that only a law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

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

II. Present Situation:

Silver Alert

Florida's Silver Alert Plan was created by Executive Order Number 08-211, effective October 8, 2008.¹ The FDLE, the Department of Transportation, the Department of Motor Vehicles and Highway Safety's Highway Patrol, local law enforcement agencies, other agencies and entities, and the media collaborate on a standardized and coordinated response to implement the system, which is intended to aid local law enforcement in the rescue or recovery of a missing elderly person who suffers from irreversible deterioration of intellectual faculties.² The plan recognizes that the most effective response to a missing senior citizen leverages community resources for the search to augment the investigative response by the local law enforcement agency. The plan further acknowledges Silver Alerts should be activated through the investigating local law enforcement agency which is in the best position to notify the media and disseminate the information through avenues such as neighborhood telephone alerts and other technologies the agency may have to communicate with its citizens.³

Under current law, the FDLE considers a person who meets the criteria for a state Silver Alert to be a "missing endangered adult," as defined in s. 937.021, F.S.,⁴ though the definition does not specifically mention persons who meet Silver Alert criteria. The criteria for a Silver Alert are as follows:

- The missing person must be age 60 or older and present a clear indication that the individual has an irreversible deterioration of intellectual faculties, or under extraordinary circumstances when a person age 18 to 59 has irreversible deterioration of intellectual faculties and law enforcement has determined the individual lacks the capacity to consent, and that the use of dynamic message signs may be the only possible way to rescue the missing person.
- Local law enforcement has already activated a local or regional alert by contacting media outlets.
- The law enforcement agency's investigation has concluded that the disappearance poses a credible threat to the person's safety.
- A description of the vehicle and a tag number is available and has been verified by local law enforcement.
- The local law enforcement agency has entered the missing person into the Florida Crime Information Center and issued a statewide "Be On the Look Out" (BOLO) to other law enforcement/911 centers.

¹ See <http://elderaffairs.state.fl.us/english/notices/Oct08/govsilveralert.pdf> (last accessed on March 2, 2011).

² See <http://www.fmcdf.org/foundation-history.htm> (last accessed on March 1, 2011).

³ Except as otherwise indicated, most of the information regarding Silver Alert is from the following resources on the FDLE's website: <http://www.fdle.state.fl.us/MCICSearch/SilverAlerts.asp>, <http://www.fdle.state.fl.us/Content/News/October-2008/Governor-Crist-Signs-Executive-Order-Creating-Silv.aspx>, and <http://www.fdle.state.fl.us/MCICSearch/Documents/SilverAlertFAQ.pdf> (last accessed on March 1, 2011).

⁴ Analysis of SB 664, Florida Department of Law Enforcement, February 28, 2011.

Only a law enforcement agency may activate a Silver Alert. Local law enforcement will take a report of a missing person, issue a Silver Alert if the criteria are met, and notify the FDLE if the person is driving a vehicle. The local law enforcement agency determines how long a Silver Alert remains activated.

Dynamic message signs are activated regionally or statewide when criteria are met. If road signs are used, they remain activated for a maximum of 6 hours, unless the missing elderly person is rescued or the Department of Transportation is otherwise instructed. To maintain integrity of the system and not dilute its effectiveness, the road signs will be used primarily for persons with irreversible deterioration of intellectual faculties 60 years and older. However, road signs may be used in rare instances when that is the only viable method to locate a missing person under the age of 60 who otherwise meet criteria.

The Emergency Alert System (EAS) is not used for Silver Alerts. The EAS is restricted to child abductions, and is not used for any other cases involving missing children. However, just like with Missing Child Alerts, television and radio stations are notified and the information can be broadcasted to the viewing or listening public. The local law enforcement agency is responsible for contacting local and regional media outlets. Media outlets have the option on whether or not to broadcast Silver Alert information.

According to the FDLE, since the program's inception, the department has issued 283 Silver Alerts with 42 direct recoveries as a result of the alerts.⁵

Missing Person Investigations/Chapter 937, F.S.

Chapter 937, F.S., covers missing person investigations. Terminology relevant to the chapter is defined in s. 937.0201, F.S. Section 937.021, F.S., addresses a number of matters relating to missing persons investigations such as requirements for written policies, filing and acceptance of reports, civil immunity from damages for good faith compliance with alert requests, etc. Section 937.022, F.S., creates a Missing Endangered Persons Information Clearinghouse and specifies its organization and duties, who may submit information, and type of information submitted. Other sections of the chapter deal with birth records, student records, fingerprints, and dental records of missing children (respectively, s. 937.024, F.S., s. 936.025, F.S., s. 937.028, F.S., and s. 937.071, F.S.).

Section 937.0201(4), F.S., defines a "missing endangered person" as a missing child,⁶ a missing adult⁷ younger than 26 years of age, or 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. The term has relevance to a "missing endangered person report," which is a report prepared on a form prescribed by the FDLE by rule for use by the public and law enforcement agencies in reporting information to the Missing Endangered Persons Information Clearinghouse about a missing

⁵ E-mail from FDLE staff to staff of the Senate Committee on Criminal Justice, dated March 2, 2011.

⁶ A "missing child" is 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. s. 937.021(3), F.S.

⁷ A "missing adult" is 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. s. 937.021(2), F.S.

endangered person.⁸ *The definition of “missing endangered person” does not specifically mention a person who meets the criteria for activation of the Silver Alert Plan.*

Section 937.021(5)(a), F.S., provides that, upon receiving a request to record, report, transmit, display, or release Amber Alert or Missing Child Alert information from the law enforcement agency having jurisdiction over the missing child, the FDLE as the state Amber Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11; F.S., or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Amber Alert or Missing Child Alert information pertaining to such child.

Section 937.021(5)(b), F.S., contains an immunity provision that is almost identical to s. 937.021(5)(a), F.S., but pertains to complying with a request to provide information on a missing adult. *Compliance with a request to release Silver Alert information is not specifically mentioned in any immunity provision.*

Section 937.021(5)(c), F.S., provides that the presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Amber Alert, Missing Child Alert, or missing adult information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect. *Silver Alert is not specifically referenced in paragraph (5)(c).*

Section 937.021(5)(c), F.S., provides that neither subsection (5) nor any other provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Amber Alert, Missing Child Alert, or missing adult information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information. *Silver Alert is not specifically referenced in paragraph (5)(c).*

III. Effect of Proposed Changes:

The bill amends the definition of “missing endangered person” in s. 937.0201, F.S., to specifically include within this definition a missing adult who meets the criteria for activation of a Silver Alert.⁹

The bill amends s. 937.021, F.S., to do the following:

⁸ s. 937.021(5), F.S.

⁹ The FDLE states that, “[w]hile the Department considers those who meet the criteria for activation of a Silver Alert covered under provisions for missing endangered adults as defined in 937.0201(c), there is no objection to specific inclusion of these persons as an identified subset as proposed in SB 664. The Department has been named state Silver Alert coordinator (lines 66-67) and while appropriate, it should be noted that if federal legislation is passed that defines a Silver Alert coordinator, there may be additional responsibilities that the clearinghouse would have to take on to fulfill this role.” Analysis of SB 664, Florida Department of Law Enforcement, February 28, 2011.

- Provide that, upon receiving a request to record, report, transmit, display, or release Silver Alert information from the law enforcement agency having jurisdiction over the missing adult, the FDLE as the state Silver Alert coordinator, any state or local law enforcement agency, and the personnel of these agencies; any radio or television network, broadcaster, or other media representative; any dealer of communications services as defined in s. 202.11, F.S.; or any agency, employee, individual, or entity is immune from civil liability for damages for complying in good faith with the request and is presumed to have acted in good faith in recording, reporting, transmitting, displaying, or releasing Silver Alert information pertaining to the missing adult.
- Provide that the presumption of good faith is not overcome if a technical or clerical error is made by any agency, employee, individual, or entity acting at the request of the local law enforcement agency having jurisdiction, or if the Silver Alert information is incomplete or incorrect because the information received from the local law enforcement agency was incomplete or incorrect.
- Provide that no provision of law creates a duty of the agency, employee, individual, or entity to record, report, transmit, display, or release the Silver Alert information received from the local law enforcement agency having jurisdiction. The decision to record, report, transmit, display, or release information is discretionary with the agency, employee, individual, or entity receiving the information.

The bill also amends s. 937.022, F.S., to provide that only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

The effective date of the bill is July 1, 2011.

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:

Since there is already an existing Silver Alert program, it appears unlikely that the bill would have any additional impact on private entities involved in the alert, such as television and radio stations broadcasting the alert.

C. Government Sector Impact:

According to the FDLE, “[t]he proposed legislation would have little impact on the Department as statewide Silver Alerts have been issued since 2008,” and will not impact state agencies for the same reason.¹⁰

VI. Technical Deficiencies:

The FDLE has indicated some concerns with language found at lines 121-125 of the bill. Those lines provide that only the law enforcement agency having jurisdiction over the case may submit a Silver Alert report to the Missing Endangered Persons Information Clearinghouse involving a missing adult who is suspected by a law enforcement agency of meeting the criteria for activation of the Silver Alert Plan.

The FDLE states:

[T]he Department would recommend minor verbiage changes to ensure that the clear intent of the legislation is realized. While it is clear that this line is mirrored on the verbiage for submission of missing endangered persons reports, instructions for submissions of such cases is already covered in F.S. 937.0223. Furthermore, “Silver Alert report” would be confusing nomenclature as the Department does not collect reports of Silver Alerts. Additionally, local law enforcement agencies can and do issue local Silver Alerts for persons who do not meet criteria for State activation, particularly for those travelling on foot who studies show can be expected to be located within a quarter-mile of where they were last seen, and when it is believed that community assistance will help to bring the person home safely. More precise phrasing, and a recommendation should the decision be made to keep this provision, would be to replace the words “submit a Silver Alert report to the clearinghouse” in line 122 with “make a request for the activation of a state Silver Alert to the clearinghouse[.]”¹¹

VII. Related Issues:

None.

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

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

None.

¹⁰ Analysis of SB 664, Florida Department of Law Enforcement, February 28, 2011.

¹¹ *Id.*

B. Amendments:

Barcode 901184 by Criminal Justice on March 9, 2011:

Provides that only a law enforcement agency having jurisdiction over the case may make a request to the Missing Endangered Persons Information Clearinghouse for activation of Silver Alert if criteria for activation are met.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
