

By Senator Bronson

18-604B-01

1 A bill to be entitled
2 An act relating to DNA analysis; amending s.
3 943.325, F.S.; authorizing use of biological
4 specimens other than blood for DNA analysis;
5 authorizing use of trained, nonmedical
6 personnel in collecting specimens; providing
7 for collection of specimens from persons who
8 are required to provide specimens but have
9 never been incarcerated; providing immunity
10 from liability for persons assisting in
11 collecting specimens; authorizing collection of
12 specimens at remote sites; amending s. 760.40,
13 F.S.; exempting tests performed under s.
14 943.325, F.S., from requirements for informed
15 consent to genetic testing; providing an
16 effective date.

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18 Be It Enacted by the Legislature of the State of Florida:

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20 Section 1. Section 943.325, Florida Statutes, is
21 amended to read:
22 943.325 Blood specimen testing for DNA analysis.--
23 (1)(a) Any person who is convicted or was previously
24 convicted in this state for any offense or attempted offense
25 defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s.
26 810.02, s. 812.133, or s. 812.135 or a similar offense in
27 another jurisdiction and who is either:
28 1. Still incarcerated, or
29 2. No longer incarcerated or, not having ever been
30 incarcerated, yet ~~but~~ is within the confines of the legal
31 state boundaries and is on probation, community control,

1 parole, conditional release, control release, or any other
2 court-ordered supervision,

3
4 shall be required to submit two specimens of blood or other
5 biological specimens approved by the Department of Law
6 Enforcement to a Department of Law Enforcement designated
7 testing facility as directed by the department.

8 (b) For the purpose of this section, the term "any
9 person" shall include both juveniles and adults committed to
10 or under the supervision of the Department of Corrections or
11 the Department of Juvenile Justice or committed to a county
12 jail.

13 (2) The withdrawal of blood for purposes of this
14 section shall be performed in a medically approved manner
15 using a collection kit provided by, or accepted by, the
16 Department of Law Enforcement and only by or under the
17 supervision of a physician, registered nurse, licensed
18 practical nurse, ~~or~~ duly licensed medical personnel or other
19 trained and competent personnel. The collection of other
20 approved biological specimens shall be performed by any person
21 using a collection kit provided or accepted by the Department
22 of Law Enforcement in a manner approved by the department as
23 directed in the kit or as otherwise found to be acceptable by
24 the department.

25 (3) Upon a conviction of any person for any offense
26 under paragraph (1)(a) which results in the commitment of the
27 offender to a county jail, correctional facility, or juvenile
28 facility, the entity responsible for the facility shall assure
29 that the blood specimens or other biological specimens
30 required by this section and approved by the Department of Law
31 Enforcement are promptly secured and transmitted to the

1 Department of Law Enforcement. If the person is not
2 incarcerated following such conviction, the person may not be
3 released from the custody of the court or released pursuant to
4 a bond or surety until the blood or other approved biological
5 specimens required by this section have been taken. The chief
6 judge of each circuit shall, in conjunction with the sheriff
7 or other entity that maintains the county jail, assure
8 implementation of a method to promptly collect required blood
9 or other approved biological specimens and forward the
10 specimens to the Department of Law Enforcement. The Department
11 of Law Enforcement, in conjunction with the sheriff, the
12 courts, the Department of Corrections, and the Department of
13 Juvenile Justice, shall develop a statewide protocol for
14 securing the blood or other approved biological specimens of
15 any person required to provide specimens under this section.
16 Personnel at the jail, correctional facility, or juvenile
17 facility shall implement the protocol as part of the regular
18 processing of offenders.

19 (4) If any blood or other approved biological
20 specimens submitted to the Department of Law Enforcement under
21 this section are found to be unacceptable for analysis and use
22 or cannot be used by the department in the manner required by
23 this section, the Department of Law Enforcement may require
24 that another set of blood or other approved biological
25 specimens be taken as set forth in subsection (11).

26 (5) The Department of Law Enforcement shall provide
27 the specimen vials, mailing tubes, labels, or other
28 appropriate containers and instructions for the collection of
29 blood or other approved biological specimens. The specimens
30 shall thereafter be forwarded to the designated testing
31 facility for analysis to determine genetic markers and

1 characteristics for the purpose of individual identification
2 of the person submitting the sample.

3 (6) In addition to the specimens submitted by reason
4 of the mandated collection of specimens required by this
5 section, the Department of Law Enforcement may, at its option,
6 receive and use other blood or other approved biological
7 specimens. Any ~~The~~ analysis, when completed, shall be entered
8 into the automated database maintained by the Department of
9 Law Enforcement for such purpose as provided in this section,
10 and shall not be included in the state central criminal
11 justice information repository.

12 (7) The results of a DNA analysis and the comparison
13 of analytic results shall be released only to criminal justice
14 agencies as defined in s. 943.045(10), at the request of the
15 agency. Otherwise, such information is confidential and exempt
16 from the provisions of s. 119.07(1) and s. 24(a), Art. I of
17 the State Constitution.

18 (8) The Department of Law Enforcement and the
19 statewide criminal laboratory analysis system shall establish,
20 implement, and maintain a statewide automated personal
21 identification system capable of, but not limited to,
22 classifying, matching, and storing analyses of DNA
23 (deoxyribonucleic acid) and other biological molecules. The
24 system shall be available to all criminal justice agencies.

25 (9) The Department of Law Enforcement shall:

26 (a) Receive, process, and store blood and other
27 approved biological samples and the data derived therefrom
28 furnished pursuant to subsection (1) or pursuant to a
29 requirement of supervision imposed by the court or the Parole
30 Commission with respect to a person convicted of any offense
31 specified in subsection (1) or as specified in subsection (6).

1 (b) Collect, process, maintain, and disseminate
2 information and records pursuant to this section.

3 (c) Strive to maintain or disseminate only accurate
4 and complete records.

5 (d) Adopt rules prescribing the proper procedure for
6 state and local law enforcement and correctional agencies to
7 collect and submit blood and other approved biological samples
8 pursuant to this section.

9 (10)(a) The court shall include in the judgment of
10 conviction for an offense specified in this section, or a
11 finding that a person described in subsection (1) violated a
12 condition of probation, community control, or any other
13 court-ordered supervision, an order stating that blood or
14 other approved biological specimens are required to be drawn
15 by the appropriate agency in a manner consistent with this
16 section and, unless the convicted person lacks the ability to
17 pay, the person shall reimburse the appropriate agency for the
18 cost of drawing and transmitting the blood or other approved
19 biological specimens to the Florida Department of Law
20 Enforcement. The reimbursement payment may be deducted from
21 any existing balance in the inmate's bank account. If the
22 account balance is insufficient to cover the cost of drawing
23 and transmitting the blood or other approved biological
24 specimens to the Florida Department of Law Enforcement, 50
25 percent of each deposit to the account must be withheld until
26 the total amount owed has been paid. If the judgment places
27 the convicted person on probation, community control, or any
28 other court-ordered supervision, the court shall order the
29 convicted person to submit to the drawing of the blood or
30 other approved biological specimens as a condition of the
31 probation, community control, or other court-ordered

1 supervision. For the purposes of a person who is on
2 probation, community control, or any other court-ordered
3 supervision, the collection requirement must be based upon a
4 court order, or as otherwise provided by the person in the
5 absence of a court order. If the judgment sentences the
6 convicted person to time served, the court shall order the
7 convicted person to submit to the drawing of the blood or
8 other approved biological specimens as a condition of such
9 sentence.

10 (b) The appropriate agency shall cause the specimens
11 to be drawn or collected as soon as practical after conviction
12 but, in the case of any person ordered to serve a term of
13 incarceration as part of the sentence, the specimen shall be
14 drawn or collected as soon as practical after the receipt of
15 the convicted person by the custodial facility. For the
16 purpose of this section, the appropriate agency shall be the
17 Department of Corrections whenever the convicted person is
18 committed to the legal and physical custody of the department.
19 Conviction information contained in the offender information
20 system of the Department of Corrections shall be sufficient to
21 determine applicability under this section. The appropriate
22 agency shall be the sheriff or officer in charge of the county
23 correctional facility whenever the convicted person is placed
24 on probation, community control, or any other court-ordered
25 supervision or form of supervised release or is committed to
26 the legal and physical custody of a county correctional
27 facility.

28 (c) Any person previously convicted of an offense
29 specified in this section, or a crime which, if committed in
30 this state, would be an offense specified in this section, and
31 who is also subject to the registration requirement imposed by

1 s. 775.13, shall be subject to the collection requirement of
2 this section when the appropriate agency described in this
3 section verifies the identification information of the person.
4 The collection requirement of this section does not apply to a
5 person as described in s. 775.13(5).

6 (d) For the purposes of this section, conviction shall
7 include a finding of guilty, or entry of a plea of nolo
8 contendere or guilty, regardless of adjudication or, in the
9 case of a juvenile, the finding of delinquency.

10 (e) If necessary, the state or local law enforcement
11 or correctional agency having authority over the person
12 subject to the sampling under this section shall assist in the
13 procedure. The law enforcement or correctional officer so
14 assisting may use reasonable force if necessary to require
15 such person to submit to the withdrawal of blood specimens or
16 the collection of other approved biological specimens. Any
17 such ~~The~~ withdrawal or collection shall be performed in a
18 reasonable manner. A hospital, clinical laboratory, medical
19 clinic, or similar medical institution; a physician, certified
20 paramedic, registered nurse, licensed practical nurse, or
21 other personnel authorized by a hospital to draw blood; a
22 licensed clinical laboratory director, supervisor,
23 technologist, or technician; or any other person who assists a
24 law enforcement officer is not civilly or criminally liable as
25 a result of withdrawing blood specimens according to accepted
26 medical standards when requested to do so by a law enforcement
27 officer or any personnel of a jail, correctional facility, or
28 juvenile detention facility, regardless of whether the
29 convicted person resisted the drawing of blood specimens. A
30 person other than the subject required to provide the
31 biological specimens who collects or assists in the collection

1 of approved specimens other than blood is not civilly or
2 criminally liable if a collection kit provided or accepted by
3 the Department of Law Enforcement is used and the collection
4 is done in a manner approved by the department, as directed in
5 the kit, or is performed in an otherwise reasonable manner.

6 (f) If a judgment fails to order the convicted person
7 to submit to the drawing of the blood or collecting of other
8 approved biological specimens as mandated by this section, the
9 state attorney may seek an amended order from the sentencing
10 court mandating the submission of blood or other approved
11 biological specimens in compliance with this section. As an
12 alternative, the department, a state attorney, the Department
13 of Corrections, or any law enforcement agency may seek a court
14 order to secure the blood or other approved biological
15 specimens as authorized in subsection (11).

16 (11) If the Department of Law Enforcement determines
17 that a convicted person who is required to submit blood or
18 other approved biological specimens under this section has not
19 provided the specimens, the department, a state attorney, or
20 any law enforcement agency may apply to the circuit court for
21 an order that authorizes taking the convicted person into
22 custody for the purpose of securing the required specimens.
23 The court shall issue the order upon a showing of probable
24 cause. Following issuance of the order, the convicted person
25 shall be transported to a location acceptable to the agency
26 that has custody of the person, the blood or other approved
27 biological specimens shall be withdrawn or collected in a
28 reasonable manner, and the person shall be released if there
29 is no other reason to justify retaining the person in custody.
30 The agency that takes the convicted person into custody may,
31 but is not required to, transport the person back to the

1 | location where the person was taken into custody. An agency
2 | acting under authority of an order under this section may, in
3 | lieu of transporting the convicted person to a collection
4 | site, secure the blood or other approved biological specimens
5 | at the location of the convicted person in a reasonable
6 | manner. If the convicted person resists providing the
7 | specimens, reasonable force may be used to secure the
8 | specimens, and any person using such force to secure the
9 | specimens or reasonably assisting in the securing of the
10 | specimens is not civilly or criminally liable for actions
11 | taken.

12 | (12) Unless the convicted person has been declared
13 | indigent by the court, the convicted person shall pay the
14 | actual costs of collecting the blood or other approved
15 | biological specimens required under this section.

16 | (13) If a court, a law enforcement agency, or the
17 | Department of Law Enforcement fails to strictly comply with
18 | this section or to abide by a statewide protocol for
19 | collecting blood or other approved biological specimens, such
20 | failure is not grounds for challenging the validity of the
21 | collection or the use of a specimen, and evidence based upon
22 | or derived from the collected blood or other approved
23 | biological specimens may not be excluded by a court.

24 | Section 2. Paragraph (a) of subsection (2) of section
25 | 760.40, Florida Statutes, is amended to read:

26 | 760.40 Genetic testing; informed consent;
27 | confidentiality.--

28 | (2)(a) Except for purposes of criminal prosecution,
29 | except for purposes of determining paternity as provided in s.
30 | 742.12(1), and except for purposes of acquiring specimens from
31 | persons convicted of certain offenses or as otherwise provided

1 in s. 943.325, DNA analysis may be performed only with the
2 informed consent of the person to be tested, and the results
3 of such DNA analysis, whether held by a public or private
4 entity, are the exclusive property of the person tested, are
5 confidential, and may not be disclosed without the consent of
6 the person tested. Such information held by a public entity is
7 exempt from the provisions of s. 119.07(1) and s. 24(a), Art.
8 I of the State Constitution.

9 Section 3. This act shall take effect October 1, 2001.

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SENATE SUMMARY

With respect to persons required to submit blood samples for DNA testing by the Department of Law Enforcement, allows the department to substitute other forms of biological specimens for blood samples and requires those persons to submit such specimens. Allows the department to collect specimens at remote sites. Allows the use of trained, but nonmedical, personnel to collect specimens.