STORAGE NAME: h1597.jud
DATE: March 27, 2000

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIARY
ANALYSIS

BILL #: HB 1597

RELATING TO: DNA Testing

SPONSOR(S): Committee on Law Enforcement and Crime Prevention and Representative Futch

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 10 NAYS 0
(2) JUDICIARY
(3)
(4)
(5)

I. SUMMARY:

HB 1597 adds the crime of burglary to the list of crimes which require the defendant to submit blood samples for DNA analysis upon conviction. Currently, Florida law requires that persons convicted or previously convicted of murder or attempted murder, sexual battery, aggravated battery, carjacking, home invasion robbery, or lascivious behavior, to submit blood specimens to the Florida Department of Law Enforcement for DNA testing and subsequent entry into the Florida Convicted Offender Database. The bill also clarifies that DNA samples are to be obtained for those convicted of a designated crime who are either still incarcerated or who are no longer incarcerated but are on probation community control, or any other court-ordered supervision. In addition, the bill allows the modification of a judgment of conviction to mandate the submission of a blood specimen under certain circumstances. As an alternative, the Florida Department of Law Enforcement, a state attorney, the Department of Corrections, or any law enforcement agency may seek a court order to secure the required blood specimens.

The bill has an effective date of July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [X]
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No []	N/A [X]
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

B. PRESENT SITUATION:

DNA Collection by the Florida Department of Law Enforcement

Currently, the Florida Department of Law Enforcement (FDLE) has the authority under s. 943.325, F.S., to collect blood samples from individuals convicted of any offense or attempted offense set forth in chapter 794 (sexual battery), chapter 800 (lewdness and indecent exposure), section 782.04 (murder), section 784.045 (aggravated battery), section 812.133 (carjacking), or section 812.135 (home invasion robbery). s. 943.325(1)(a), F.S. FDLE collects, categorizes, and enters the DNA samples into a database of past offenders in an effort to help law enforcement officers solve future cases. This database contains samples collected from offenders convicted of the specified offenses since the DNA database was created by the Florida Legislature in 1989. FDLE is charged with maintaining the database, and disseminating the information contained in the database to appropriate law enforcement agencies. ss. 943.325(5) - 943.325(9), F.S.

Upon conviction of any person committing one of the specified offenses, which results in the commitment of the person to a county jail, correctional facility, or juvenile facility, the entity responsible for the facility shall assure that the blood specimens of the person are promptly secured and transmitted to the FDLE. s. 943.325(3), F.S. If the person is not incarcerated following such a conviction, the statutes provide that person may not be released from the court's custody or released pursuant to a bond or surety until blood specimens have been taken. s. 943.325(3), F.S.

The chief judge of each circuit (in conjunction with the sheriff or other entity that maintains the county jail), must assure implementation of a method to promptly collect the blood specimens and forward them to the FDLE. FDLE, together with the sheriff, the courts, the Department of Corrections, and the Department of Juvenile Justice, has the responsibility to develop a statewide protocol for securing the blood specimens from any person required to submit them. Personnel at the commitment facility are required to implement the protocol as part of the regular processing of offenders. s. 943.325(3), F.S.

If the blood specimens submitted to FDLE are found to be unacceptable for analysis and use, or cannot be used by FDLE in the manner required by the statute, then FDLE may require that another set of specimens be taken. s. 943.325(4), F.S. If FDLE determines that a convicted person who is required to submit blood specimens has not provided the specimens, then FDLE, a state attorney, or any law enforcement agency may apply to the circuit court for an order that authorizes the taking of the person into custody for the purpose of securing the required specimens. s. 943.325(11), F.S. The court shall issue the order upon a showing of

probable cause. s. 943.325(11), F.S. Following issuance of the order, the convicted person must be transported to a location acceptable to the agency that has custody of the person, the blood specimens must be withdrawn in a reasonable manner, and the person must be released if there is no other reason to justify holding the person in custody. s. 943.325(11), F.S. Unless the convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the blood specimens. s. 943.325(12), F.S.

When offenders have been remanded to the custody of the Department of Corrections, collections have not been a problem. Sometimes though, when the offenders are not remanded to the custody of the Department of Corrections, there arises the need to secure the blood sample via court order. A recent court case has restricted the scope of DNA samples which can be obtained for some offenders convicted of a designated offense. In Carra v. State, 24 Fla. L. Weekly D1438 (Fla. 2d DCA June 16, 1999), Carra was on probation for a qualifying offense but was not incarcerated at the time the State filed its motion to compel him to submit blood samples for the forensic DNA database. The court ruled that although Carra might have been subject to statute had the State filed a timely motion, he was not subject to DNA collection at the time the motion was filed because he was no longer incarcerated. Carra, 24 Fla. L. Weekly at D1438.

DNA Technology at FDLE

According to information provided by FDLE, as of November 1, 1999, there were 60,949 samples collected and submitted to FDLE. Of these 56,452 samples had been analyzed using Refractive Fragment Length Polymorphism (RFLP) technology, and had been entered into the database. This work was completed both through FDLE's analysis of the samples, and contracting the performance of these analyses through a private vendor.

DNA analyses have recently undergone a transition from the use of RFLP technology to Short Tandem Repeat (STR) technology. FDLE has begun to reanalyze all the 60,949 samples stored by FDLE, along with the newly collected ones. As of November 1, 1999, 8,374 samples have been completed using the STR technology and entered into the database. It is estimated that this reanalysis will be completed by the year 2001.

Since its inception, the database has had a total of 204 "hits" made. Eight of these were made against the national DNA database. As a result of these hits, 330 investigations have been aided through the utilization of the DNA database technology.

C. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill amends s. 943.325(1)(a), F.S., to add burglary to the list of crimes for which a person must submit blood samples for the Florida DNA database. FDLE estimates this would result in 24,000 new samples per year from newly convicted offenders.

The bill also makes it clear that persons convicted or previously convicted of a designated offense, who are no longer incarcerated, but are on probation, community control, or other court-ordered supervision will be subject to court-ordered DNA testing. This can be accomplished either through the modification of the judgment of conviction,[1] or through a court order mandating the collection of a blood specimen. This bill should have the effect of

[1] Modification of a judgment of conviction would have to be made pursuant to Florida Rule of Criminal Procedure 3.800, which permits parties to move for correction of judgments under specified circumstances.

overturning the Court's decision in the case of Carra by allowing the collection of samples of persons on probation or other supervision.

The bill further provides that if the original judgment of conviction fails to order the defendant to submit to the collection requirement, a state attorney, the Department of Corrections, or any law enforcement agency may seek an order mandating collection. Finally, the bill makes it clear that DNA samples which are provided voluntarily or under circumstances "other than by court order" are authorized under the statute and may be utilized. In other words, a court order is not the sole or exclusive means by which a blood sample may be obtained.

D. SECTION-BY-SECTION ANALYSIS:

See Section II.C. Effect of Proposed Changes

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

N/A

2. Expenditures:

A. Non-recurring Effects:

FDLE estimated the funds required for the first year would be $2,146,332. This amount includes salaries and benefits for two new positions, OPS and contractual benefits, expense items, and OCO purchases. These funds would be needed to complete one portion of the analyses of the one-time submission of samples from incarcerated offenders and the analyses of the estimated increase of 24,000 new samples each year received from newly convicted offenders.

The Department of Corrections estimates that the fiscal impact on the department will be $163,717 to obtain samples from 19,467 burglary admissions and $166,820 to obtain samples from 19,836 incarcerated offenders.

The Department of Juvenile Justice estimates it would cost $220,400 to test the juveniles under its control or supervision.

B. Recurring Effects:

FDLE estimates that recurring costs would be limited to the salaries and benefits of the two positions, totaling $76,332. Recurring costs are limited as a result of switching DNA technology (from RFLP to STR).

If the number of individuals sent to the Department of Corrections remained constant at 19,467, the $163,717 would be a recurring cost.

If the number of juveniles who commit burglary remains constant (in FY 98-99, 5,510 juveniles committed burglary offenses), the Department of Juvenile Justice estimates $220,400 would be a recurring cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

In addition, the Department of Corrections says that 16,490 persons are on probation for burglary. If those persons reported to a county jail to give a blood samples, the county jail personnel would have to take the sample and forward it to FDLE for analysis. This cost is indeterminate but the Department of Corrections says it costs $8.41 to process an inmate's blood sample.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to spend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with any city or county.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

Persons who were convicted of burglary before the enactment of this bill may raise double jeopardy or ex post facto claims and argue that the bill subjects them to multiple punishments or that it changes the punishment after the commission of a crime. Although s. 943.325, F.S., was passed in 1989, there are no published opinions considering these issues regarding this law.

In Collie v. State, 710 So. 2d 1000 (Fla. 2d DCA 1998), the court examined whether a requirement that persons convicted of certain sex crimes register as sexual predators violated double jeopardy and held that it did not. The double jeopardy clause, Art. 1, s. 9, Fla. Const.,

prohibits successive punishments for the same offense. The Collie court examined the sexual predator statute and found that registration did not constitute punishment. Collie, 710 So. 2d at 1008-1011. The court applied the test from United States v. Ursery, 518 U.S. 267 (1996). Id. at 1008-1009.[2] The court found that the legislature did not intend to punish persons by requiring registration as a sexual predator. Id. at 1008-1009. Instead, the court found the purpose of the statute was to protect the public and was not punitive. Id.

Similarly, it can be argued that there is no punitive purpose to this bill. According to information from FDLE, 52% of the offenders who commit homicide or sexual assaults have a prior burglary conviction. "Registration" in a DNA database could be a significant tool in helping law enforcement solve crimes. The burglary offender is not punished again for burglary. It can be argued that the offender is only required, like the sexual predator, to give information. Further, it is necessary that the State have a means to identify persons who are incarcerated or on court-ordered supervision. Like fingerprint, DNA analysis is a unique and effective way to identify persons.

Once a court determines that the intent of a statute is not punitive, it must determine whether the statutory scheme is so punitive, it negates the nonpunitive intent. Collie, 710 So. 2d at 1009. The Collie court found the sexual predator registration statutory scheme was nonpunitive. Id. at 1012. Similarly, a court could find the DNA testing scheme is nonpunitive. The giving of a blood sample does not restrict movement, does not serve to deter crime, and there is no alternative purpose. If sexual predator registration does not violate double jeopardy, it can be argued that requiring a blood sample does not violate double jeopardy.

Collie and Fletcher v. State, 699 So. 2d 346 (Fla. 5th DCA 1997), also rejected claims that requiring persons convicted of various sex offenses prior to the enactment of the Florida Sexual Predators Act to register as sexual predators violated the ex post facto clause. The court held that registration as a sexual predator is neither a sentence or a punishment so it does not present ex post facto concerns. Fletcher, 699 So. 2d at 347. A similar argument can be made here. If a court finds that this bill does not retroactively increase a penalty for a crime, there is no ex post facto problem.

Fosman v. State, 664 So. 2d 1163 (Fla. 4th DCA 1995), rejected claims that requiring someone charged with sexual battery to submit to a HIV test violates the Fourth Amendment prohibition against unreasonable searches and seizures or the Florida Constitution's right to privacy provision. The court said the search met the "special needs" exception to the Fourth Amendment which involved balancing the needs of the search against the invasion which the search entails. Fosman, 664 So. 2d at 1165. Rejecting the privacy claim, the court noted that to justify an intrusion into a person's privacy, the state must show a compelling state interest

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[2] The court described the Ursery test:

In Ursery, the Supreme Court developed a two-prong test to determine whether a regulation is punitive for double jeopardy purposes. Under the first prong, the court must look at the legislative intent to determine whether the regulation was intended to be punitive or remedial. If the legislative intent was for the regulation to be punitive, then the analysis is complete and the regulation violates double jeopardy. However, if the legislative intent was for the regulation to be remedial, the court must evaluate the second prong which is whether the regulation is so punitive in fact that it may not legitimately be viewed as remedial in nature. See Ursery, 518 U.S. at 276, 116 S.Ct. at 2141.

and use the least intrusive means. Id. at 1166. The court found that a person accused of sexual battery has no reasonable expectation of privacy in regard to a blood test for HIV and that society's interest in protecting others from HIV is a compelling state interest. Id. at 1166.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

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