

STORAGE NAME: h1597.lec

DATE: March 14, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND CRIME PREVENTION
ANALYSIS**

BILL #: HB 1597 (PCB LECP 00-04)

RELATING TO: DNA Testing

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

TIED BILL(S): SB 838(i); HB 603(c)

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

(1) LAW ENFORCEMENT AND CRIME PREVENTION YEAS 10 NAYS 0

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I. SUMMARY:

HB 1597 adds the crime of burglary to the list of crimes, which upon conviction require the defendant to submit blood samples for DNA analysis. 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 still within the legal confines of the state, and 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. 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:

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|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Currently, the Florida Department of Law Enforcement (FDLE) has the authority under s. 943.325, Florida Statutes, 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), s. 782.04 (murder), s.784.045 (aggravated battery), s. 812.133 (carjacking), or s. 812.135 (home invasion robbery). 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.

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. 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.

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.

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. 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. The court shall issue the order upon a showing of probable cause.

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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. Unless the convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the blood specimens.

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.

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, as previously indicated. Recent court cases, however, have restricted the scope of DNA samples which can be obtained, for some offenders convicted of a designated offense. In the case of Carra v. State, 736 So.2d 721 (Fla. 2d DCA 1999), the defendant 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 the defendant might earlier 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*.

C. EFFECT OF PROPOSED CHANGES:

HB 1597 adds the criminal offense of "burglary" to the list of offenses for which a person must submit blood samples for the Florida DNA database. This would greatly enhance the number of offenders that will be required to submit blood samples. The DNA database housed at FDLE has proven to be an effective law enforcement resource. Implementation of the new DNA technology and internal efforts of FDLE have allowed the department to resolve the backlog of processing of samples that occurred when the database was first established. Accordingly, the next logical step in development of a broad database, would be to expand the pool of offenders to include burglars. Criminal history records indicate that a large number of burglars go on to commit additional, and often more serious offenses, including assaults and similar offenses in which DNA samples are included in the evidence collected for prosecution of the offense. Including burglars in the group of convicted offenders who must submit DNA samples, adds to the population of felony offenders who may be tied to violent crimes, and will promote the resolution of unsolved crimes by providing DNA links to the perpetrators.

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, or through a court order mandating the collection of a blood specimen. This bill should have the effect of overturning the Court's decision in the case of Carra v State, 736 So.2d 721 (Fla. 2d DCA 1999), which required the defendant's incarceration as a prerequisite for blood specimens to be secured. This court-imposed limitation on obtaining DNA blood samples from persons convicted of the designated offenses will be removed by the bill.

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:

This section need be completed only in the discretion of the Committee.

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, exspense 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.

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). With the implementation of the new technology and after the one-time examination of previously collected samples, the current level of funding will allow for the examination of the newly acquired samples.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

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:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND CRIME PREVENTION:

Prepared by:

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