

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 79 Purple Alert

**SPONSOR(S):** Appropriations Committee, Casello, Willhite and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 184

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	16 Y, 0 N	Mathews	Hall
2) Appropriations Committee	27 Y, 0 N, As CS	Smith	Pridgeon
3) Judiciary Committee		Mathews	Kramer

### SUMMARY ANALYSIS

Wandering, also called elopement, is a common safety concern that may affect a person with a disability and his or her family. Wandering occurs when a person leaves the safety of a responsible caregiver or a safe area, and may result in harm or injury to the person.

Florida has statutory alert systems for certain populations, including missing persons 60 years of age or older who suffer from irreversible deterioration of intellectual faculties (Silver Alert). The Silver Alert enables law enforcement to disseminate information about such missing adults to further location and recovery efforts. No alert system exists for missing adults with specified cognitive, intellectual, or developmental disabilities under age 60.

CS/HB 79 creates s. 937.0205, F.S., and requires the Florida Department of Law Enforcement (FDLE) to establish the Purple Alert to aid in the search for a missing adult:

- With a mental or cognitive disability; an intellectual or developmental disability; a brain injury; another physical, mental, or emotional disability not related to substance abuse; or a combination of any such conditions;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for Silver Alert activation.

The bill requires the Florida Department of Transportation, the Florida Department of Highway Safety and Motor Vehicles, the Florida Department of Lottery, and local law enforcement agencies (LLEA) to cooperate with FDLE to establish and implement the Purple Alert. Under the Purple Alert, LLEA may broadcast information to the media and subscribers in any jurisdiction where a missing adult is believed to be or may be located. LLEA may request a Purple Alert notification to be broadcast on lottery terminals in locations such as supermarkets, convenience stores, and gas stations. LLEA may also request FDLE to open a missing persons case with the Missing Endangered Persons Information Clearinghouse, authorizing the activation of dynamic message signs on state highways and dissemination of missing persons information to the public.

The bill requires Alzheimer's services adult day care center employees to review information on the Purple Alert and licensed centers to provide information on the Purple Alert to any enrolled participant or caregiver. Under the bill, the Florida Division of Emergency Management is required to maintain an inventory of digitally displayed automatic changeable signs to provide immediate public distribution of emergency and missing endangered persons information.

The bill provides an appropriation of \$199,901 from the FDLE Operating Trust Fund and authorizes two full time equivalent positions, for the purpose of implementing the provisions in the act.

The bill provides an effective date of July 1, 2021 for the appropriation, and an effective date of July 1, 2022 for all other provisions in the act.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Missing Person Investigations

Every state, county, and municipal law enforcement agency in Florida is required to submit information concerning missing endangered persons to the Florida Department of Law Enforcement's (FDLE) Missing Endangered Person Information Clearinghouse (MEPIC).<sup>1</sup> MEPIC serves as the central repository of information regarding missing endangered persons. Upon receiving information about a missing endangered person, MEPIC disseminates the information to the appropriate local, regional and statewide agencies in an effort to locate the missing person.<sup>2</sup> Section 937.0201, F.S., defines a "missing endangered person" to include a missing:

- Child;<sup>3</sup>
- Adult younger than 26 years of age;
- 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
- Adult who meets the criteria for activation of the Silver Alert.<sup>4</sup>

A law enforcement agency receiving a report of a missing child 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.<sup>5</sup> Similarly, a law enforcement agency receiving a report of a missing adult must transmit the report for inclusion within the FCIC and NCIC databases within two hours.

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:

- FDLE, a state or local law enforcement agency (LLEA), 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.<sup>6</sup>

Entities who report, transmit, display, or release information pertaining to a missing person are presumed to have acted in good faith.<sup>7</sup> 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 LLEA having jurisdiction or if the missing person information is incomplete or incorrect because the information received from the LLEA was incomplete or incorrect.<sup>8</sup>

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<sup>1</sup> S. 937.022(3)(b), F.S.

<sup>2</sup> MEPIC is located in the Enforcement and Investigative Support Bureau as part of the Investigations and Forensic Science Program of the FDLE. MEPIC assists law enforcement and families in locating missing persons by providing analytical services, collecting and disseminating relevant information and engaging the public in the search for the missing person. Florida Department of Law Enforcement: Missing Endangered Persons Information Clearinghouse, *About Us*, <https://www.fdle.state.fl.us/mcicsearch/AboutUs.asp> (last visited Mar. 22, 2021).

<sup>3</sup> "Missing child" means a person younger than 18 years of age. S. 937.0201(3), F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Florida Department of Law Enforcement, *Frequently Asked Questions* (2018), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Frequently-Asked-Questions.aspx> (last visited Mar. 22, 2021). S. 937.021, F.S.

<sup>6</sup> 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.

<sup>7</sup> S. 937.021(5), F.S.

<sup>8</sup> *Id.*

## Silver Alert

The Silver Alert may be activated to broadcast local or regional alerts of a missing person who is 60 years of age or older and suffers from a verified irreversible deterioration of intellectual faculties.<sup>9,10</sup> In rare instances, a Silver Alert may also be activated for a missing person when:

- He or she 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 means to rescue the missing person.<sup>11</sup>

There are two levels of activation under the Silver Alert: local and state. An LLEA may activate a local Silver Alert if an adult meeting the Silver Alert criteria goes missing on foot. Although activation criteria are specific to LLEA, law enforcement generally:

- Conducts a preliminary investigation to conclude the person's disappearance poses a credible threat to his or her 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 law enforcement and 911 centers.<sup>12</sup>

An LLEA may request FDLE to activate the statewide Silver Alert when a person meeting Silver Alert criteria goes missing in a vehicle. Prior to the request, the LLEA determines that the person's disappearance poses a credible threat to his or her welfare and safety and enters the missing adult's information into FCIC. The LLEA then contacts MEPIC at FDLE who must confirm the case meets Silver Alert criteria before notifying the:

- Florida Highway Patrol to send a statewide officer notification;
- Florida Department of Transportation to activate dynamic message signs<sup>13</sup> on highways; and
- Department of Elder Affairs to notify the public through an email alert system.<sup>14</sup>

Law enforcement has directly recovered 259 missing persons and indirectly recovered 45 missing persons through activation of the Silver Alert since implementing the plan in 2008.<sup>15</sup>

## Wandering

Wandering, also called elopement, is a common safety concern that may affect a person with a cognitive disability and his or her family. Cognitive disability includes a wide range of medical conditions that include intellectual disability, autism spectrum disorders, severe and persistent mental illness, brain injury, stroke, Alzheimer's disease and other dementias.<sup>16</sup> Section 393.063, F.S., defines related terms including:

- "Developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, Autism Spectrum Disorder (ASD), spina bifida, Down syndrome, Phelan-

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<sup>9</sup> Florida Department of Law Enforcement, *Silver Activation Steps*, <http://www.fdle.state.fl.us/Silver-Alert-Plan/Activation-Steps.aspx> (last visited Mar. 22, 2021).

<sup>10</sup> Agency policy determines how the LLEA verifies that a person suffers from an irreversible deterioration of intellectual faculties. *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Dynamic message signs are electronic signs that appear along major highways and typically display information about traffic conditions, travel times, construction, and road incidents. Florida Department of Transportation, *Highway Signing Program* (2021), <https://www.fdot.gov/traffic/TrafficServices/Signing.shtm> (last visited Mar. 22, 2021).

<sup>14</sup> Members of the public may sign up to receive Silver Alert email updates on the DOEA website. Department of Elder Affairs, *Florida Silver Alert Notification*, <https://lists.elderaffairs.org/listmanager/listinfo/silveralert> (last visited Mar. 22, 2021).

<sup>15</sup> A direct recovery is a recovery resulting from the activation of the State Silver Alert, primarily through state agency action. An indirect recovery is a recovery resulting from local agency actions in coordination with the Silver Alert Plan. Florida Department of Law Enforcement, *Silver Alert Monthly Report* (Jan. 2021), <http://www.fdle.state.fl.us/Silver-Alert-Plan/Monthly-Reports/2021-Monthly-Reports/Silver-Alert-January-2021> (last visited Mar. 22, 2021).

<sup>16</sup> Federal Communications Commission, *Cognitive Disabilities*, <https://www.fcc.gov/cognitive-disabilities/> (last visited Mar. 22, 2021).

McDermid syndrome, or Prader-Willi syndrome; that manifests before age 18; and constitutes a substantial handicap that can reasonably be expected to continue indefinitely.<sup>17</sup>

- "Intellectual disability" as significantly sub average intellectual functioning<sup>18</sup> existing concurrently with deficits in adaptive behavior<sup>19</sup> which manifests before age 18 and can reasonably be expected to continue indefinitely.

A person with cognitive disability may be at higher risk for wandering behavior. Wandering occurs when a person leaves the safety of a responsible caregiver or a safe area, and may result in harm or injury to the person.<sup>20</sup> Wandering incidents can be life-threatening and an impaired person may be at risk even in a closely monitored setting. Approximately twelve to 60 percent of individuals with a cognitive disability wander and approximately five percent of wandering instances result in physical harm.<sup>21</sup> For those persons missing more than 72 hours, the death rate can be as high as 88 percent,<sup>22</sup> with the most common causes of death being exposure to natural elements, drowning, and vehicular accidents.<sup>23</sup>

Currently, adults under 60 years of age with a mental or cognitive disability, intellectual or developmental disability, brain injury, or other physical, mental or emotional disability that may not be irreversible are not included under the Silver Alert Plan or any other alert protocol. There is no applicable alert to help facilitate the safe return of missing adults who do not qualify for a Silver Alert.

### Specialized Alzheimer's Services Adult Day Care Centers

Section 429.918, F.S., creates a designation of an adult day care center as a "specialized Alzheimer's services adult day care center." To be eligible for this designation, an adult day care center must meet an extensive list of program and facility requirements outlined in s. 429.918(4), F.S. Every employee of a specialized Alzheimer's services day care center must be trained on information about the Silver Alert program and the procedures to locate a participant who has wandered away from the center. The center must provide every participant or participant's caregiver with information about the Silver Alert program.

### **Effect of Proposed Changes**

CS/HB 79 creates s. 937.0205, F.S., which establishes the Purple Alert to aid law enforcement in the search for a missing adult:

- With a mental or cognitive disability; an intellectual or developmental disability, as defined in s. 393.063, F.S.; a brain injury; another physical, mental, or emotional disability not related to substance abuse; or a combination of any such conditions;
- Whose disappearance indicates a credible threat of immediate danger or serious bodily harm to himself or herself;
- Who cannot be returned to safety without law enforcement intervention; and
- Who does not meet the criteria for Silver Alert activation.

The bill directs FDLE, in cooperation with DOT, the Florida Department of Highway Safety and Motor Vehicles (DHSMV), the Florida Department of the Lottery, and LLEA's, to establish and implement the

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<sup>17</sup> S. 393.063(12), F.S.

<sup>18</sup> 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.

<sup>19</sup> 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. *Id.*

<sup>20</sup> Dementia Care Central, *Preventing Wandering in Persons with Alzheimer's and Dementia* (2019), <https://www.dementiacarecentral.com/caregiverinfo/wandering/> (last visited Mar. 22, 2021).

<sup>21</sup> Joseph Wherton et al., *Wandering as a Sociomaterial Practice: Extending the Theorization of GPS Tracking in Cognitive Impairment*, *Qualitative Health Research* (2018), <https://journals.sagepub.com/doi/10.1177/1049732318798358#articleCitationDownloadContainer> (last visited Mar. 22, 2021). Wandering estimates range from 12 to 60 percent due to difficulties defining and recording such instances.

<sup>22</sup> Dementia Care Central, *Preventing Wandering in Persons with Alzheimer's and Dementia* (2019), <https://www.dementiacarecentral.com/caregiverinfo/wandering/> (last visited Mar. 22, 2021).

<sup>23</sup> *Id.*

Purple Alert. The bill amends ss. 937.021 and 937.022, F.S., to expand the definition of “missing endangered person” to include a missing adult who meets Purple Alert activation criteria.

The bill authorizes an LLEA to open a 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. The clearinghouse must coordinate with the DOT, DHSMV, and the Department of the Lottery for the activation of dynamic message signs on state highways, notifications on lottery terminals, and the broadcast of critical information to the public about the missing adult.

Under the bill, FDLE must develop procedures to monitor the use, activation, and results of the Purple Alert. The Purple Alert must also include a strategy for informing and educating law enforcement, the media, and other stakeholders about the plan. FDLE may adopt rules to implement the alert.

The bill amends s. 429.918, F.S., to require Alzheimer's services adult day care center employees to review information on the Purple Alert and licensed centers to provide information on the Purple Alert to any enrolled participant or caregiver. Under the bill, the Florida Division of Emergency Management is required to maintain an inventory of digitally displayed automatic changeable signs to provide immediate public distribution of emergency and missing endangered persons information.

The bill provides an appropriation to FDLE for the purpose of implementing the provisions in the act.

The bill provides an effective date of July 1, 2021 for the appropriation, and an effective date of July 1, 2022 for all other provisions.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 252.35, F.S., relating to Emergency management powers; Division of Emergency Management.

**Section 2:** Amends s. 937.0201, F.S., relating to the definitions.

**Section 3:** Creates s. 937.0205, F.S., relating to Purple Alert.

**Section 4:** Amends s. 937.021, F.S., relating to missing child and missing adult reports.

**Section 5:** Amends s. 937.022, F.S., relating to Missing Endangered Persons Information Clearinghouse.

**Section 6:** Amends s. 429.918, F.S., relating to licensure designation as specialized Alzheimer's services adult day care center.

**Section 7:** Provides an appropriation.

**Section 8:** Provides effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

The bill provides an appropriation of \$199,901 from the FDLE Operating Trust Fund (\$107,111 recurring, \$92,790 nonrecurring) and authorizes two full time equivalent positions with associated salary rate of 55,853 for the purpose of implementing the provisions in the act.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact to LLEA by requiring agencies to develop policies, train staff, and establish or enhance necessary systems to implement the Purple Alert.<sup>24</sup>

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate negative impact on specialized Alzheimer's services adult day care centers by requiring centers to update employee orientation plans and information given to participants, or caregivers, which includes information on the Purple Alert.

**D. FISCAL COMMENTS:**

FDLE estimates approximately 146 new alerts annually as a result of the bill. The department indicated a need for three Crime Intelligence Analyst I positions to accommodate the associated workload, in addition to \$170,000 for information technology improvements.<sup>25</sup> After additional review, the department advised that \$85,000 of the IT improvement costs could be absorbed within existing resources.<sup>26</sup> Additionally, upon review of current vacant FTE positions within the department, and projected current and future expenditures from the Operating Trust Fund, additional resource needs beyond the bills appropriation can be handled within existing resources.

DHSMV estimates the bill may have an indeterminate impact on workload of the Florida Highway Patrol and the regional communications center assigned to coordinate Purple Alerts. DHSMV can absorb any current impacts within existing resources, but may request additional staffing and funding resources in the future to address any workload increases as a result of the bill.<sup>27</sup>

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants FDLE sufficient rulemaking authority for implementation.

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<sup>24</sup> *Supra Note 24.* at p. 3.

<sup>25</sup> Florida Department of Law Enforcement, Agency Analysis of 2021 House Bill 79, p. 4 (Dec. 16, 2020).

<sup>26</sup> Email from Ronald Draa, Chief of Staff, Florida Department of Law Enforcement, HB 79 (March 12, 2021).

<sup>27</sup> Department of Highway Safety and Motor Vehicles, 2021 Agency Bill Analysis – SB 184 (Jan. 6, 2021).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 15, 2021 the Appropriations Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the funding source for the appropriation provided in the bill from the General Revenue Fund to the FDLE Operating Trust Fund; and,
- Adjusted the amount of the appropriation, the number of authorized FTE and the associated salary rate provided to implement provisions in the bill.

The analysis is drafted to the committee substitute as passed by the Appropriations Committee.