

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/CS/HB 1043	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Hager and others	115 Y's	1 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 936; includes parts of CS/CS/SB 718 and HB 1105	<b>GOVERNOR'S ACTION:</b>	Pending

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### SUMMARY ANALYSIS

CS/CS/HB 1043 passed the House on March 8, 2016, as CS/CS/SB 936. The bill includes portions of HB 1105 and CS/CS/SB 718 and HB 1105.

Autism spectrum disorder (ASD) is a developmental disorder that is characterized, in varying degrees, by repetitive behaviors and difficulties with social interaction and communication. In the Diagnostic and Statistical Manual of Mental Disorder, the ASD diagnosis encompasses disorders such as Autistic Disorder and Asperger Syndrome. Individuals diagnosed with ASD have an estimated seven times as many contacts with law enforcement agencies during their lifetimes than other individuals.

The bill requires the Department of Highway Safety and Motor Vehicles to put a "D" on an individual's identification card upon satisfactory proof that the individual has been diagnosed with a developmental disability. Additionally, the bill requires a law enforcement officer, a correctional officer, or another public safety official to procure the presence of a specified mental health professional at any interview of an individual diagnosed with autism or ASD, if requested by the individual or the individual's parent or guardian. The individual or the individual's parent or guardian is responsible for the expenses related to having the professional present. If the individual is a victim, the expenses must be reimbursed by the defendant upon conviction.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2016, except as otherwise provided.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF 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.<sup>1</sup>

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., 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.<sup>2</sup> This estimate is based on surveys of 8-year-old children who were living in 11 communities in the United States in 2010.<sup>3</sup> 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.<sup>4</sup>

#### **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.<sup>5</sup> 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.<sup>6</sup>

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.

#### **Identification Cards in Florida**

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<sup>1</sup> 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).

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

<sup>3</sup> 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).

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

<sup>5</sup> 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).

<sup>6</sup> *Id.*

A person who is five years of age or older, or a person of any age who has a disability and applies for a disabled parking permit, may be issued an identification card by the Department of Highway Safety and Motor Vehicles (DHSMV) upon completion of an application and payment of a \$25 fee.<sup>7, 8</sup> For an original identification card the \$25 fee is deposited into the General Revenue Fund.<sup>9</sup> For a replacement identification card \$9 is deposited into the Highway Safety Operating Trust Fund or retained by the tax collector issuing the replacement, and \$16 is deposited into the General Revenue Fund.<sup>10</sup>

An identification card issued to a person five to 14 years of age expires, unless canceled earlier, on the fourth birthday of the applicant following the date of original issue. An identification card issued to a person 15 years of age or older expires, unless canceled earlier, on the eighth birthday of the applicant following the date of original issue.<sup>11</sup>

### **Effect of the Bill**

The bill amends s. 322.051, F.S., effective October 1, 2016, allowing a person with a developmental disability, or a parent or guardian of a child or ward with a developmental disability to request to be issued an identification card with a “D” designation for the person diagnosed with a developmental disability.

DHSMV will issue the identification card upon proof of diagnosis of a developmental disability by a licensed physician and payment of an additional \$1 fee. The \$1 fee is deposited into the Operations and Maintenance Trust Fund administered by the Agency for Persons with Disabilities. A replacement identification card that includes the designation may be issued without payment of the \$25 replacement fee.

The bill provides that the changes made to the identification card by this bill will apply upon implementation of new designs for the driver license and identification card by DHSMV.

The bill requires a law enforcement officer, a correctional officer, or another public safety official to make a good faith effort to have a specified professional present at all interviews of an individual diagnosed with autism or an ASD, who is a victim, suspect, or a defendant. This requirement only applies if the individual or the individual’s parent or guardian requests the presence of a specified professional.

Professionals specified in the bill include a psychiatrist, a psychologist, a mental health counselor, a special education instructor, a clinical social worker, or a related professional. Any such professional must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism or an ASD or related developmental disability or must be certified in special education with a concentration focused on persons with autism or an ASD.

All expenses related to the presence of a professional at the interview must be paid by the requesting parent, guardian, or individual. If the individual is a victim of a crime, the defendant shall reimburse the victim for all expenses related to the attendance of the professional at the interview upon conviction of the offense of which the individual is a victim.

The bill specifies that failing to have a professional present at the time of an interview does not create a basis for suppression of the statement, suppression of the contents of the interview, or a civil cause of action.

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<sup>7</sup> s. 322.051, F.S.

<sup>8</sup> s. 322.21(1)(f), F.S.

<sup>9</sup> s. 322.21(1)(f)1., F.S.

<sup>10</sup> s. 322.21(1)(f)2., F.S.

<sup>11</sup> s. 322.051(2)(a), F.S.

The bill requires each law enforcement agency to develop policies to implement the requirements of the bill, and provide training on the new policies to law enforcement officers and correctional officers.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

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

#### **1. Revenues:**

Payment of the additional \$1 fee for identification cards with a “D” designation may have a positive indeterminate impact to the Operations and Maintenance Trust Fund administered by the Agency for Persons with Disabilities.

#### **2. Expenditures:**

The bill requires law enforcement agencies to develop policies and provide training to law enforcement officers and correctional officers. The bill also requires DHSMV to issue identification cards that have a “D” designation upon payment of a \$1 fee for new or replacement identification cards, and states that replacement cards may be issued without payment of the statutory \$25 fee. Collectively, these requirements may have a negative fiscal impact on DHSMV, the Department of Corrections, and state law enforcement agencies.

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

#### **1. Revenues:**

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

#### **2. Expenditures:**

The bill requires law enforcement agencies to develop policies and provide training to law enforcement officers and correctional officers. This requirement may have a negative fiscal impact on local law enforcement agencies.

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

A replacement identification card with a “D” designation may be issued without charging the statutory \$25 fee pursuant to s. 322.21(1)(f), F.S. This may have a positive indeterminate impact on individuals requesting a replacement identification card with a “D” designation.

### **D. FISCAL COMMENTS:**

None.