

1 A bill to be entitled  
2 An act relating to a DNA database; providing a short  
3 title; amending s. 943.325, F.S.; providing legislative  
4 intent; providing definitions; providing a phase-in  
5 schedule whereby persons arrested for specified felony  
6 offenses will be required to provide DNA samples to the  
7 Department of Law Enforcement until all persons arrested  
8 for felony offenses will be required to provide such  
9 samples; requiring reports; providing for a statewide  
10 automated personal identification system capable of  
11 classifying, matching, and storing analyses of DNA and  
12 other data; providing for access; specifying duties of the  
13 department; providing that the database may contain DNA  
14 for certain types of samples; specifying offenders from  
15 whom DNA is to be collected; authorizing the use of  
16 reasonable force to collect samples; providing an  
17 exemption from liability for use of such force; providing  
18 for collection of samples from specified offenders from  
19 out of state; requiring the department to provide sample  
20 containers; providing requirements for information to be  
21 submitted with each sample; providing for court orders for  
22 samples; authorizing prosecutors to seek court orders in  
23 certain circumstances; providing that a convicted person  
24 shall pay the actual costs of collecting the approved  
25 biological specimens unless declared indigent; providing  
26 that certain failures to strictly comply with statute or  
27 protocol may not provide grounds for challenging the  
28 validity of the collection or the use of a DNA sample in

29 court and evidence based upon or derived from the  
 30 collected DNA sample may not be excluded by a court;  
 31 providing that the detention, arrest, or conviction of a  
 32 person based upon a database match or database information  
 33 will not be invalidated if it is later determined that the  
 34 sample was obtained or placed in the database by mistake;  
 35 providing for retention of samples; providing for analysis  
 36 of samples; requiring that DNA analysis and the comparison  
 37 of analytic results shall be released only to criminal  
 38 justice agencies; providing a public records exemption for  
 39 such information; prohibiting willfully refusing to  
 40 provide a DNA sample; providing penalties; prohibiting  
 41 specified offenses relating to disclosing DNA records,  
 42 using records without authorization, or tampering with DNA  
 43 samples or analysis results; providing penalties; amending  
 44 ss. 760.40 and 948.014, F.S.; conforming provisions to  
 45 changes made by this act; providing an effective date.  
 46

47 Be It Enacted by the Legislature of the State of Florida:  
 48

49 Section 1. This act may be cited as the "DNA Database  
 50 Act."

51 Section 2. Section 943.325, Florida Statutes, is amended  
 52 to read:

53 (Substantial rewording of section. See  
 54 s. 943.325, F.S., for present text)

55 943.325 DNA Database.--

56 (1) LEGISLATIVE INTENT.--

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

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

79 (2) DEFINITIONS.--As used in this section, the term:

80 (a) "Arrested" means apprehended or physically taken into  
81 custody, resulting in the submission of arrest fingerprints to  
82 the department, pursuant to s. 943.051.

83 (b) "CODIS" means the Federal Bureau of Investigation's  
84 Combined DNA Index System that allows the storage and exchange

85 of DNA records submitted by federal, state, and local forensic  
 86 DNA laboratories.

87 (c) "Convicted" means a finding of guilt by a court of  
 88 competent jurisdiction, or entry of a plea of nolo contendere or  
 89 guilty, or, in the case of a juvenile, the finding of  
 90 delinquency, regardless of adjudication.

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

95 (e) "DNA record" means all information associated with the  
 96 collection and analysis of a person's DNA sample, including the  
 97 distinguishing characteristics collectively referred to as a DNA  
 98 profile.

99 (f) "DNA sample" means a buccal or other approved  
 100 biological specimen capable of undergoing DNA analysis.

101 (g) "Qualifying offender" means any person, including  
 102 juveniles and adults committed to a county jail or committed to  
 103 or under the supervision of the Department of Corrections or the  
 104 Department of Juvenile Justice, including persons incarcerated  
 105 in a private correctional institution operated under contract  
 106 pursuant to s. 944.105, and persons transferred to this state  
 107 under the Interstate Compact on Juveniles, part XIII of chapter  
 108 985, or accepted under Article IV of the Interstate Corrections  
 109 Compact, part III of chapter 941, and any person required to  
 110 register as a sexual offender or sexual predator as defined in  
 111 s. 943.0435, s. 775.21, s. 944.607, or s. 985.4815, who is:

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112 1. Convicted of any felony offense or attempted felony  
113 offense or a similar offense in another jurisdiction, or any  
114 misdemeanor violation of s. 784.048, s. 787.025, s. 794.027, s.  
115 800.02, s. 800.03, s. 810.14, s. 847.011, s. 847.013, s.  
116 847.0135, or s. 877.26, or an offense that was found, pursuant  
117 to s. 874.04, to have been committed for the purpose of  
118 benefiting, promoting, or furthering the interests of a criminal  
119 gang as defined in s. 874.03; or

120 2. Arrested for any felony offense committed in this  
121 state, under the following conditions:

122 a. Subject to sufficient funding appropriations passed by  
123 the Legislature and approved by the Governor for each phase of  
124 expansion of DNA sample collection in this sub-subparagraph, and  
125 after determination and official notification to submitting  
126 agencies by the department that it has sufficient  
127 infrastructure, facilities, and personnel to receive such  
128 samples, all persons arrested for or charged with any of the  
129 following felony offenses shall be required to submit a DNA  
130 sample at the time they are booked into a jail, correctional  
131 facility, or juvenile facility:

132 (I) Beginning January 1, 2011, all felonies defined by  
133 chapters 782, 784, 794, and 800.

134 (II) Beginning January 1, 2013, all felonies defined by  
135 chapters 810 and 812.

136 (III) Beginning January 1, 2015, all felonies defined by  
137 chapters 787 and 790.

138 (IV) Beginning January 1, 2017, all felonies defined by  
139 chapter 893.

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140 (V) Beginning January 1, 2019, all felony offenses.

141 b. The department may reject submissions of samples  
142 received for any felony arrests prior to funding of any phase  
143 set forth in this subparagraph or received prior to the  
144 department's official notification to the submitting agency as  
145 provided in this section.

146 c. On or before February 1, 2010, and by February 1 of  
147 each even-numbered year thereafter through 2018, the department  
148 shall provide the Legislature with a report listing the funding,  
149 infrastructure, facility, and personnel requirements for the DNA  
150 database and DNA evidentiary analysis for the expansion phase  
151 scheduled for the following year.

152 (3) STATEWIDE DNA DATABASE.--The department, through the  
153 statewide criminal laboratory analysis system shall establish,  
154 implement, and maintain a statewide automated personal  
155 identification system capable of, but not limited to,  
156 classifying, matching, and storing analyses of DNA and other  
157 biological molecules and related data. The department shall be  
158 the administrator of the statewide DNA database. All accredited  
159 local government crime laboratories within the state shall have  
160 access through CODIS to the statewide DNA database in accordance  
161 with the rules and agreements established by the department.

162 (4) DUTIES.--The department shall:

163 (a) Receive, process, and store DNA and the data derived  
164 therefrom furnished pursuant to this section.

165 (b) Collect, process, maintain, and disseminate  
166 information and records as provided by this section.

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167 (c) Strive to maintain and disseminate only accurate and  
168 complete records.

169 (d) Participate in the national DNA database program  
170 administered by the Federal Bureau of Investigation.

171 (e) Provide for liaison with the Federal Bureau of  
172 Investigation and other criminal justice agencies relating to  
173 the state's participation in the CODIS program and the national  
174 DNA index system.

175 (f) Adopt rules specifying the proper procedure, including  
176 requisite identification information, for state and local law  
177 enforcement and correctional agencies to collect and submit DNA  
178 samples pursuant to this section.

179 (5) SAMPLES.--The statewide DNA database may contain DNA  
180 data obtained from the following types of biological samples:

181 (a) Crime scene samples.

182 (b) Samples obtained from qualifying offenders required by  
183 this section to provide a biological sample for DNA analysis and  
184 inclusion in the statewide DNA database.

185 (c) Samples lawfully obtained during the course of a  
186 criminal investigation.

187 (d) Samples from deceased victims or suspects that were  
188 lawfully obtained during the course of a criminal investigation.

189 (e) Samples from unidentified human remains.

190 (f) Samples from persons reported missing.

191 (g) Samples voluntarily contributed by relatives of  
192 missing persons.

193 (h) Other samples approved by the department.

194 (6) COLLECTION OF DNA SAMPLES FROM OFFENDERS.--

195       (a) Any qualifying offender, who is:  
 196       1. Arrested in this state,  
 197       2. Incarcerated in this state, or  
 198       3. On probation, community control, parole, conditional  
 199 release, control release, or any other type of court-ordered  
 200 supervision in this state,  
 201  
 202 shall be required to submit a DNA sample to a department-  
 203 designated facility.  
 204       (b) Arrested qualifying offenders must submit a DNA sample  
 205 at the time they are booked into a jail, correctional facility,  
 206 or juvenile facility.  
 207       (c) Incarcerated persons and those in the custody of the  
 208 Department of Juvenile Justice must submit required DNA samples  
 209 not less than 45 days before their presumptive date of release  
 210 from such incarceration or commitment.  
 211       (d) Upon the conviction of any qualifying offender which  
 212 results in the commitment of the offender to a county jail,  
 213 correctional facility, or juvenile facility, the entity  
 214 responsible for the jail or facility shall ensure that a DNA  
 215 sample is promptly secured and transmitted to the department.  
 216 Personnel at the jail, correctional facility, or juvenile  
 217 facility shall collect the DNA samples as part of the regular  
 218 processing of qualifying offenders committed to the jail or  
 219 facility.  
 220       (e) If a qualifying offender is not incarcerated following  
 221 conviction, that offender may not be released from the custody  
 222 of the court at the time of sentencing or released pursuant to a



223 bond or surety until the DNA sample required by this section has  
 224 been taken by the sheriff or his or her designee. The sheriff  
 225 shall secure, process, and transmit the DNA sample to the  
 226 department in a timely manner.

227 (7) REASONABLE FORCE.--Duly authorized law enforcement and  
 228 corrections personnel may employ reasonable force in cases where  
 229 a qualified offender refuses to provide a DNA sample required  
 230 under this section, and no such employee shall be civilly or  
 231 criminally liable for the use of such reasonable force.

232 (8) OUT-OF-STATE OFFENDERS.--Any qualifying offender who  
 233 is:

234 (a) Transferred to this state under the Interstate Compact  
 235 on Juveniles, part XIII of chapter 985, for a felony offense or  
 236 attempted felony offense, or

237 (b) Accepted under Article IV of the Interstate  
 238 Corrections Compact, part III of chapter 941, for a felony  
 239 offense or attempted felony offense,

240  
 241 shall provide a DNA sample pursuant to this section to the  
 242 entity responsible for supervision of the offender, who shall  
 243 ensure that the DNA sample is collected in a manner approved by  
 244 the department and promptly secured and transmitted to the  
 245 department.

246 (9) COLLECTION; LIABILITY.--

247 (a) The collection of DNA samples may be performed by any  
 248 person using a collection kit approved by the department as  
 249 directed in the kit or pursuant to other procedures approved by  
 250 or acceptable to the department.

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251 (b) Any person who collects or assists in the collection  
252 of a DNA sample is not civilly or criminally liable if a  
253 collection kit provided or approved by the department is used  
254 and the collection is done as directed in the kit, in a manner  
255 approved by the department, or is performed in an otherwise  
256 reasonable manner.

257 (10) SAMPLES.--The department will provide the DNA sample  
258 collection kits, labels, or other appropriate containers and  
259 instructions for the collection of the DNA samples. After  
260 collection, the DNA samples shall be forwarded to the department  
261 for analysis to determine genetic markers and characteristics  
262 for the purpose of individual identification of the person  
263 submitting the sample.

264 (a) At minimum, the following information must be included  
265 with each submission:

266 1. The qualifying offender's last name, first name, date  
267 of birth, race, gender, and State Identification (SID) number if  
268 known.

269 2. The statute number of each offense charged.

270 3. The collecting agency's name and address.

271 4. The name and telephone number of the person performing  
272 the collection of the DNA sample or witnessing the collection of  
273 the sample.

274 (b) If a DNA sample submitted to the department under this  
275 section cannot be used by the department in the manner and for  
276 the purposes required by this section, the department may  
277 require that another DNA sample be obtained.

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278 (11) COURT ORDERS; COSTS.--The sentencing court shall  
279 include in the judgment order for a qualifying offender a  
280 provision requiring collection of a DNA sample from the  
281 defendant in a manner consistent with this section.

282 (a) Unless a convicted person has been declared indigent  
283 by the court, the convicted person shall pay the actual costs of  
284 collecting the approved biological specimens required under this  
285 section.

286 (b) If the order of a sentencing court fails to order a  
287 qualifying offender to submit a DNA sample as mandated by this  
288 section, the prosecutor may seek an amended order from the  
289 sentencing court requiring submission of a DNA sample in  
290 compliance with this section. In the alternative, the  
291 department, the Department of Corrections, a law enforcement  
292 agency, or a prosecutor may apply to the appropriate circuit  
293 court with jurisdiction for an order authorizing the seizure of  
294 the qualifying offender for the purpose of securing the required  
295 DNA sample.

296 1. The court shall issue the order upon a showing of  
297 probable cause.

298 2. Following issuance of the order, the DNA sample shall  
299 be collected in a reasonable manner and the qualifying offender  
300 shall be released unless there is cause to justify retaining the  
301 offender in custody.

302 (c) Failure by a law enforcement agency or other entity  
303 involved in collection of DNA samples under this section to  
304 strictly comply with this section or to abide by a statewide  
305 protocol for collecting DNA samples is not grounds for

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306 challenging the validity of the collection or the use of a DNA  
307 sample in court and evidence based upon or derived from the  
308 collected DNA sample may not be excluded by a court.

309 (d) The detention, arrest, or conviction of a person based  
310 upon a database match or database information will not be  
311 invalidated if it is later determined that the sample was  
312 obtained or placed in the database by mistake.

313 (e) All DNA samples submitted to the department for any  
314 reason shall be retained in the statewide DNA database and may  
315 be used for all lawful purposes as provided in this section.

316 (12) ANALYSIS OF DNA SAMPLES.--

317 (a) The department shall specify procedures for the  
318 collection, submission, identification, analysis, storage, and  
319 disposition of the DNA samples and DNA records collected under  
320 this section. These procedures shall also ensure compliance with  
321 national quality assurance standards so that the DNA records may  
322 be accepted into the national DNA database.

323 (b) The analyses of DNA samples collected under this  
324 section shall be used only for law enforcement identification  
325 purposes or to assist in the recovery or identification of human  
326 remains or missing persons and may not be used for  
327 identification of any medical or genetic condition.

328 (c) When completed, the results of DNA analysis shall be  
329 entered into the statewide DNA database maintained and  
330 administered by the department for such purpose, as provided in  
331 this section.

332 (13) RESULTS.--The results of a DNA analysis and the  
333 comparison of analytic results shall be released only to

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334 criminal justice agencies as defined in s. 943.045(10), at the  
335 request of the agency. Otherwise, such information is  
336 confidential and exempt from the provisions of s. 119.07(1) and  
337 s. 24(a), Art. I of the State Constitution.

338 (14) OFFENSES AND PENALTIES.--

339 (a) Any person subject to the requirements of this section  
340 who willfully refuses to provide a DNA sample commits a  
341 misdemeanor of the second degree, punishable as provided in s.  
342 775.082 or s. 775.083.

343 (b) Any person who:

344 1. Knowingly or intentionally discloses a DNA record,  
345 including the results of a DNA analysis, to a person or agency  
346 other than one authorized to have access to such records under  
347 this section;

348 2. Knowingly or intentionally uses or receives DNA  
349 records, including the results of DNA analysis, for purposes  
350 other than those authorized under this section; or

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

354  
355 commits a felony of the third degree, punishable as provided in  
356 s. 775.082, s. 775.083, or s. 775.084.

357 Section 3. Paragraph (a) of subsection (2) of section  
358 760.40, Florida Statutes, is amended to read:

359 760.40 Genetic testing; informed consent; confidentiality;  
360 penalties; notice of use of results.--

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361 (2) (a) Except for purposes of criminal prosecution, except  
362 for purposes of determining paternity as provided in s. 409.256  
363 or s. 742.12(1), and except for purposes of acquiring specimens  
364 ~~from persons convicted of certain offenses or as otherwise~~  
365 provided in s. 943.325, DNA analysis may be performed only with  
366 the informed consent of the person to be tested, and the results  
367 of such DNA analysis, whether held by a public or private  
368 entity, are the exclusive property of the person tested, are  
369 confidential, and may not be disclosed without the consent of  
370 the person tested. Such information held by a public entity is  
371 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
372 of the State Constitution.

373 Section 4. Subsection (1) of section 948.014, Florida  
374 Statutes, is amended to read:

375 948.014 Requirement to submit to drawing of blood or other  
376 biological specimens.--

377 (1) As a condition of probation, community control, or any  
378 other court-ordered community supervision, the court shall order  
379 offenders ~~order persons convicted of offenses specified in s.~~  
380 ~~943.325~~ to submit to the drawing of the blood or other  
381 biological specimens when required under s. 943.325 as  
382 ~~prescribed in that section~~ as a condition of the probation,  
383 community control, or other court-ordered community supervision.

384 Section 5. This act shall take effect July 1, 2009.