

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Judiciary Committee

BILL: SB 2408

INTRODUCER: Senator Crist

SUBJECT: DNA Testing

DATE: April 16, 2007

REVISED: _____

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

I. Summary:

Current law provides for phased-in DNA (deoxyribonucleic acid) testing, contingent upon appropriations, for certain persons who have committed felonies. The bill deletes the language from the statute which referred to the phase-in dates that have passed and language making testing contingent upon appropriations. The effect of the deletions is to require certain persons who have committed any felony to submit blood or other biological specimens for DNA analysis.

The bill adds certain misdemeanor offenses for which a conviction requires the person convicted to submit blood or other biological specimens for DNA analysis and inclusion in the Florida Department of Law Enforcement DNA database. The bill also imposes these requirements in cases where the court finds a crime was committed for the purpose of furthering the interests of a criminal street gang.

This bill substantially amends section 943.325, Florida Statutes.

II. Present Situation:

In 1989, the Legislature enacted s. 943.325, F.S., which required the Florida Department of Law Enforcement (FDLE) to establish and maintain a statewide DNA database.¹ Originally, the statute only required persons convicted on or after January 1, 1990, of offenses relating to sexual battery or lewd and lascivious conduct to submit blood samples to the FDLE for DNA analysis.²

¹ Ch. 89-335, Laws of Florida.

² *Id.*

In 2001, s. 943.325, F.S., was revised to include a list of felony offenses that would require a person convicted of such enumerated felony to submit blood specimens for DNA analysis. The 2001 revision also provided that for certain felonies the requirement would be phased in over several years, contingent upon specific appropriation.³

In its current form, s. 943.325, F.S., requires incarcerated persons and persons who are under some form of community supervision⁴ to submit blood or other biological specimens⁵ if they have been convicted of any of the following enumerated offenses:

- Chapter 794, F.S. (sexual battery), chapter 800, F.S. (lewdness and indecent exposure), s. 782.04, F.S. (murder), s. 784.045, F.S. (aggravated battery), s. 810.02, F.S. (burglary), s. 812.133, F.S. (carjacking), or s. 812.135, F.S. (home-invasion robbery).
- Effective July 1, 2002, and contingent upon specific appropriation, s. 812.13, F.S. (robbery), or s. 812.131, F.S. (robbery by sudden snatching).
- Effective July 1, 2003, and contingent upon specific appropriation, chapter 787, F.S. (kidnapping, false imprisonment, luring or enticing a child, interference with custody), or s. 782.07, F.S. (manslaughter).
- Effective July 1, 2004, and contingent upon specific appropriation, any forcible felony, as described in s. 776.08, F.S., aggravated child abuse, as described in s. 827.03(2), F.S., aggravated abuse of an elderly person or a disabled adult, as described in s. 825.102(2), F.S., or any felony violation of chapter 790, F.S., involving the use or possession of a firearm.
- Effective July 1, 2005, and *contingent upon specific appropriation*, any felony offense.

As indicated above, qualifying offenses have been added at a measured pace, with each year's expansion made "contingent upon specific appropriation." While there was statutory authority for the collection of all felony convictions, the specific appropriation needed to make this provision effective has not yet been fully enacted.

In a July 2006 memorandum to sheriffs and state attorneys, the FDLE explained its expectation that there would be a two-year phase-in of DNA specimen collection for those felony offenders not already being collected due to the lack of specific appropriation during FY 2005-06. The FDLE indicated that during FY 2006-07, the Legislature appropriated funding for DNA specimen collection for all remaining felonies offenses under chapter 812, F.S. (theft, robbery, and related crimes) not already covered.

³ Ch. 2001-97, Laws of Florida.

⁴ Community supervision generally includes probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.

⁵ According to the FDLE over 90 percent of the agencies (e.g., sheriffs, Department of Corrections, Department of Juvenile Justice) submitting convicted offender specimens use an oral swab collection kit to collect DNA specimens. See FLORIDA DEPARTMENT OF LAW ENFORCEMENT, DNA BROCHURE: FREQUENTLY ASKED QUESTIONS, http://www.fdle.state.fl.us/CJResCtr/dna_brochure/faq.asp.

III. Effect of Proposed Changes:

This bill deletes the timetable language outlined in Section II, Present Situation, and removes language indicating that the requirement of expanding the DNA database is subject to appropriation. The effect of the deletions is that incarcerated persons and persons under some form of community supervision are required to submit blood or other biological specimens for inclusion in the statewide DNA database if they have been convicted of any felony offense, irrespective of whether there is a specific appropriation.

The bill adds certain misdemeanor offenses for which a conviction requires the person convicted to submit blood or other biological specimens for DNA analysis and inclusion in the Florida Department of Law Enforcement (FDLE) DNA database. Offenders who are convicted of the following misdemeanor offenses, or have previously been convicted and are still under some form of incarceration, juvenile commitment, or court-ordered supervision, will be required to submit biological specimens.

These enumerated misdemeanor offenses are:

- Section 784.048, F.S. – Stalking
 - Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree.
- Section 810.14, F.S. – Voyeurism
 - A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy. The first or second such violation is a misdemeanor of the first degree.
- Section 847.011, F.S. – Prohibition of certain acts in connection with obscene, lewd, etc., materials – penalty
 - Any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes,

prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, is guilty of a misdemeanor of the first degree, if it is the first conviction for such violation.

- The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of the previous paragraph is prima facie evidence of the violation of said paragraph.
- A person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree. A person who, after having been convicted of such violation, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.
- Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree, if it is the first conviction for such violation.
- Section 847.013, F.S. – Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations
 - It is unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell or rent a videotape of a motion picture to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

- It is unlawful for any person knowingly to rent or sell, or loan to a minor for monetary consideration, a videocassette or a videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.
- It is unlawful for any minor, or any person, to falsely represent to the owner, or to the owner's agent, that such minor is 17 years of age or older, or that he or she is the parent of the minor, with the intent to procure such minor's admission to such premises, or such minor's purchase or rental of a videotape, for a monetary consideration.
- A violation of any of these provisions constitutes a misdemeanor of the first degree.
- Section 847.0135, F.S. – Computer pornography
 - It is a first degree misdemeanor for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to violate the laws against computer pornography.
- Section 877.26, F.S. – Direct observation, videotaping, or visual surveillance of customers in merchant's dressing room
 - It is a first degree misdemeanor for any merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy.

The bill would also require DNA sample collection from persons who have been found by the court to have committed offenses for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. The definition of criminal street gang is found in s. 874.03(1), F.S., which states:

“Criminal street gang” means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

The bill provides an effective date of July 1, 2007

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:

The Florida Department of Law Enforcement (FDLE) has requested funding to support the addition of all remaining felonies for which conviction does not currently require collection of blood or other biological specimens for DNA analysis. The FDLE has requested 2 FTE (two crime laboratory technicians) and \$3,007,929 from General Revenue for FY 2007-08 to expand the DNA database to include all felons. Of this amount, \$828,277 represents annual recurring costs⁶ of additional staff and consumable supplies, and \$2,179,652 represents non-recurring infrastructure and other start-up costs.

Aside from the removal of the requirement of specific appropriation regarding the testing of all felons, this bill expands the number of qualifying offenders by adding specified misdemeanors. The FDLE stated that there were less than 300 convictions per year under the misdemeanor sections added by the bill. The FDLE indicated that there have only been 16 convictions under s. 847.03, F.S., since records have been maintained. Finally, the FDLE indicated that no additional funding would be necessary to absorb the submissions required by the addition of the misdemeanor offenses or for offenses committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang as defined in s. 874.03, F.S.

⁶ This figure does not attempt to estimate the impact of future legislative decisions such as a pay package that would increase future costs.

Similarly, any impact on local governments from collecting and submitting additional samples to the FDLE is expected to be insignificant because of the small number of projected offenders who will be added to the database if this bill becomes law.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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