

By Senator Lynn

7-02414-08

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1 A bill to be entitled

2 An act relating to DNA testing of arrested persons;  
3 amending s. 943.325, F.S.; requiring that persons who are  
4 arrested for certain specified violent and sexual offenses  
5 undergo blood or other biological specimen testing for DNA  
6 analysis; requiring that the arresting agency secure and  
7 transmit the blood or other biological specimen to the  
8 Department of Law Enforcement; providing that a medical  
9 institution and medical personnel authorized to draw blood  
10 are not civilly or criminally liable as a result of  
11 withdrawing blood specimens as required by the act;  
12 authorizing the department, a state attorney, or any law  
13 enforcement agency to apply to the circuit court for an  
14 order to take a person into custody if the person fails to  
15 provide the required specimens; requiring that an arrested  
16 person pay the costs of collecting the blood or other  
17 biological specimen; providing an effective date.

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

20  
21 Section 1. Subsections (1), (3), (10), (11), and (12) of  
22 section 943.325, Florida Statutes, are amended to read:

23 943.325 Blood or other biological specimen testing for DNA  
24 analysis.--

25 (1) (a) Any person who is:

26 1. Convicted or was previously convicted in this state for  
27 any offense or attempted offense enumerated in paragraph (b);  
28 ~~and any person who is~~

7-02414-08

2008814\_\_

29           2. Transferred to this state under Article VII of the  
30 Interstate Compact on Juveniles, part XIII of chapter 985, who  
31 has committed or attempted to commit an offense similarly defined  
32 by the transferring state, who is either:

33           ~~a.1.~~ Still incarcerated;~~7~~ or

34           ~~b.2.~~ No longer incarcerated, or has never been  
35 incarcerated, yet is within the confines of the legal state  
36 boundaries and is on probation, community control, parole,  
37 conditional release, control release, or any other type of court-  
38 ordered supervision; or

39           3. Arrested in this state for any offense or attempted  
40 offense enumerated in paragraph (b),

41  
42 shall be required to submit two specimens of blood or other  
43 biological specimens approved by the Department of Law  
44 Enforcement to a Department of Law Enforcement designated testing  
45 facility as directed by the department.

46           (b)1. Chapter 794, chapter 800, s. 782.04, s. 784.045, s.  
47 810.02, s. 812.133, or s. 812.135.

48           2. Effective July 1, 2002, and contingent upon specific  
49 appropriation, s. 812.13 or s. 812.131.

50           3. Effective July 1, 2003, and contingent upon specific  
51 appropriation, chapter 787 or s. 782.07.

52           4. Effective July 1, 2004, and contingent upon specific  
53 appropriation, any forcible felony, as described in s. 776.08,  
54 aggravated child abuse, as described in s. 827.03(2), aggravated  
55 abuse of an elderly person or a disabled adult, as described in  
56 s. 825.102(2), or any felony violation of chapter 790 involving  
57 the use or possession of a firearm.

7-02414-08

2008814\_\_

58           5. Effective July 1, 2005, and contingent upon specific  
59 appropriation, any felony offense.

60           (c) As used in this section, the term "any person" includes  
61 both juveniles and adults who are arrested or who are committed  
62 to a county jail or committed to or under the supervision of the  
63 Department of Corrections or the Department of Juvenile Justice,  
64 including persons incarcerated in a private correctional  
65 institution operated under contract pursuant to s. 944.105.

66           (d) Any person who was previously convicted in this state  
67 for any offense or attempted offense enumerated in subparagraph  
68 (b)1., subparagraph (b)2., or subparagraph (b)3. and who is still  
69 incarcerated or in the custody of the Department of Juvenile  
70 Justice must submit, not less than 45 days before his or her  
71 presumptive date of release from such incarceration or  
72 commitment, two specimens of blood or other approved biological  
73 specimens as directed by the Department of Law Enforcement to a  
74 testing facility designated by the department.

75           (3) Upon the arrest of a person for an offense specified in  
76 paragraph (1)(b), the arresting agency shall ensure that the  
77 blood specimens or other biological specimens required by this  
78 section are promptly secured and transmitted to the Department of  
79 Law Enforcement. Upon a conviction of any person for any offense  
80 under paragraph (1)(b) ~~(1)(a)~~ which results in the commitment of  
81 the offender to a county jail, correctional facility, or juvenile  
82 facility, the entity responsible for the facility shall ensure  
83 ~~assure~~ that the blood specimens or other biological specimens  
84 required by this section and approved by the Department of Law  
85 Enforcement are promptly secured and transmitted to the  
86 Department of Law Enforcement. Personnel at the jail,

7-02414-08

2008814\_\_

87 | correctional facility, or juvenile facility shall collect the  
88 | specimens as part of the regular processing of offenders  
89 | committed to the jail or facility. If the person is not  
90 | incarcerated following such conviction, the person may not be  
91 | released from the custody of the court at the time of sentencing  
92 | or released pursuant to a bond or surety until the blood  
93 | specimens or other approved biological specimens required by this  
94 | section have been taken by the sheriff or his or her designee.  
95 | The sheriff shall secure, process, and transmit the specimens to  
96 | the Department of Law Enforcement in a timely manner.

97 |       (10) (a) The court shall include in the judgment of  
98 | conviction for an offense specified in this section, or a finding  
99 | that a person described in subsection (1) violated a condition of  
100 | probation, community control, or any other court-ordered  
101 | supervision, an order stating that blood specimens or other  
102 | approved biological specimens are required to be drawn or  
103 | collected by the appropriate agency in a manner consistent with  
104 | this section and, unless the convicted person lacks the ability  
105 | to pay, the person shall reimburse the appropriate agency for the  
106 | cost of drawing and transmitting the blood specimens or  
107 | collecting and transmitting other approved biological specimens  
108 | to the ~~Florida~~ Department of Law Enforcement. The reimbursement  
109 | payment may be deducted from any existing balance in the inmate's  
110 | bank account. If the account balance is insufficient to cover the  
111 | cost of drawing and transmitting the blood specimens or  
112 | collecting and transmitting other approved biological specimens  
113 | to the ~~Florida~~ Department of Law Enforcement, 50 percent of each  
114 | deposit to the account must be withheld until the total amount  
115 | owed has been paid. If the judgment places the convicted person

7-02414-08

2008814\_\_

116 on probation, community control, or any other court-ordered  
117 supervision, the court shall order the convicted person to submit  
118 to the drawing of the blood specimens or the collecting of other  
119 approved biological specimens as a condition of the probation,  
120 community control, or other court-ordered supervision. For the  
121 purposes of a person who is on probation, community control, or  
122 any other court-ordered supervision, the collection requirement  
123 must be based upon a court order, or as otherwise provided by the  
124 person in the absence of a court order. If the judgment sentences  
125 the convicted person to time served, the court shall order the  
126 convicted person to submit to the drawing of the blood specimens  
127 or the collecting of other approved biological specimens as a  
128 condition of such sentence.

129 (b) The appropriate agency shall cause the specimens to be  
130 drawn or collected as soon as practical after an arrest or  
131 conviction but, in the case of any person ordered to serve a term  
132 of incarceration as part of the sentence, the specimen shall be  
133 drawn or collected as soon as practical after the receipt of the  
134 convicted person by the custodial facility. For the purpose of  
135 this section, the appropriate agency shall be the Department of  
136 Corrections whenever the convicted person is committed to the  
137 legal and physical custody of the department. Conviction  
138 information contained in the offender information system of the  
139 Department of Corrections shall be sufficient to determine  
140 applicability under this section. The appropriate agency shall be  
141 the sheriff or officer in charge of the county correctional  
142 facility whenever the convicted person is placed on probation,  
143 community control, or any other court-ordered supervision or form

7-02414-08

2008814\_\_

144 of supervised release or is committed to the legal and physical  
145 custody of a county correctional facility.

146 (c) Any person previously convicted of an offense specified  
147 in this section, or a crime that ~~which~~, if committed in this  
148 state, would be an offense specified in this section, and who is  
149 also subject to the registration requirement imposed by s.  
150 775.13, shall be subject to the collection requirement of this  
151 section when the appropriate agency described in this section  
152 verifies the identification information of the person. The  
153 collection requirement of this section does not apply to a person  
154 as described in s. 775.13(5).

155 (d) For the purposes of this section, conviction includes  
156 ~~shall include~~ a finding of guilty, or entry of a plea of nolo  
157 contendere or guilty, regardless of adjudication or, in the case  
158 of a juvenile, the finding of delinquency.

159 (e) If necessary, the state or local law enforcement or  
160 correctional agency having authority over the person subject to  
161 the sampling under this section shall assist in the procedure.  
162 The law enforcement or correctional officer so assisting may use  
163 reasonable force if necessary to require such person to submit to  
164 the withdrawal of blood specimens or the collection of other  
165 approved biological specimens. Any such withdrawal or collection  
166 shall be performed in a reasonable manner. A hospital, clinical  
167 laboratory, medical clinic, or similar medical institution; a  
168 physician, certified paramedic, registered nurse, licensed  
169 practical nurse, or other personnel authorized by a hospital to  
170 draw blood; a licensed clinical laboratory director, supervisor,  
171 technologist, or technician; or any other person who assists a  
172 law enforcement officer is not civilly or criminally liable as a

7-02414-08

2008814\_\_

173 result of withdrawing blood specimens according to accepted  
174 medical standards when requested to do so by a law enforcement  
175 officer or any personnel of a jail, correctional facility, or  
176 juvenile detention facility, regardless of whether the arrested  
177 or convicted person resisted the drawing of blood specimens. A  
178 person other than the subject required to provide the biological  
179 specimens who collects or assists in the collection of approved  
180 specimens other than blood is not civilly or criminally liable if  
181 a collection kit provided by, or accepted by, the Department of  
182 Law Enforcement is used ~~utilized~~ and the collection is done in a  
183 manner approved by the department, as directed in the kit, or is  
184 performed in an otherwise reasonable manner.

185 (f) If a judgment fails to order the convicted person to  
186 submit to the drawing of the blood specimens or the collecting of  
187 other approved biological specimens as mandated by this section,  
188 the state attorney may seek an amended order from the sentencing  
189 court mandating the submission of blood specimens or other  
190 approved biological specimens in compliance with this section. As  
191 an alternative, the department, a state attorney, the Department  
192 of Corrections, or any law enforcement agency may seek a court  
193 order to secure the blood specimens or other approved biological  
194 specimens as authorized in subsection (11).

195 (11) If the Department of Law Enforcement determines that  
196 an arrested or a convicted person who is required to submit blood  
197 specimens or other approved biological specimens under this  
198 section has not provided the specimens, the department, a state  
199 attorney, or any law enforcement agency may apply to the circuit  
200 court for an order that authorizes taking the arrested or  
201 convicted person into custody for the purpose of securing the

7-02414-08

2008814\_\_

202 required specimens. The court shall issue the order upon a  
203 showing of probable cause. Following issuance of the order, the  
204 arrested or convicted person shall be transported to a location  
205 acceptable to the agency that has custody of the person, the  
206 blood specimens or other approved biological specimens shall be  
207 withdrawn or collected in a reasonable manner, and the person  
208 shall be released if there is no other reason to justify  
209 retaining the person in custody. An agency acting under authority  
210 of an order under this section may, in lieu of transporting the  
211 arrested or convicted person to a collection site, secure the  
212 blood specimens or other approved biological specimens at the  
213 location of the arrested or convicted person in a reasonable  
214 manner. If the arrested or convicted person resists providing the  
215 specimens, reasonable force may be used ~~utilized~~ to secure the  
216 specimens and any person using ~~utilizing~~ such force to secure the  
217 specimens or reasonably assisting in the securing of the  
218 specimens is not civilly or criminally liable for actions taken.  
219 The agency that takes the arrested or convicted person into  
220 custody may, but is not required to, transport the person back to  
221 the location where the person was taken into custody.

222 (12) Unless the arrested or convicted person has been  
223 declared indigent by the court, the arrested or convicted person  
224 shall pay the actual costs of collecting the blood specimens or  
225 other approved biological specimens required under this section.

226 Section 2. This act shall take effect October 1, 2008.