

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 Criminal Justice

BILL: SB 330

INTRODUCER: Senator Dean

SUBJECT: Missing Persons with Special Needs

DATE: February 27, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.			JU	
3.			CF	
4.			AP	

I. Summary:

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 “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 condition” (further described as a “person with special needs”).

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;
- Grants civil immunity to specified persons and entities responding to a law enforcement agency’s request to broadcast information relating to a missing person with special needs;
- Subject to federal funding, requires the Florida Department of Law Enforcement (FDLE) to provide electronic monitoring devices to persons with special needs who have the potential to go missing due to autism spectrum disorder;
- Requires the Agency for Persons with Disabilities (APD) to annually provide the FDLE with a list of the number of persons with special needs in each county who would be eligible for an electronic monitoring device;
- Subject to legislative appropriation, requires the Department of Children and Families (DCF) to provide electronic monitoring devices to persons with special needs who have the potential to go missing due to diagnosed Alzheimer’s disease or any other form of dementia; and
- Requires the Criminal Justice Standards and Training Commission to incorporate training in the retrieval of missing persons with special needs into the curriculum for continuous employment or appointment as a law enforcement officer.

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 regarding 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, subsequent to reporting such 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 subsequent to entry by the law enforcement agency of the child or person 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.”

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).

Law Enforcement Training on Missing Endangered Persons

According to the FDLE, “[t]he law enforcement basic recruit training incorporates training on the retrieval of missing endangered persons as currently defined.”⁹

Electronic Monitoring of Persons with Special Needs

“Wandering, also called elopement, is an important safety issue that affects some people with disabilities, their families, and the community.”¹⁰ “Wandering is when someone leaves a safe area or a responsible caregiver. This typically includes situations where the person may be injured or harmed as a result.”¹¹

According to the FDLE, “[m]issing endangered persons as currently defined are not monitored, nor is there a funding source within FDLE to establish a monitoring system.”¹²

According to the APD, “the Justice Department announced earlier this year that it will make funding available immediately to provide free electronic tracking devices for children with autism who are at risk of wandering.”¹³

III. Effect of Proposed Changes:

The bill 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 “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 condition” (“missing persons with special needs”). Therefore, 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.

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.

⁹ FDLE Analysis.

¹⁰ “Wandering (Elopement) (footnote omitted),” Centers for Disease Control and Prevention, available at <http://www.cdc.gov/ncbddd/disabilityandsafety/wandering.html> (last viewed on February 17, 2015).

¹¹ *Id.*

¹² FDLE Analysis.

¹³ Analysis of HB 69 (January 20, 2015), Agency for Persons with Disabilities (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “APD Analysis.” HB 69, as filed, is very similar to SB 330. The House bill was subsequently amended and is now CS/HB 69.

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.

To the extent federally funded, the FDLE must provide electronic monitoring devices to persons with special needs who have the potential to go missing due to autism spectrum disorder. The APD must annually provide the FDLE with a list of the number of persons with special needs in each county who would be eligible for an electronic monitoring device.

Subject to legislative appropriation, the DCF must provide electronic monitoring devices to persons with special needs who have the potential to go missing due to diagnosed Alzheimer's disease or any other form of dementia.

The Criminal Justice Standards and Training Commission must incorporate training in the retrieval of missing persons with special needs into the curriculum for continuous employment or appointment as a law enforcement officer.

The bill takes effect July 1, 2015.

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:

None.

C. Government Sector Impact:

The APD has not indicated that the bill would have a fiscal impact on the agency.

The FDLE states: “With the revision of s. 937.0201, F.S., it would be necessary for FDLE to amend its clearinghouse database to include report fields for persons with autism spectrum disorder, developmental disability, and individuals with other diseases or conditions reported missing. If the retrieval of missing endangered persons is included in mandatory retraining, the ATMS¹⁴ officer records system will require additional programming to include a report field under this title.”¹⁵ The FDLE has not indicated any specific costs relating to amending the clearinghouse database and making additional programming changes to the ATMS officer records system.

The FDLE states that “[t]he monitoring of endangered persons ... may require additional personnel...”¹⁶ Based on this comment, the fiscal impact of monitoring on the FDLE appears to be indeterminate.

Subject to federal funding, the FDLE must provide electronic monitoring devices to persons with special needs who have the potential to go missing due to autism spectrum disorder.¹⁷

Subject to legislative appropriation, the DCF must provide electronic monitoring devices to persons with special needs who have the potential to go missing due to diagnosed Alzheimer’s disease or any other form of dementia. The bill does not include any specific appropriation.

The DCF states that the “fiscal impact of this bill is unknown, electronic monitoring devices entail the use of GPS tracking and monitoring and a typical device can range in cost from \$299 - \$699 per unit. Upon determining the number of devices the Department of Children and Families could supply, the cost required to staff and support monitoring efforts would then need to be considered as part of the overall fiscal impact. Two FTEs at \$114,991 (Salaries and Benefits, Expense and HR package) to provide monitoring, database management and maintenance, and to liaison with law enforcement would be needed.”¹⁸

The DCF also notes that “[a]t an average price of \$450.00 per unit, if all the vulnerable adults that Adult Protective Services investigated met criteria (10,358), the cost of providing the devices would be \$4,461,100 (for five percent of that population the cost could be \$233,055, and ten percent could be \$466,110). Among the statewide adult population that would meet criteria under this bill, if one percent of the 1,161,622 individuals were fitted with the monitoring devices, the device cost would total \$5,227,200. If ten percent of that population were to employ the devices, the cost rises to \$52,272,900, and then to \$132,682,250 at a 25% rate of utilization.”

¹⁴ Automated Training Management System.

¹⁵ FDLE Analysis.

¹⁶ *Id.*

¹⁷ The FDLE states: “It may be preferable to have a singular entity responsible for distribution of these devices and serve as the designated state agency pass-through for federal funds to secure these devices.” *Id.*

¹⁸ Analysis of HB 69 (December 23, 2014), Department of Children and Families (on file with the Senate Committee on Criminal Justice). This analysis is further cited as “DCF Analysis.”

VI. Technical Deficiencies:

The FDLE, the APD, and the DCF have identified what they believe are issues regarding several provisions of the bill. To the extent the Legislature agrees with any of the issues presented, the issues may be viewed as technical deficiencies.

Definition of Persons with Special Needs

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.”¹⁹ 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.”

Electronic Monitoring of Persons with Special Needs

The FDLE states that “[e]lectronic monitoring is beyond the defined mission scope of FDLE pursuant to Sections 20.201 and 943.03, FS.” Further, “[b]eyond distribution of electronic monitoring devices given undefined ‘federal funds,’ the bill language is absent direction regarding the purpose, protocol, extent, limitations, or criteria for the creation and maintenance of the proposed electronic monitoring program.” Finally, “[i]f it is the legislative intent that local agencies become involved in the distribution and/or monitoring of missing endangered persons, then FDLE will need rule authority to implement the monitoring program in such a manner.”

The DCF states that the bill would require “DCF to make electronic monitoring devices available to certain individuals with dementia. DCF Adult Protective Services Program investigates alleged abuse, neglect, financial exploitation and self-neglect of adults, age eighteen (18) and older who are unable to protect or provide for themselves.”²⁰ “DCF Adult Protective Services Program is only involved with a small percentage of adults who meet the criteria as specified in the bill.”

The DCF also indicates that the bill contains limited specific criteria relevant to those to be monitored by the department. “Not all adults with cognitive impairments or a diagnosis of dementia, are at risk of wandering, [n]or are they so impaired that they cannot make decisions for themselves. It is also not specified who would make the determination or under what authority a person would be made to wear such a device.”

¹⁹ FDLE Analysis. All further statements from the FDLE quoted in this section of the analysis are from this source.

²⁰ DCF Analysis. All further statements from the DCF quoted in this section of the analysis are from this source.

The APD states:

Although the Agency has the capability to send county-specific demographic data to FDLE (for Agency clients diagnosed with autism spectrum disorder), the Agency does not have the means to determine, in an automated and statistically sound manner, which of those clients have “the potential to go missing” as described in the bill. There is currently no valid predictor or assessment to determine a person’s risk or potential of wandering.

In addition, the Agency only collects information on individuals with autism who have contacted the Agency and subsequently applied for services. There are many other Floridians who could meet the eligibility criteria described in the bill but would not be captured in any Agency database.

For these reasons, the Agency would only be able to provide a report of the number of Agency clients with a developmental disability by county to FDLE without regard to their “risk of becoming lost”.

In addition, it is important that language be added to this bill to more clearly specify what the process would be to participate in this program. As this bill specifically addresses the provision of monitoring of minors or individuals who are not competent to consent the mechanism for participation in this program by individuals with special needs must be clarified. Even if monitoring were to be included as part of a behavior management plan approved through a peer review process, the legal guardian would need to provide informed consent prior to acquiring a tracking device and for monitoring to be implemented. This needs to be something that only the individual’s parents or legal guardian can elect to do with the understanding that they can withdraw consent and terminate participation at any time.²¹

Law Enforcement Training on Missing Persons with Special Needs

The FDLE states that the bill “requires training in the retrieval of persons with special needs. The bill states this training will be included in the curriculum required for continuous employment or appointment as a law enforcement officer. This bill needs clarification as to if the training is to be included in both basic and mandatory retraining with the use of the word ‘Or’.”

VII. Related Issues:

None.

²¹ APD Analysis.

VIII. Statutes Affected:

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

This bill creates the following sections of the Florida Statutes: 937.035 and 943.17297.

This bill reenacts sections 39.0141 and 39.301, Florida Statutes, to incorporate the amendment made to section 937.021, Florida Statutes, in references to that section.

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

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

None.

B. Amendments:

None.