

**STORAGE NAME:** h0603.cor

**DATE:** March 20, 2000

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CORRECTIONS  
ANALYSIS**

**BILL #:** HB 603

**RELATING TO:** Convicted Burglar/DNA Analysis

**SPONSOR(S):** Representative Hafner

**TIED BILL(S):** SB 838 (s); HB 1597 (c)

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

- (1) CORRECTIONS
  - (2) CRIMINAL JUSTICE APPROPRIATIONS
  - (3)
  - (4)
  - (5)
- 

I. SUMMARY:

House Bill 603 amends s. 943.325, F.S. The bill requires persons convicted of burglary or attempted burglary (as defined in s. 810.02, F.S.) to submit blood specimens for DNA analysis. This bill applies to inmates previously convicted of burglary or attempted burglary charges but still incarcerated, as well as all new inmate admissions for burglary or attempted burglary convictions.

House Bill 603 may require an increase in expenditures at the state and local government levels.

The bill provides for an effective date.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |  |   |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input 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:

This bill does not support less government because it involves increasing the number of inmates required to submit blood specimens, which may require increased staff and expenditures on the part of the Florida Department of Law Enforcement, the Department of Juvenile Justice, the Department of Corrections, and possibly county and municipal correctional facilities as well.

B. PRESENT SITUATION:

DNA Analysis:

As defined in s. 760.40, F. S., DNA analysis means the "medical and biological examination and analysis of a person to identify the presence and composition of genes in the person's body." To date, the Florida Department of Law Enforcement (FDLE) has currently performed DNA analysis on more than 63,000 blood specimens from Florida criminals.<sup>1</sup>

DNA analysis has been proven to be a useful tool in identifying criminals and deterring them from committing future crimes. Fifty-two percent of offenders who FDLE has linked to sexual assault or homicide using the DNA database were determined to have burglary convictions in their prior criminal history.<sup>2</sup> If Florida begins to collect DNA from persons convicted of burglary, then the state may be able to use the DNA to resolve older, unsolved crimes; additionally the expansion of the DNA database will provide evidence to help convict future offenders.

Current Law:

Section 943.325, F.S., provides that any person convicted of a sexual battery offense, an offense involving lewdness, murder, aggravated battery, carjacking, or home-invasion robbery, and who is within the confines of the legal state boundaries, shall be required to submit two specimens of blood to the FDLE designated testing facility for analysis. The section defines "any person" to include "both juveniles and adults committed to or under the

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<sup>1</sup>Information provided by David Coffman, DNA Database Supervisor at the Florida Department of Law Enforcement.

<sup>2</sup>Statistic provided by David Coffman, DNA Database Supervisor at the Florida Department of Law Enforcement.

supervision of" the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), or committed to a county jail. Unless the convicted person has been declared indigent by the court, the statute requires the offender to pay for the actual costs of collecting the blood specimens.

It is the responsibility of the facility incarcerating the offender to obtain the blood specimens and send them to FDLE. However, if an offender does not receive a sentence of incarceration following his or her conviction, the statute states that the offender shall not be released from the custody of the court until the blood specimen is drawn. In such a case, the procedure would be handled by the county jail. It is the responsibility of FDLE to provide the agencies (including the counties) who are collecting specimens with the necessary specimen vials, mailing tubes, labels and instructions for the collection of the blood specimens. FDLE also sends the collecting agencies and counties a submission form to be completed for each specimen collected. The blood specimens collected from the offenders are then forwarded to the designated testing facility for DNA analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

Procedures and Numbers:

According to staff at the Department of Corrections, it takes approximately 20 to 30 minutes of time per inmate to retrieve the inmate, prepare them for drawing the sample, actually draw the blood, complete the necessary paperwork, and send the samples and documentation to FDLE.<sup>3</sup> The department has estimated that it costs approximately \$8.41 per inmate to obtain the blood specimens.

In FY 1998-99, there were 4,332 inmate admissions at the Department of Corrections for burglary as a primary offense, and on June 30, 1999, there were 12,288 offenders incarcerated by DOC for convictions of burglary as a primary offense.<sup>4</sup> As of June 30, 1999, there were 14,786 burglary offenders under community supervision by the Department of Corrections.<sup>5</sup>

According to data provided by DJJ, 5,510 youth committed burglary offenses during FY 1998-99 and received the following dispositions: 351 youth were ordered into a judicial Juvenile Alternative Services Program, 3,705 were placed on probationary services (community control), and 1,454 were committed to Department of Juvenile Justice facilities.<sup>6</sup>

The FDLE indicates that the collection kits sent to the agencies and counties cost approximately \$2 each. DNA analysis of the blood costs approximately \$75 per sample,

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<sup>3</sup>Information provided by John Burke, the Deputy Director of Health Services (Administration) for the Department of Corrections.

<sup>4</sup>The Guidebook to Corrections in Florida, 1998-99 Annual Report, published by the Florida Department of Corrections, 1999.

<sup>5</sup>The Guidebook to Corrections in Florida, 1998-99 Annual Report, published by the Florida Department of Corrections, 1999.

<sup>6</sup>Information obtained from Department of Juvenile Justice's Bill Analysis for HB 603.

which includes testing, archiving, maintenance and other annual operating expenses like employee salaries.<sup>7</sup>

**C. EFFECT OF PROPOSED CHANGES:**

Currently, persons convicted of burglary or attempted burglary are not required to submit blood specimens for DNA analysis. House Bill 603 will add those offenders who are convicted of burglary or attempted burglary crimes (defined in s. 810.02, F. S.) to the current list of offenders already required to submit blood specimens.

Statistics provided by the Department of Corrections indicate that there were 19,467 offenders admitted during FY 98-99 with burglary convictions as a primary or non-primary offense who would be subject to this new law, as well as 19,836 burglary offenders currently under custody of the department who would be subject to the law.<sup>8</sup> Information provided by the Department of Juvenile Justice indicate there were 5,510 youth who committed burglary offenses during FY 98-99 who would be subject to the new law.<sup>9</sup>

The FDLE estimates that they expect to receive approximately 24,000 new blood samples per year if the legislation passes.

The bill will require an increase in expenditures on behalf of all state agencies involved. The bill may have an indeterminate fiscal impact on counties and municipalities. Please see the Fiscal Analysis and Economic Impact section for more detail.

**D. SECTION-BY-SECTION ANALYSIS:**

None.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

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

**1. Revenues:**

No revenues will be generated by the passage of this legislation.

**2. Expenditures:**

This bill will require an increase in expenditures on the part of DOC, DJJ, and FDLE to obtain the necessary blood specimens.

**Non-recurring Expenditures for DOC:**

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<sup>7</sup>Information provided by Chris Carney, staff with DNA Database at the Florida Department of Law Enforcement.

<sup>8</sup>Statistic included in the Department of Corrections' Bill Analysis for HB 603.

<sup>9</sup>Information obtained from Bill Analysis generated by staff at the Florida Department of Juvenile Justice.

Based on conversation with staff at DOC, the department has estimated that it costs approximately \$8.41 per inmate to obtain the blood sample. Therefore, if DOC were to pay for the collection of blood samples from all currently incarcerated or supervised inmates who have burglary convictions as either a primary or non-primary offense (19,836 offenders), it would cost the department \$166,820.<sup>10</sup> This figure takes into consideration offenders who would have already had their blood drawn for another offense. This amount would be a one-time cost, until the department had collected blood samples from all incarcerated or supervised burglary offenders. After that process has been completed, the department would only have to obtain blood specimens from incoming offenders. However, it needs to be noted that the Florida Statutes require offenders to pay for costs of collecting the blood samples, unless the offender is declared indigent by the court. Approximately 30 percent of DOC's incarcerated population has been determined to be indigent and therefore are not expected to pay for the collection costs.<sup>11</sup> The statistics are not available on the actual percentage of offenders who do pay for collection costs.

Recurring Expenditures for DOC:

According to statistics contained in the department's annual reports, the average number of inmates admitted for burglary charges as a primary offense each year between FY 95-96 and FY 98-99 is 4,322. This figure does not include offenders who received burglary convictions as a non-primary offense. Based on this average, the department would spend approximately \$36,348.02 per year in recurring costs to obtain blood samples from convicted burglars. This monetary amount is based on the assumption that the offenders themselves did not pay for any collection costs and assuming the offenders did not already have their blood drawn because of another crime committed.

Non-recurring Expenditures for DJJ:

Based on the bill analysis submitted by DJJ for HB 603, DJJ is not anticipating any non-recurring costs due to passage of the bill.

Recurring Expenditures for DJJ:

The DJJ estimates that it costs the department approximately \$40 per youthful offender to obtain a blood sample. Based on the 5,510 youths committed for burglary offenses in FY 1998-99, DJJ has provided an estimate of \$220,400 in recurring fiscal impact.

Non-recurring Expenditures for FDLE:

The funds needed by FDLE for the first year have been calculated to be \$2,146,332. This amount includes salaries and benefits for two new positions, OPS and contractual agreements, expense items and ongoing capital outlay purchases. These funds are needed to complete the analyses of the one-time submission of samples from currently incarcerated burglary offenders and also the analyses of each of the new samples received during the first year from all newly convicted offenders.

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<sup>10</sup>Statistic included in the Department of Corrections' Bill Analysis for HB 603.

<sup>11</sup>Information provided by Jim Bidy, Deputy Director for the Office of Administration at the Department of Corrections.

Recurring Expenditures for FDLE:

The recurring costs for FDLE are limited to the salaries and benefits of the two positions of \$76,332. FDLE is currently switching from one type of DNA analysis technology to another.<sup>12</sup> As a result of this switch, no additional funding above the current base budget for the database is anticipated. With the implementation of the new technology and after the one time examination of the 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:

No revenues will be generated by the passage of this legislation.

2. Expenditures:

It is difficult to determine the fiscal impact that House Bill 603 will have on local governments. County jails are already required to submit blood specimens from other offenders, and in most cases already have someone on staff or contract who is capable of performing the procedure. The Florida Department of Law Enforcement pays for the specimen vials, mailing tubes, labels and instructions for the collection of the blood specimens.

Because the bill only requires specimens from offenders who have been **convicted** of the crime of burglary or attempted burglary, this means that counties will only have to collect blood specimens from those offenders who have been convicted of the crime and subsequently sentenced to a term of incarceration in a county jail. The crime of burglary is classified as a felony, in which case the offender, if convicted, would generally be sentenced to a period of incarceration at the state correctional level, not the county level. However, not all felony burglary offenders are sentenced to a term in state prison. Statistics collected between October 1, 1998 and September 31, 1999 indicate that 15.9 percent of felony burglary offenders (primary offense) were sentenced to a term in county jail, 36.4 percent were sentenced to probation, and 33.1 percent were sentenced to state prison.<sup>13</sup> If an offender is sentenced to probation rather than incarceration, it is the county jail's responsibility to obtain the blood specimen.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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<sup>12</sup>FDLE is in the process of switching to a more advanced type of DNA technology (from RFLP to STR). The switch in technology is not a result of this legislation, and it will not be affected by the legislation.

<sup>13</sup>Statistics obtained from the Office of Economic & Demographic Research.

D. FISCAL COMMENTS:

Please see explanation under State Government and Local Government Fiscal Impact sections.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

As s. 943.325, F.S. is currently phrased, there is a concern whether the statute may violate the ex post facto law provision of Article I, Section 10 of the Florida Constitution. Section 943.325, F.S., applies to any person "convicted, or who was previously convicted and is still incarcerated" of specific crimes. The concern was raised by committee staff as to whether it is constitutional to apply this statute (either with or without burglary) in a retroactive manner to include all offenders **previously convicted** and still incarcerated for certain crimes. However, this statute requiring DNA samples from other groups of offenders has been in effect since 1989, and staff research has not found any Florida case law wherein an ex post facto challenge was made.<sup>14</sup>

B. RULE-MAKING AUTHORITY:

None.

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<sup>14</sup>However, 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.

**STORAGE NAME:** h0603.cor

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**PAGE 8**

C. OTHER COMMENTS:

In Section 2, House Bill 603 states "This act shall take effect October 1, 1999." This sentence needs to be amended to read "This act shall take effect October 1, 2000."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CORRECTIONS:

Prepared by:

Staff Director:

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Melinda A. Smith

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Jo Ann Levin