

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 1275 Persons with Disabilities Registry
SPONSOR(S): Health & Human Services Committee, Plasencia and others
TIED BILLS: CS/HB 1277 **IDEN./SIM. BILLS:** CS/SB 784

FINAL HOUSE FLOOR ACTION: 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1275 passed the House on April 20, 2023, and subsequently passed the Senate on May 1, 2023.

Some behaviors associated with certain developmental, neurological, or psychological impairments can increase a person's chances of negative interactions with law enforcement. These include the inability to follow instructions, acting out, inappropriate verbal statements, or other actions that may be mistakenly perceived as an indication of hostility, criminal intent, or alcohol or drug intoxication.

Some local law enforcement agencies have developed programs to create safer interactions between law enforcement and individuals with certain impairments or disabilities. These include registries that allow individuals with certain developmental, neurological, or psychological impairments to voluntarily enroll by submitting identifying information and indicating the condition they have that may be relevant to their interactions with law enforcement officers.

CS/HB 1275 creates s. 402.88, F.S., to establish uniform requirements for the operation of Persons with Disabilities Registries by law enforcement agencies. Registries may include individuals who have a developmental, psychological, or other disability or condition that may be relevant to their interactions with law enforcement officers. The bill requires specified professionals to diagnose and certify a person's condition prior to eligibility for enrollment in a registry. The bill specifies enrollment and disenrollment processes for adults, minors, and adults declared incapacitated.

The bill authorizes a local law enforcement agency to provide access to a registry, and relevant information from the registry, to law enforcement officers engaged in official duties.

The bill is linked to CS/HB 1277, which creates a public records exemption for all records and personal identifying information relating to the enrollment of individuals in a persons with disabilities registry held by a local law enforcement agency.

The bill has no fiscal impact on state or local government.

The bill was approved by the Governor on June 29, 2023, ch. 2023-312, L.O.F., and will become effective on January 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Disabilities

Disabilities can cause a lack of functionality in an individual's vision, hearing, cognition, or motor performance, and can limit an individual's ability to care for themselves or live independently.¹ Disabilities can be present at birth or develop over the lifespan. Examples of disabilities include Down Syndrome, autism, and Alzheimer's disease. Currently, 12.7 percent of Americans have a disability.²

Intellectual Disabilities

Intellectual disability means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An individual with an intellectual disability has certain limitations in both mental functioning and in adaptive skills such as communicating, self-care, and social skills. These limitations will cause a person to learn and develop more slowly. People with intellectual disabilities may take longer to learn to speak, walk, and take care of their personal needs such as dressing or eating.³

Down Syndrome

Down syndrome is an intellectual disability caused when abnormal cell division results in extra genetic material from chromosome 21. This genetic disorder, also known as trisomy 21, varies in severity, causes lifelong intellectual disability and developmental delays, and, in some people, causes health problems.⁴

Neurological Disorders

Autism

Autism is a pervasive, neurologically-based developmental disability of extended duration that has onset during infancy or childhood, which causes severe learning, communication, and behavioral disorders.⁵ Autism spectrum disorder (ASD) includes autism, Asperger's syndrome, and any other pervasive developmental disorder.⁶ The Centers for Disease Control and Prevention (CDC) estimates that approximately one in 44 children has ASD.⁷ The CDC also estimates that over 5.4 million adults have ASD.⁸

¹ Cornell University, Disability Statistics Online Resource for U.S. Disability Statistics, American Community Survey (2019), available at <https://www.disabilitystatistics.org/reports/acs.cfm?statistic=1> (last accessed May 10, 2023).

² Id.

³ Agency for Persons with Disabilities, *Long-Range Program Plan Fiscal Years 2023-24-2027-28*, available at <http://floridafiscalportal.state.fl.us/Document.aspx?ID=24394&DocType=PDF> (last accessed May 10, 2023).

⁴ Id.

⁵ S. 393.063(5), F.S.

⁶ S. 627.6686(2)(b), F.S.

⁷ Centers for Disease Control and Prevention, *Data & Statistics on Autism Spectrum Disorder*, available at <https://www.cdc.gov/ncbddd/autism/data.html> (last accessed May 10, 2023).

⁸ Centers for Disease Control and Prevention, *Key Findings: CDC Releases First Estimates of the Number of Adults Living with Autism Spectrum Disorder in the United States*, available at <https://www.cdc.gov/ncbddd/autism/features/adults-living-with-autism-spectrum-disorder.html> (last accessed May 10, 2023).

Alzheimer's Disease

Alzheimer's disease is a form of dementia, a general term for memory loss, in which dementia symptoms worsen gradually over time. It is a progressive brain disorder that damages and eventually destroys brain cells, leading to memory loss and changes in the functions of the brain. Alzheimer's disease accounts for 60 to 80 percent of dementia cases. In the early stages of Alzheimer's disease, memory loss is mild; in late-stages, individuals lose the ability to carry on a conversation and respond to their environment. Currently, the disease has no cure, but treatment can temporarily slow the worsening of symptoms.⁹

Florida has an increasing number of individuals with Alzheimer's disease. An estimated 580,000 Floridians have Alzheimer's disease.¹⁰ The projected number of Floridians with Alzheimer's disease is estimated to increase by 24 percent to 720,000 individuals by 2025.¹¹

Mental Disorders

A mental illness is an impairment of the mental or emotional processes that exercise conscious control of one's actions or the ability to perceive or understand reality, which interferes with the person's ability to meet the ordinary demands of living.¹² An estimated 26 percent of American adults suffer from a diagnosable mental disorder in a given year.¹³ One in six youth aged 6-17 experience a mental health disorder each year.¹⁴ These range in severity from illnesses that mildly impair functioning to illnesses such as schizophrenia that involve hallucinations and delusions, incoherent speech, and inappropriate behavior.¹⁵

Interactions with Law Enforcement

All the conditions discussed above have attributes that may mislead a law enforcement officer to think that an individual is under the influence of drugs or alcohol—such as speech impairment, vision impairment, uncontrollable body movements, and memory loss.

Because of this, such a condition may make interactions with law enforcement more challenging. For example, identifying that a person has ASD can be difficult for a person unfamiliar with the condition, including law enforcement officers.¹⁶ The signs of autism may mislead a law enforcement officer to think the person is being aggressive or disobedient, which might cause the officer to approach the situation in the same manner they would when dealing with a suspected criminal.¹⁷ Common attributes of autism are communication differences and behaviors or thinking that are repetitive or restricted to an area of interest. These traits could be interpreted by law enforcement as not being compliant with questioning or direct instructions.

⁹ Alzheimer's Association, *2021 Alzheimer's Disease Facts and Figures*, available at <https://www.alz.org/media/documents/alzheimers-facts-and-figures.pdf> (last accessed May 10, 2023).

¹⁰ Florida Department of Elder Affairs, *2021 Alzheimer's Disease Advisory Committee Annual Report*, available at https://elderaffairs.org/wp-content/uploads/ADAC-Report-2021_FINAL.pdf (last accessed May 10, 2023).

¹¹ Id.

¹² S. 394.455(29), F.S.

¹³ Johns Hopkins Medicine, *Mental Health Disorder Statistics*, available at <https://www.hopkinsmedicine.org/health/wellness-and-prevention/mental-health-disorder-statistics> (last accessed May 10, 2023).

¹⁴ National Alliance on Mental Health, *Mental Health by the Numbers*, available at <https://www.nami.org/mhstats> (last accessed May 10, 2023).

¹⁵ U.S. Department of Health and Human Services, National Institute of Mental Health, *Understanding Psychosis*, <https://www.nimh.nih.gov/health/publications/understanding-psychosis> (last accessed May 10, 2023).

¹⁶ Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, *Aele Monthly Law Journal*, 101, 102 (2009), available at <https://www.aele.org/law/2009all07/2009-07MLJ101.pdf> (last accessed May 10, 2023).

¹⁷ Lambert, Randy (2018) "How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community," *Child and Family Law Journal*: Vol. 6 : Iss. 1 , Article 3, available at: <https://lawpublications.barry.edu/cfij/vol6/iss1/3> (last accessed May 10, 2023).

A characteristic of ASD known as escalation poses a particular problem in encounters with law enforcement.¹⁸ Escalation describes the response of a person with ASD under stress or in an unfamiliar situation. Overwhelmed by the barrage of sensory information, a person with ASD may attempt to flee an uncomfortable situation, become combative, or simply shut down. The individual may cover his or her ears and shriek, not knowing how or where to get help.¹⁹ The presence of police lights and sirens, uniforms, loud and unfamiliar voices, or barking dogs often makes a difficult situation worse by contributing to the individual's sensory overload.²⁰

Registries of Persons with Disabilities

Some local law enforcement agencies have developed and implemented programs in an attempt to create safer interactions with individuals with certain impairments. These include registries to allow individuals with certain conditions to voluntarily enroll by submitting certain identifying information and indicating the condition they have that may be relevant to their interactions with law enforcement officers.²¹

The information from these registries is then shared with law enforcement when an officer interacts with an individual listed in the registry. For example, a dispatcher can inform an officer of an individual's condition prior to the officer interacting with that individual or an officer may search the registry prior to interacting with an individual.

Effect of the Bill

CS/HB 1275 creates s. 402.88, F.S., to create uniform requirements for the operation of Persons with Disabilities Registries by law enforcement agencies. Registries may include individuals who have a developmental, psychological, or other disability or condition that may be relevant to their interactions with law enforcement officers. The bill requires specified professionals to diagnose and certify a person's condition prior to eligibility for enrollment in a registry.

The bill requires law enforcement agencies to ensure that individuals are enrolled in, and disenrolled from, Persons with Disabilities Registries as follows:

- An adult may enroll and disenroll themselves;
- An incapacitated adult²² with a disability may be enrolled and disenrolled by that adult's legal guardian—the local law enforcement agency must notify such adults of their enrollment in writing within 5 business days; and
- A minor may be enrolled and disenrolled by that minor's parent or legal guardian—the local law enforcement agency must notify such individuals of enrollment in writing within 5 business days of the enrollee's 18th birthday.

The bill requires a parent or legal guardian of a child or an incapacitated adult to provide documentation of the legal authority to enroll the child or incapacitated adult in a registry. Documentation may be in the

¹⁸ *Supra* at note 16.

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Seminole County Sheriff's Office-County Autism Response & Enhanced Services Program (CARES), available at <https://www.seminolesheriff.org/page.aspx?id=157>, City of Jacksonville Emergency Preparedness and Homeland Security-Registry for Endangered, Vulnerable, and Missing Persons (REVAMP), available at <https://www.jaxready.com/REVAMP>, City of Davie Police Department-Special Needs Registry, available at <https://www.davie-fl.gov/1451/Special-Needs-Registry>, Hillsborough County Sheriff's Office-Project Safe Encounter, available at <https://teamhcsos.com/News/PressRelease/f0f3d53b-cf10-4740-9112-ab88284a1e49/21-023> (last accessed May 10, 2023). See also Town of Jupiter, Pembroke Pines, Miami Shores, Town of Miami Lakes, Palm Beach Gardens, City of Lake Mary, and Polk County.

²² S. 744.102, F.S. An incapacitated person is an individual who has been judicially determined to lack the capacity to manage at least some of their own property or to meet at least some of the essential requirements for the individual's health and safety. See also s. 744.3201, F.S., the process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.

form of a birth certificate, power of attorney,²³ court order establishing parental rights or guardianship, or letters of guardianship.²⁴

A local law enforcement agency must remove an individual from a registry within 5 business days of an enrollee's verbal or written request for removal.

The bill authorizes a registry to include certain information, including, but not limited to:

- The enrollee's name, address, contact information, personal identifying information, and condition that may be relevant to interactions with law enforcement officers;
- The name, address, contact information, and personal identifying information of a parent or legal guardian who enrolled an individual; and
- The certification of the condition.

The bill authorizes a local law enforcement agency to provide access to its disability registry, and relevant information from the registry, to law enforcement officers engaged in official duties.

The bill provides an effective date of January 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

²³ S. 709.2102(1),(9), F.S. A power of attorney is a writing that grants authority to an attorney or other individual to act in the place of the incapacitated adult.

²⁴ S. 744.345, F.S. Letters of guardianship issued to a guardian must specify whether the guardianship pertains to the person, or property, or both, of the ward. The letters must state whether the guardianship is plenary or limited, and, if limited, the letters must state the powers and duties of the guardian. The letters are also required to state whether or not, and to what extent, the guardian is authorized to act on behalf of the ward with regard to any advance directive previously executed by the ward.

