

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1043 Interviews of Suspects or Defendants with Autism Spectrum Disorder

SPONSOR(S): Criminal Justice Subcommittee; Hager and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	7 Y, 0 N, As CS	Keegan	White
2) Justice Appropriations Subcommittee		McAuliffe	Lloyd
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 defines key terms and requires qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a suspect or a defendant in a criminal case;
- The individual has been diagnosed with autism spectrum disorder; and
- The law enforcement officer knows or should know that the individual has been diagnosed with autism spectrum disorder.

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, if practicable, in certain circumstances.

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 requires a qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if:

- The individual is a suspect or defendant in a criminal case;
- The individual has been diagnosed with autism spectrum disorder; and
- The law enforcement officer knows or should have known that the individual has been diagnosed with autism spectrum disorder.

The bill defines the following key terms:

- “Autism spectrum disorder” has the same meaning as provided in s. 627.6686.
- “Law enforcement officer” has the same meaning as provided in s. 943.10.
- “Qualified professional” means a mental health counselor, a behavioral therapist, or a related professional with professional experience teaching, treating, or caring for patients or clients who have an autism spectrum disorder, or a psychiatrist or psychologist.

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 s. 943.0439, F.S., relating to interviews of suspects or defendants with autism spectrum disorder.

Section 3. Providing 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 qualified professional to be present to

assist a law enforcement officer, if practicable, during an interview of an individual if (1) the individual is a suspect or defendant in a criminal case; (2) the individual has been diagnosed with an autism spectrum disorder; and (3) the law enforcement officer knows or should have known that the individual has been diagnosed with an autism spectrum disorder. While it is likely that 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 counties and municipalities are obligated to pay for a qualified professional's services, the bill could constitute a mandate; however, an exemption may apply to the county/municipality mandates provision if the bill results in an insignificant fiscal impact to county or municipal governments.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Defines key terms; and
- Requires a qualified professional to be present to assist a law enforcement officer, if practicable, during an interview of an individual if (1) the individual is a suspect or defendant in a criminal case; (2) the individual has been diagnosed with autism spectrum disorder; and (3) the law enforcement officer knows or should know that the individual has been diagnosed with autism spectrum disorder.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.