

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1043 Criminal Justice System Interviews of Persons with Autism, an Autism Spectrum Disorder, or a Related Developmental Disability

SPONSOR(S): Hager and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 936

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|--------|---------|--|
| 1) Criminal Justice Subcommittee | | Keegan | White |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM 5).

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes than other individuals. There is currently no requirement in Florida for any mental health or similar professional to assist during law enforcement interactions with individuals diagnosed with ASD.

The bill requires a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional, each of whom must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism, an autism spectrum disorder, or a related developmental disability, or must be certified in special education with a concentration focused on persons with autism, to be present to assist when:

- A law enforcement officer, correctional officer, or another public safety official is conducting an interview; and
- The interviewed person is an individual with autism, an autism spectrum disorder, or a related developmental disability.

The county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because agencies will have to procure the services of a qualified professional in certain circumstances. This may result in an indeterminate positive fiscal impact; however, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

This bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Autism Spectrum Disorder

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and verbal and nonverbal communication. The ASD diagnosis once included Autistic Disorder, Asperger Syndrome, Pervasive Developmental Disorder Not Otherwise Specified, and other disorders; however, in June 2013, all autism disorders were merged into one umbrella diagnosis of ASD when the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5) was published.¹

Florida law defines several terms relating to autism:

- “Autism” is defined in s. 393.063(3), F.S., as “a pervasive, neurologically based developmentally based disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood, individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and non-verbal communication and imaginative ability, and markedly restrictive repertoire of activities and interests.”
- “Developmental disability” is defined in s. 393.063(9), F.S., defines “developmental as “a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.”
- “Autism spectrum disorder” is defined in ss. 627.6686(2)(b) and 641.31098(2)(b), F.S., as “any of the following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association: 1. Autistic disorder. 2. Asperger’s syndrome. 3. Pervasive developmental disorder not otherwise specified.”

Although an exact population count of individuals with ASD does not exist, the Centers for Disease Control’s (CDC) Autism Developmental Disabilities Monitoring (ADDM) Network estimates that approximately one in 68 children have been identified with ASD.² This estimate is based on surveys of 8-year-old children who were living in 11 communities in the United States in 2010.³ Boys are five times more likely than girls to be identified with ASD and white children are more likely to be identified than black or Hispanic children.⁴

Law Enforcement and ASD

It has been estimated that individuals with ASD have up to seven times more contacts with law enforcement agencies during their lifetimes.⁵ These contacts occur under a variety of circumstances. Law enforcement officers often come into contact with persons with ASD through a call reporting a domestic disturbance, a suspicious person who is acting in an unusual manner, or when responding to a medical emergency.⁶

There is currently no requirement in Florida for any mental health or similar professional to assist law enforcement during interactions with individuals diagnosed with ASD.

Effect of the Bill

The bill cites the act as the “Wes Kleinert Fair Interview Act.”

¹ CENTERS FOR DISEASE CONTROL & PREVENTION, *Facts about ASD*, <http://www.cdc.gov/ncbddd/autism/facts.html> (last visited Jan. 22, 2016); AUTISM SPEAKS, *What is Autism*, <https://www.autismspeaks.org/what-autism> (last visited Jan. 22, 2016).

² CENTERS FOR DISEASE CONTROL & PREVENTION, *Data and Statistics*, <http://www.cdc.gov/ncbddd/autism/data.html> (last visited Jan. 22, 2016).

³ CENTERS FOR DISEASE CONTROL & PREVENTION, *10 Things You Need to Know about CDC’s Latest Report from The Autism and Developmental Disabilities Monitoring Network*, <http://www.cdc.gov/features/dsautismdata/index.html> (last visited Jan. 22, 2016).

⁴ *Id.*

⁵ Pamela Kulbarsh, *Law Enforcement and Autism*, OFFICER.COM (Feb. 15, 2013), <http://www.officer.com/article/10880086/law-enforcement-and-autism> (last visited Jan. 22, 2016).

⁶ *Id.*

The bill provides legislative encouragement for various protections for individuals with certain medical conditions or disabilities.

The bill requires a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional, each of whom must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism, an autism spectrum disorder, or a related developmental disability, or must be certified in special education with a concentration focused on persons with autism, to be present to assist when:

- A law enforcement officer, correctional officer, or another public safety official is conducting an interview; and
- The interviewed person is an individual with autism, an autism spectrum disorder, or a related developmental disability.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1. Creating the "Wes Kleinert Fair Interview Act."

Section 2. Creating an unnumbered section of statute relating to legislative intent.

Section 3. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have an impact on state revenues.

2. Expenditures:

The bill may have an indeterminate impact on state government expenditures because state law enforcement agencies will have to procure the services of a qualified professional in certain circumstances.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have an indeterminate impact on local government expenditures because local law enforcement agencies will have to procure the services of a qualified professional in certain circumstances.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The exact number of individuals diagnosed with ASD is unknown. Additionally, most law enforcement agencies do not collect data on the number or type of encounters that law enforcement officers have with individuals diagnosed with ASD. However, the bill requires law enforcement officers and other government employees to utilize a specified professional for *any* kind of interview with an individual

who has specified disorders. While it is likely a fiscal impact on law enforcement agencies will occur, the amount of that fiscal impact is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of article VII, section 18, of the Florida Constitution may apply because this bill requires county and municipal law enforcement agencies to procure the services of a qualified professional in certain circumstances. To the extent that political subdivisions, including cities and counties (through the police department or the sheriff's department), are obligated to pay for a qualified professional's services, the bill could constitute a mandate as defined in Article VII, Section 18(a) of the Florida Constitution for which no funding source is provided to such political subdivisions.

Article VII, section 18(a), of the Florida Constitution, states that county and municipality governments are not bound by any general law requiring one or more county or municipality governments to spend funds, unless the Legislature has determined that such law fulfills an important state interest and meets one of a number of enumerated exceptions.⁷

Pursuant to article VII, section 18, of the Florida Constitution, laws that will have an "insignificant fiscal impact" are exempt from the requirements of Section 18.⁸ The term "insignificant" has been defined as a matter of legislative policy as an amount not greater than the average statewide population for the applicable fiscal year times ten cents. The 2010 United States census, which contains the most recent federal census data, indicates that the Florida population is 18,801,310.⁹ A bill having a statewide fiscal impact on counties and municipalities in aggregate or in excess of \$1.88 million would be characterized as a mandate. It is unknown at this time the exact amount counties and cities would be required to spend to implement the requirements of the bill.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not provide a statute reference for the language of the bill.

The bill requires law enforcement officers to have a specified professional present for interview of an individual with a specified disorder, but does not specify what types of interviews this requirement applies to. Additionally, the bill does not specify what options a law enforcement officer has available in an emergency situation involving an individual with a specified disorder.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

⁷F.L.A. CONST. art. VII, s. 18(a).

⁸FLA. CONST. art. VII s. 18(d).

⁹ U.S. Census Bureau, 2010 Census Interactive Population Search, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=12> (last visited Jan. 22, 2016).