

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1648

SPONSOR: Criminal Justice Committee

SUBJECT: DNA Database - Sample Collection

DATE: March 7, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

Senate Bill 1648 would require that the local sheriff or his or her designee be responsible for the collection of DNA specimens from those offenders who are required to provide a sample and who are not sentenced to incarceration by the court. Section 943.325, F.S., currently provides that the specimen be given by certain felony offenders and that the specimen be forwarded to FDLE, but there is some apparent unintended ambiguity in the language of the current statute that this bill would clarify.

The bill would also clarify that approved biological specimens, other than blood, can be provided in the case of juvenile offenders and adult sex offenders currently required to give the specimen. These clarifications would make the statute consistent throughout.

This bill substantially amends section 943.325 and 948.03 of the Florida Statutes.

## II. Present Situation:

In 1989, the Legislature created a state DNA data bank to accumulate and analyze DNA from known criminals to compare to DNA evidence collected from crime scenes to help solve crimes. Section 943.325, F.S., currently requires biological specimens from offenders convicted of murder, robbery, carjacking, aggravated battery, sexual battery, lewd or lascivious offenses, and burglary, and establishes a timetable for expanding the DNA data bank to include any person convicted for:

- manslaughter or kidnapping as of July 1, 2003;
- violent felony offense as of July 1, 2004; and
- any person convicted for any felony offense.

The Florida Department of Law Enforcement is responsible for receiving, processing and storing the samples collected, as well as providing the specimen collection kits. FDLE, along with the statewide criminal laboratory analysis system, is further directed to “establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA and other biological molecules.” s. 943.325(8), F.S.

The DNA database directly aided 485 investigations in 2002.

FDLE is processing samples now which come from a saliva swab, as opposed to an actual sample of blood which was used in the past. This swab makes it easier to gather the samples because the procedure is not as invasive and the same skills are not required of the sample collector.

During the second quarter of 2002, FDLE reported a statewide rate of receiving a DNA sample from only 42 percent of the qualifying offenders who were sentenced to a non-incarcerative sentence. Of the 3,944 qualifying offenders from which a sample should have been received, 1,662 were actually received during the second quarter. The same trend is reported for the third and fourth quarters of 2002 – 46 percent and 44 percent, respectively.

From a practical standpoint, the collection of samples is fairly routine in cases where the offender is sentenced to incarceration within the Department of Corrections, as all inmates are processed through medical and receiving facilities. Although s. 943.325(3), F.S., requires that “if the person is not incarcerated following such conviction, the person may not be released from the custody of the court or released pursuant to a bond or surety until the blood specimens or other approved biological specimens required by this section have been taken,” it appears that the sample collection becomes a less routine matter under these circumstances. FDLE reports that in some cases the sample is actually collected in court, in others it is collected at a later date by the probation office, and judging from the compliance rate, in some cases the specimen is not collected at all. It is suggested that incorporating the saliva swab sample collection into the fingerprinting procedure that is done in the courtroom upon conviction, would improve the compliance rate dramatically.

The statute clearly states that: “The appropriate agency shall cause the specimens to be drawn or collected as soon as practical after conviction... The appropriate agency shall be the sheriff or officer in charge of the county correctional facility whenever the convicted person is placed on probation, community control, or any other court-ordered supervision or form of supervised release ...” s. 943.325(10)(b), F.S.

Although the legislative intent seems clear, when read in conjunction with subsection (3), it could be argued that there is some ambiguity as to which agency is primarily responsible for collecting, securing and transmitting the samples from offenders who are not incarcerated or detained. Subsection 943.325(3) states, in part: “The chief judge of each circuit shall, in conjunction with the sheriff or other entity that maintains the county jail, assure implementation of a method to promptly collect required blood specimens or other approved biological specimens and forward the specimens to the Department of Law Enforcement. The Department

of Law Enforcement, in conjunction with the sheriff, the courts, the Department of Corrections, and the Department of Juvenile Justice, shall develop a statewide protocol for securing the blood specimens or other approved biological specimens of any person required to provide specimens under this section. Personnel at the jail, correctional facility, or juvenile facility shall implement the protocol as part of the regular processing of offenders.”

It has been suggested that any confusion resulting from the language set forth above could be alleviated by placing the specimen collection responsibility on one entity. Because it is the prevailing practice that the sheriff or his or her designee processes offenders who are sentenced by the court, at the time of sentencing, logic suggests the responsibility could rest there.

### **III. Effect of Proposed Changes:**

Senate Bill 1648 would conform subsection (1)(d) of s. 943.325, F.S., to allow for the collection of approved biological specimens, other than blood, from qualifying juvenile offenders currently required to give a specimen, as is the case throughout the section. The same provision is made in paragraph 8 of s. 948.03(5)(a), F.S., for qualifying sex offenders. The current statute provides only that blood samples be taken.

The bill would clarify that the local sheriff, or his or her designee, is responsible for collecting the blood or biological specimens from offenders who are not sentenced to an incarcerative sentence by the court, before the offender leaves the custody of the court. It further clarifies that the sheriff shall secure, process and transmit the specimens to FDLE in a timely manner. These changes should eliminate any ambiguity in the statute with regard to who is responsible under the circumstances where an offender does not go to prison, jail or a juvenile facility upon sentencing.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

### **V. Economic Impact and Fiscal Note:**

#### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

It is expected that the practical effect of the bill will be to impose an additional workload upon the local sheriff. However, the Florida Sheriff's Association has not provided staff with any projected fiscal impact upon the local agencies that may result from requiring the specimen collection from the qualifying offenders who are about to be released into the community on community supervision. FDLE provides the specimen collection kits and training in the procedures required for collecting the specimens.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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