

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1151 DNA Database
SPONSOR(S): Snyder and others
TIED BILLS: IDEN./SIM. BILLS: SB 2276

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Public Safety & Domestic Security Policy Committee, Kramer, Kramer.

SUMMARY ANALYSIS

Currently, s. 943.325, F.S. requires each person convicted of a felony or specified misdemeanor offense to submit a DNA sample for inclusion in the statewide DNA database maintained by the Florida Department of Law Enforcement (FDLE).

- 1. Beginning January 1, 2011, all felonies defined by chapters 782 (murder), 784 (assault and battery), 794 (sexual battery) and 800 (lewd or lascivious offenses);
2. Beginning January 1, 2013, all felonies defined by chapters 810 (burglary and trespass) and 812 (theft and robbery).
3. Beginning January 1, 2015, all felonies defined by chapters 787 (kidnapping) and 790 (firearm offenses);
4. Beginning January 1, 2017, all felonies defined by chapter 893 (controlled substances);
5. Beginning January 1, 2019, all felony offenses.

The bill also amends s. 943.325, F.S. to make a number of changes suggested by FDLE – many of which are clarifying or technical. Because the section is substantially reworded by the bill, the entirety of the section is shown as underlined language.

The bill creates two criminal offenses which are not in current law. The bill makes it a second degree misdemeanor for any person subject to the requirements of the section to willfully refuse to provide a DNA sample. The bill creates a third degree felony offense for any person who:

- 1. Knowingly or intentionally discloses a DNA record, including the results of a DNA analysis, to a person or agency other than one authorized to have access to such records under the section;
2. Knowingly or intentionally uses or receives DNA records, including the results of DNA analysis, for purposes other than those authorized under this section; or
3. Knowingly or intentionally tampers or attempts to tamper with any DNA sample, the result of any analysis of a DNA sample, or a DNA sample collection container.

If funded, the provisions of the bill requiring the collection of DNA from every offender arrested for a felony would have a fiscal impact on the state – see fiscal comments section for details.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

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 data bank.¹ Originally, the statute only required persons convicted of offenses relating to sexual battery or lewd and lascivious conduct to submit blood samples to the FDLE.² However, in 2001, the statute was amended by expanding the list of felony offenses which would require a person to submit a DNA sample, and by establishing a phased in timetable, subject to funding, to require a DNA sample to be collected from all convicted felons.³ The phase in was completed during the 2007 session, when the legislature funded the collection of DNA samples from all convicted felons and selected misdemeanor offenders as discussed further below.

FDLE processes DNA offender samples submitted and stores it in Florida's DNA database. FDLE also contributes DNA samples to the Federal Bureau of Investigation's (FBI) CODIS (Combined DNA Index System). CODIS contains two indexes: one contains DNA profiles of offenders and the other contains forensic samples, generally evidence collected at crime scenes. Most commonly, forensic samples are searched against the offender index to attempt to establish the identity of a person who might have committed a criminal offense and against other forensic samples to establish potential links between cases being investigated.

Because section 943.325, F.S. is substantially reworded by the bill, the entirety of the section is shown as underlined language. However, some of the language is not new but has been moved to a different part of the section as will be discussed further below. Subsection (1) of s. 943.325, F.S. as amended by the bill will contain legislative findings.⁴

¹Ch. 89-335, Laws of Fla..

²*Id.*

³Ch. 2001-97, Laws of Fla.

⁴The intent language provides:

The Legislature hereby finds that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions and in detecting recidivist acts. It is the policy of this state to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. Therefore, it is in the best interests of the citizens of this state to establish a statewide DNA database containing DNA samples submitted by persons convicted of or arrested for felony offenses and convicted of certain misdemeanor offenses. Additionally, the statewide DNA database shall include DNA records and samples necessary for the identification of missing persons and unidentified human remains, including DNA samples voluntarily contributed by relatives of missing persons.

Currently, any person who is convicted of one of the following offenses is required to submit two biological samples to FDLE⁵:

1. Any felony offense;
2. Any misdemeanor violation of stalking (s. 784.048), voyeurism (s. 810.14), obscenity (s. 847.011), exposing a minor to harmful materials (s. 847.013), computer pornography (847.0135) or direct observation, videotaping, or visual surveillance of customers in merchant's dressing rooms (877.26); or
3. An offense that was found to have been committed for the purpose of benefiting, promoting or furthering the interests of a criminal gang.

As amended by the bill subsection (6) of 943.325, F.S. will provide that any "qualifying offender" who is arrested⁶ in this state, incarcerated in this state or on probation, community control, parole, conditional release, control release or any other type of court ordered supervision in the state will be required to submit a DNA⁷ sample⁸ to a department-designated facility.

The term "qualified offender" is defined to include any person convicted⁹ of any of the felony or misdemeanor offenses included under current law (specified above).¹⁰ The definition will also include any person *arrested* for a felony offense committed in this state under the following conditions relating to funding:

Subject to appropriations for each phase of expansion of DNA sample collection and after determination and official notification to submitting agencies by FDLE that it has sufficient infrastructure, facilities, and personnel to receive such samples, all person arrested for or charged with any of the following felony offenses shall be required to submit a DNA sample at the time they are booked into a jail, correctional facility or juvenile facility:

- a. Beginning January 1, 2011, all felonies defined by chapters 782 (murder), 784 (assault and battery), 794 (sexual battery) and 800 (lewd or lascivious offenses);
- b. Beginning January 1, 2013, all felonies defined by chapters 810 (burglary and trespass) and 812 (theft and robbery).
- c. Beginning January 1, 2015, all felonies defined by chapters 787 (kidnapping) and 790 (firearm offenses);
- d. Beginning January 1, 2017, all felonies defined by chapter 893 (controlled substances)
- e. Beginning January 1, 2019, all felony offenses.

The bill authorizes FDLE to reject submissions of samples received for any felony arrests prior to funding of any phase of expansion or prior to FDLE's notification to submitting agencies. The bill

The Legislature also finds that upon establishment of the Florida DNA database a match between casework evidence DNA samples from a criminal investigation and DNA samples from a state or federal database of certain offenders may be used to find probable cause for the issuance of a warrant to obtain the DNA sample from an offender.

⁵ s. 943.325(1)(a) and (b), F.S.

⁶ The term "arrested" is defined to mean "apprehended or physically taken into custody, resulting in the submission of arrest fingerprints to the department, pursuant to s. 943.051, F.S."

⁷ The bill provides the following definition of the term "DNA":

"DNA" means deoxyribonucleic acid. DNA is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

⁸ The bill defines the term "DNA sample" to mean "a buccal or other approved biological specimen capable of undergoing DNA analysis."

⁹ The bill defines the term "convicted" to mean "a finding of guilt by a court of competent jurisdiction, or entry of a plea of nolo contendere or guilty, or, in the case of a juvenile, the finding of delinquency regardless of adjudication."

¹⁰ The term "qualified offender" also includes "juveniles and adults committed to a county jail or committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105, and persons transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985, or accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941, and any person required to register as a sexual offender or sexual predator as defined in s. 943.0435, s. 775.21, s. 944.607, or s. 985.4815".

requires FDLE, on or before February 1, 2010 and by February 1 of each even-numbered year until 2018 to provide the Legislature with a report listing the funding, infrastructure, facility, and personnel requirements for the DNA database and DNA evidentiary analysis for the expansion phase scheduled for the following year.

Establishment of statewide DNA database: As amended by the bill, subsection (3) of s. 943.325, F.S. will contain language similar to that currently located in subsection (8) which requires FDLE, through the statewide criminal laboratory analysis system 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 and related data.

The bill specifies that the department will be the administrator of the statewide DNA database and that all accredited local government crime laboratories within the state shall have access through CODIS¹¹ to the statewide database in accordance with the rules and agreements established by the department.

Duties of FDLE: As amended by the bill, subsection (4) of s. 943.325, F.S. will contain language similar to language currently located in subsection (9) to require FDLE to:

1. Receive, process, and store DNA and the data derived therefrom furnished pursuant to the section;
2. Collect, process, maintain, and disseminate information and records as provided by the section;
3. Strive to maintain and disseminate only accurate and complete records.

Subsection (4) will also require FDLE to perform the following duties which are not specified in current law:

1. Participate in the national DNA database program administered by the Federal Bureau of Investigation (FBI);
2. Provide for liaison with the FBI and other criminal justice agencies relating to the state's participation in the CODIS program and the national DNA index system;
3. Adopt rules specifying the proper procedure, including requisite identification information, for state and local law enforcement and correctional agencies to collect and submit DNA samples pursuant to the section.

Samples: Current law does not specify the types of DNA samples that can be kept in the DNA database. The bill amends subsection (5) of s. 943.325, F.S. to specify that the statewide DNA database may contain DNA data obtained from the following types of biological samples:

1. Crime scene samples.
2. Samples contained from qualifying offenders required by this section to provide a biological sample for DNA analysis and inclusion in the statewide DNA database.
3. Samples lawfully obtained during the course of a criminal investigation.
4. Samples from deceased victims or suspects that were lawfully obtained during the course of a criminal investigation.
5. Samples from unidentified human remains.
6. Samples from persons reported missing.
7. Samples voluntarily contributed by relatives of missing persons.
8. Other samples approved by the department.

Out-of-state offenders: The bill adds language to subsection (8) of s. 943.325, F.S. which is not in current law and requires the following offenders to provide a DNA sample to the entity responsible for supervision of the offender, who then is required to ensure that the DNA sample is collected and transmitted to FDLE:

- A qualifying offender who is transferred to this state under the Interstate Compact on Juveniles,¹² for a felony offense or attempted felony offense; or

¹¹ The bill defines "CODIS" to mean "the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories."

¹² See Part XIII of Chapter 985, Florida Statutes.

- A qualifying offender who is accepted under Article IV of the Interstate Corrections Compact,¹³ of a felony offense or attempted felony offense.

Collection of DNA and liability: Current law does not specifically state that who is responsible for collecting a DNA sample. Subsection (10)(e) of s. 943.325, F.S. refers to a law enforcement officer or correctional officer taking a sample and also refers to medical personnel. Originally, DNA was collected through a blood draw; currently, it is collected through a cheek swab. The bill amends s. 943.325(9), F.S. to specify that the collection of DNA samples may be performed by any person using a collection kit approved by the department as directed in the kit or pursuant to other procedures approved by or acceptable to the department.

As amended by the bill, subsection (9)(b) of s. 943.325, F.S. will contain language similar to that currently found in subsection (10)(e) which provides that any person who collects or assists in the collection of a DNA sample is not civilly or criminally liable if a collection kit provided or approved by FDLE is used and the collection is done as directed in the kit, in a manner approved by the department, or is performed in an otherwise reasonable manner.

Reasonable force: As amended by the bill, subsection (7) of s. 943.325, F.S. will contain language similar to that currently found in subsection (10)(e) to provide that duly authorized law enforcement and correctional personnel may employ reasonable force in cases where a qualified offender refuses to provide a DNA sample required under this section, and no such employee shall be civilly or criminally liable for the use of such reasonable force.

Samples: As amended by the bill, subsection (10) of s. 943.325, F.S. will contain language similar to that currently found in subsection (5) which:

- requires FDLE to provide DNA sample collection kits, labels, or other appropriate containers and instructions for the collection of DNA samples; and
- provides that after collection, DNA samples must be forwarded to FDLE for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

The bill also adds language to subsection (10)(a) of s. 943.325, F.S. which is not contained in current law which provides that at a minimum, the following information must be included with each submission:

1. The qualifying offender's last name, first name, date of birth, race, gender, and State Identification (SID) number if known;
2. The statute number of each offense charged;
3. The collecting agency's name and address;
4. The name and telephone number of the person performing the collection of the DNA sample or witnessing the collection of the sample.

As amended by the bill, subsection (10)(b) of s. 943.325, F.S. will contain language which is currently found in subsection (4) which provides that if a DNA sample submitted to FDLE cannot be used in the manner and for the purposes required by the section, the department may require that another sample be obtained.

Court orders and costs:

The bill moves language within section 943.325 as follows:

- Subsection (11) will contain language similar to that currently found in subsection (10)(a) which provides that the sentencing court must include in the judgment order for a qualifying offender a provision requiring collection of a DNA sample from the defendant in a manner consistent with this section.

¹³ See Part III of Chapter 941, Florida Statutes.

- Subsection (11)(a) will contain language similar to that currently found in subsection (12) and provides that unless the convicted person has been found indigent by the court, the person must pay the costs of collecting the approved biological specimens required under the section.
- Subsection (11)(b) of s. 943.325, F.S. contains language similar to that currently found in subsection (10)(f) and (11) and provides that if the order of the sentencing court fails to order a qualifying offender to submit a DNA sample as mandated by the section, the prosecutor may seek an amended order. Alternatively, FDLE, the Department of Corrections, a law enforcement agency or a prosecutor may apply to the circuit court for an order authorizing the seizure of the qualifying offender for the purpose of securing the required sample.
- Subsection (11)(c) will contains language that is currently found in subsection (13) that states that failure by a law enforcement agency or other entity involved in the collection of DNA samples under this section to strictly comply with the section or to abide by a statewide protocol for collecting DNA samples is not grounds for challenging the validity of the collection or the use of a DNA sample in court and evidence based upon or derived from a collected DNA sample may not be excluded by a court.

The bill also adds language in subsection (11)(d) and (e) of s. 943.325, F.S. that is not contained in current law which provides that:

- the detention, arrest, or conviction of a person based upon a database match or database information will not be invalidated if it is later determined that the sample was obtained or placed in the database by mistake.
- all DNA samples submitted to the department for any reason shall be retained in the statewide database and may be used for all lawful purposes as provided in the section.

Analysis of DNA samples and prohibitions on use: The bill creates language in subsection (12) of s. 943.325, F.S. that is not currently in law to provide that FDLE must specify procedures for the collection, submission, identification, analysis, storage, and disposition of the DNA samples and DNA records¹⁴ collected under the section. The procedures must also ensure compliance with national quality assurance standards so that the DNA records may be accepted into the national DNA database.

The bill also adds language provides that the analyses of DNA samples collected under the section shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains or missing persons and may not be used for identification of any medical or genetic condition. The bill further which provides that when completed, the results of DNA analysis shall be entered into the statewide DNA database maintained and administered by FDLE for such purpose, as provided in the section.

Releasing results of analysis: As amended by the bill subsection (13) of s. 943.325, F.S. will contain language currently contained in subsection (7) which provides that the results of a DNA analysis and the comparison of analytical result shall be released only to criminal justice agencies as defined in s. 943.045(10), F.S, at the request of the agency; otherwise such information is confidential and exempt from public records laws.

Criminal penalties: The bill creates the following two criminal offenses in subsection (14) of s. 943.325, F.S. which are not in current law. The bill makes it a second degree misdemeanor for any person subject to the requirements of the section to willfully refuse to provide a DNA sample.

The bill creates a third degree felony offense for any person who:

1. Knowingly or intentionally discloses a DNA record, including the results of a DNA analysis, to a person or agency other than one authorized to have access to such records under the section;
2. Knowingly or intentionally uses or receives DNA records, including the results of DNA analysis, for purposes other than those authorized under this section; or

¹⁴ The bill defines the term "DNA record" to mean "all information associated with the collection and analysis of a person's DNA sample, including the distinguishing characteristics collectively referred to as a DNA profile."

3. Knowingly or intentionally tampers or attempts to tamper with any DNA sample, the result of any analysis of a DNA sample, or a DNA sample collection container.

B. SECTION DIRECTORY:

Section 1. Provides that act may be cited as the "DNA Database Act".

Section 2. Amends s. 943.325, F.S.; relating to DNA database.

Section 3. Amends s. 760.40, F.S.; relating to genetic testing; informed consent; confidentiality; penalties; notice of use of results.

Section 4. Amends s. 948.014, F.S.; relating to requirement to submit to drawing of blood or other biological specimen.

Section 5. Provides effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Criminal Justice Impact Conference has not met to consider the prison bed impact of this bill on the Department of Corrections from the creation of a new third degree felony offense.

See fiscal comments regarding fiscal impact on FDLE.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

When implemented, the provisions of the bill that will require submission of DNA from every person arrested for a felony may have a workload impact on local sheriff's offices.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

FDLE has recommended that if DNA is to be collected from all offenders arrested for a felony, it should be phased in as provided in the bill. FDLE indicates that currently, a person collecting DNA from an offender cannot immediately verify whether DNA has previously been collected from the offender in a prior case. This results in FDLE being sent DNA samples for offenders that are already in the database. FDLE also receives DNA samples that do not have the required demographic information attached. This results in additional workload for the department. FDLE recommends placing equipment at each of the 600 sites where DNA is collected so that the person could verify whether the DNA database already contained a sample from the offender in question. This would also reduce instances of DNA being submitted with insufficient demographic information attached. The following is

***Fiscal Timeline for Expanding DNA collections
to include all persons arrested for felony offenses***

<p>Year 1 2009-2010</p>	<p>Phase One \$418,071 recur; \$1,526,472 NR</p>	<p>Build Collection Infrastructure and Regional Casework Capacity</p> <ul style="list-style-type: none"> ▪ Rapid ID equipment at each collection site (600 total collection sites) to facilitate real time access to the State's DNA database ▪ 6 Crime Laboratory Analyst
<p>Year 2 2010-2011</p>	<p>Phase Two \$489,580 recur; \$418,071 NR</p>	<p>Add Felony Arrests for Homicide, Assault, Battery, Sex Crimes (Florida Statutes 782, 784, 794, 800)</p> <ul style="list-style-type: none"> ▪ Workload Processing Costs; No New Resources
<p>Year 3 2011-2012</p>	<p>Phase Three \$1,151,514 recur; \$747,532 NR</p>	<p>Build Casework Capacity in FDLE-Daytona Crime Laboratory</p> <ul style="list-style-type: none"> ▪ 1 Crime Laboratory Analyst Supervisor ▪ 6 Crime Laboratory Analysts ▪ 4 Forensic Technologists ▪ Increased space requirements for Daytona Crime Laboratory ▪ Laboratory construction/renovation ▪ Laboratory equipment ▪ Laboratory supplies
<p>Year 4 2012-2013</p>	<p>Phase Four \$1,151,514 recur; \$593,152 NR</p>	<p>Add Felony Arrests for Burglary, Theft, Robbery (Florida Statutes 810 and 812)</p> <ul style="list-style-type: none"> ▪ Workload Processing Costs; No new resources
<p>Year 6 2014-2015</p>	<p>Phase Five \$1,151,514 recur; \$79,016 NR</p>	<p>Add Felony Arrests for Kidnapping, Weapons (Florida Statute 787 and 790)</p> <ul style="list-style-type: none"> ▪ Workload Processing Costs; No new resources
<p>Year 8 2016-2017</p>	<p>Phase Six \$1,151,514 recur; \$404,348 NR</p>	<p>Add Felony Arrests for Drug Offenses (Florida Statute 893)</p> <ul style="list-style-type: none"> ▪ Workload Processing Costs; No new resources

Year 10	Phase Seven	
2018-2019	\$1,151,514 recur; \$1,066,352 NR	Add All Remaining Felony Arrests ▪ Workload Processing Costs; No new resources

III.

COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The provisions of the bill which would require taking a DNA sample from every person arrested for a felony offense may be challenged as authorizing an illegal search.

In *Morris v. State*, 909 So.2d 428 (Fla. 5th DCA 2005), the defendant argued that the requirement that he submit blood or other biological specimens for DNA testing pursuant to section 943.325, F.S. violated his 4th amendment right to be free from an unreasonable search because it required him to submit biological specimens without probable cause that testing of those specimens will reveal evidence he has committed a crime.

In rejecting the defendant's claim, the Fifth DCA summarized the existing Florida case law as follows:

This court and our sister courts have also rejected constitutional challenges to section 943.325 . *Smalley v. State*, 889 So.2d 100 (Fla. 5th DCA 2004) (statute requiring defendant convicted of second degree murder to submit DNA samples did not violate his fourth amendment right against unreasonable searches and seizures; defendant did not have reasonable expectation of privacy in blood samples that outweighed state's interest in apprehending criminals, preventing recidivism and absolving innocent persons); *Springer v. State*, 874 So.2d 719 (Fla. 5th DCA 2004) (statutory requirement that defendant, who was convicted of lewd and lascivious molestation, provide DNA samples did not violate his fourth amendment right to be free from unlawful searches); *Gonzalez v. State*, 869 So.2d 1231 (Fla. 2d DCA 2004) (finding no merit to defendant's argument that section 943.325 is unconstitutional); *L.S. v. State*, 805 So.2d 1004 (Fla. 1st DCA 2001), *rev. denied*, 821 So.2d 297 (Fla.2002) (DNA testing requirement did not violate juvenile's right to be free from unreasonable searches and seizures under fourth amendment, did not deny equal protection and did not violate rights of privacy under state constitution).

It is possible that courts may distinguish this case law when examining the provisions of this bill which authorize the taking of a DNA sample from all persons *arrested* for a felony offense rather than all persons *convicted* of a felony offense. On the other hand, the amount of the intrusion in swabbing inside the mouth of an offender would likely be considered less than taking blood from an offender which much of the existing case law is based on.

In *In re Welfare of C.T.L.*, 722 N.W.2d 484 (Minn. App. 2006), the court held that the privacy interest of a person who has been charged but not convicted of a criminal offense is not outweighed by the state's interest in collecting and analyzing a DNA sample.

B. RULE-MAKING AUTHORITY:

The bill requires FDLE to adopt rules relating to accredited local government crime laboratories within the state accessing, through CODIS, the statewide DNA database.

The bill also requires FDLE to adopt rules specifying the proper procedure, including requisite identification information, for state and local law enforcement and correctional agencies to collect and submit DNA samples pursuant to this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES