

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;
 44 | providing for removal of records in certain circumstances;
 45 | requiring rulemaking; amending ss. 760.40 and 948.014,
 46 | F.S.; conforming provisions to changes made by this act;
 47 | providing an effective date.

48 |

49 | Be It Enacted by the Legislature of the State of Florida:

50 |

51 | Section 1. This act may be cited as the "DNA Database
 52 | Act."

53 | Section 2. Section 943.325, Florida Statutes, is amended
 54 | to read:

55 | (Substantial rewording of section. See
 56 | s. 943.325, F.S., for present text)

57 | 943.325 DNA Database.--
 58 | (1) LEGISLATIVE INTENT.--
 59 | (a) The Legislature hereby finds that DNA databases are
 60 | important tools in criminal investigations, in the exclusion of
 61 | individuals who are the subject of criminal investigations or
 62 | prosecutions and in detecting recidivist acts. It is the policy
 63 | of this state to assist federal, state, and local criminal
 64 | justice and law enforcement agencies in the identification and
 65 | detection of individuals in criminal investigations and the
 66 | identification and location of missing and unidentified persons.
 67 | Therefore, it is in the best interests of the citizens of this
 68 | state to establish a statewide DNA database containing DNA
 69 | samples submitted by persons convicted of or arrested for felony
 70 | offenses and convicted of certain misdemeanor offenses.
 71 | Additionally, the statewide DNA database shall include DNA
 72 | records and samples necessary for the identification of missing
 73 | persons and unidentified human remains, including DNA samples
 74 | voluntarily contributed by relatives of missing persons.
 75 | (b) The Legislature also finds that upon establishment of
 76 | the Florida DNA database a match between casework evidence DNA
 77 | samples from a criminal investigation and DNA samples from a
 78 | state or federal DNA database of certain offenders may be used
 79 | to find probable cause for the issuance of a warrant to obtain
 80 | the DNA sample from an offender.
 81 | (2) DEFINITIONS.--As used in this section, the term:
 82 | (a) "Arrested" means apprehended or physically taken into
 83 | custody, resulting in the submission of arrest fingerprints to
 84 | the department, pursuant to s. 943.051.

85 (b) "CODIS" means the Federal Bureau of Investigation's
 86 Combined DNA Index System that allows the storage and exchange
 87 of DNA records submitted by federal, state, and local forensic
 88 DNA laboratories.

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

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

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

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

103 (g) "Qualifying offender" means any person, whether a
 104 juvenile or an adult, who is:

105 1.a. Committed to a county jail;

106 b. Committed to or under the supervision of the Department
 107 of Corrections, including persons incarcerated in a private
 108 correctional institution operated under contract pursuant to s.
 109 944.105;

110 c. Committed to or under the supervision of the Department
 111 of Juvenile Justice;

112 d. Transferred to this state under the Interstate Compact

113 on Juveniles, part XIII of chapter 985; or
 114 e. Accepted under Article IV of the Interstate Corrections
 115 Compact, part III of chapter 941; and
 116 2.a. Convicted of any felony offense or attempted felony
 117 offense in this state or of a similar offense in another
 118 jurisdiction;
 119 b. Convicted of a misdemeanor violation of s. 784.048, s.
 120 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an
 121 offense that was found, pursuant to s. 874.04, to have been
 122 committed for the purpose of benefiting, promoting, or
 123 furthering the interests of a criminal gang as defined in s.
 124 874.03; or
 125 c. Arrested for any felony offense or attempted felony
 126 offense in this state.
 127 (3) REQUIREMENT TO SUBMIT.--
 128 (a) Each qualifying offender shall submit a DNA sample as
 129 required in subsection (7).
 130 (b) DNA samples collected under paragraph (a) from persons
 131 arrested for any felony offense or attempted felony offense in
 132 this state are subject to sufficient funding appropriations
 133 being approved by the Legislature and becoming law according to
 134 the following schedule:
 135 1. Beginning January 1, 2011, all felonies defined by
 136 chapters 782, 784, 794, and 800.
 137 2. Beginning January 1, 2013, all felonies defined by
 138 chapters 810 and 812.
 139 3. Beginning January 1, 2015, all felonies defined by
 140 chapters 787 and 790.

141 4. Beginning January 1, 2017, all felonies defined by
142 chapter 893.

143 5. Beginning January 1, 2019, all remaining felony
144 offenses.

145
146 The department may reject DNA samples submitted pursuant to this
147 subsection if submitted before the funding of any phase or if
148 received before the department issues an official notification
149 to the submitting agency that the department is sufficiently
150 prepared to receive the samples.

151 (c) On or before February 1, 2010, and by February 1 of
152 each even-numbered year thereafter through 2018, the department
153 shall submit a report to the Legislature listing the funding,
154 infrastructure, facility, and personnel requirements necessary
155 to operate the DNA database and DNA evidentiary analysis for the
156 expansion phase scheduled for the following year.

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

167 (5) DUTIES.--The department shall:

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

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

172 (c) Strive to maintain and disseminate only accurate and
173 complete records.

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

176 (e) Provide for liaison with the Federal Bureau of
177 Investigation and other criminal justice agencies relating to
178 the state's participation in the CODIS program and the national
179 DNA index system.

180 (f) Adopt rules specifying the proper procedure, including
181 requisite identification information, for state and local law
182 enforcement and correctional agencies to collect and submit DNA
183 samples pursuant to this section.

184 (6) SAMPLES.--The statewide DNA database may contain DNA
185 data obtained from the following types of biological samples:

186 (a) Crime scene samples.

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

190 (c) Samples lawfully obtained during the course of a
191 criminal investigation.

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

194 (e) Samples from unidentified human remains.

195 (f) Samples from persons reported missing.

196 (g) Samples voluntarily contributed by relatives of
 197 missing persons.

198 (h) Other samples approved by the department.

199 (7) COLLECTION OF DNA SAMPLES FROM OFFENDERS.--

200 (a) Any qualifying offender, who is:

201 1. Arrested in this state,

202 2. Incarcerated in this state, or

203 3. On probation, community control, parole, conditional
 204 release, control release, or any other type of court-ordered
 205 supervision in this state,

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207 shall be required to submit a DNA sample to a department-
 208 designated facility.

209 (b) Arrested qualifying offenders must submit a DNA sample
 210 at the time they are booked into a jail, correctional facility,
 211 or juvenile facility.

212 (c) Incarcerated persons and those in the custody of the
 213 Department of Juvenile Justice must submit required DNA samples
 214 not less than 45 days before their presumptive date of release
 215 from such incarceration or commitment.

216 (d) Upon the conviction of any qualifying offender which
 217 results in the commitment of the offender to a county jail,
 218 correctional facility, or juvenile facility, the entity
 219 responsible for the jail or facility shall ensure that a DNA
 220 sample is promptly secured and transmitted to the department.
 221 Personnel at the jail, correctional facility, or juvenile
 222 facility shall collect the DNA samples as part of the regular

223 processing of qualifying offenders committed to the jail or
 224 facility.

225 (e) If a qualifying offender is not incarcerated following
 226 conviction, that offender may not be released from the custody
 227 of the court at the time of sentencing or released pursuant to a
 228 bond or surety until the DNA sample required by this section has
 229 been taken by the sheriff or his or her designee. The sheriff
 230 shall secure, process, and transmit the DNA sample to the
 231 department in a timely manner.

232 (8) REASONABLE FORCE.--Duly authorized law enforcement and
 233 corrections personnel may employ reasonable force in cases where
 234 a qualifying offender refuses to provide a DNA sample required
 235 under this section, and no such employee shall be civilly or
 236 criminally liable for the use of such reasonable force.

237 (9) OUT-OF-STATE OFFENDERS.--Any qualifying offender who
 238 is:

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

242 (b) Accepted under Article IV of the Interstate
 243 Corrections Compact, part III of chapter 941, for a felony
 244 offense or attempted felony offense,

245
 246 shall provide a DNA sample pursuant to this section to the
 247 entity responsible for supervision of the offender, who shall
 248 ensure that the DNA sample is collected in a manner approved by
 249 the department and promptly secured and transmitted to the

250 department.

251 (10) COLLECTION; LIABILITY.--

252 (a) The collection of DNA samples may be performed by any
 253 person using a collection kit approved by the department as
 254 directed in the kit or pursuant to other procedures approved by
 255 or acceptable to the department.

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

262 (11) SAMPLE SUBMISSION.--The department will provide the
 263 DNA sample collection kits, labels, or other appropriate
 264 containers and instructions for the collection of the DNA
 265 samples. After collection, the DNA samples shall be forwarded to
 266 the department for analysis to determine genetic markers and
 267 characteristics for the purpose of individual identification of
 268 the person submitting the sample.

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

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

274 2. The statute number of each offense charged.

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

276 4. The name and telephone number of the person performing
277 the collection of the DNA sample or witnessing the collection of
278 the sample.

279 (b) If a DNA sample submitted to the department under this
280 section cannot be used by the department in the manner and for
281 the purposes required by this section, the department may
282 require that another DNA sample be obtained.

283 (12) COURT ORDERS; COSTS.--The sentencing court shall
284 include in the judgment order for a qualifying offender a
285 provision requiring collection of a DNA sample from the
286 defendant in a manner consistent with this section.

287 (a) Unless a convicted person has been declared indigent
288 by the court, the convicted person shall pay the actual costs of
289 collecting the approved biological specimens required under this
290 section.

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

301 1. The court shall issue the order upon a showing of
302 probable cause.

CS/HB 1151

2009

303 2. Following issuance of the order, the DNA sample shall
304 be collected in a reasonable manner and the qualifying offender
305 shall be released unless there is cause to justify retaining the
306 offender in custody.

307 (c) Failure by a law enforcement agency or other entity
308 involved in collection of DNA samples under this section to
309 strictly comply with this section or to abide by a statewide
310 protocol for collecting DNA samples is not grounds for
311 challenging the validity of the collection or the use of a DNA
312 sample in court and evidence based upon or derived from the
313 collected DNA sample may not be excluded by a court.

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

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

321 (13) ANALYSIS OF DNA SAMPLES.--

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

328 (b) The analyses of DNA samples collected under this
329 section shall be used only for law enforcement identification
330 purposes or to assist in the recovery or identification of human

CS/HB 1151

2009

331 remains or missing persons and may not be used for
332 identification of any medical or genetic condition.

333 (c) When completed, the results of DNA analysis shall be
334 entered into the statewide DNA database maintained and
335 administered by the department for such purpose, as provided in
336 this section.

337 (14) RESULTS.--The results of a DNA analysis and the
338 comparison of analytic results shall be released only to
339 criminal justice agencies as defined in s. 943.045(10), at the
340 request of the agency. Otherwise, such information is
341 confidential and exempt from the provisions of s. 119.07(1) and
342 s. 24(a), Art. I of the State Constitution.

343 (15) OFFENSES AND PENALTIES.--

344 (a) Any person subject to the requirements of this section
345 who willfully refuses to provide a DNA sample commits a
346 misdemeanor of the second degree, punishable as provided in s.
347 775.082 or s. 775.083.

348 (b) Any person who:

349 1. Knowingly or intentionally discloses a DNA record,
350 including the results of a DNA analysis, to a person or agency
351 other than one authorized to have access to such records under
352 this section;

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

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

359
360 commits a felony of the third degree, punishable as provided in
361 s. 775.082, s. 775.083, or s. 775.084.

362 (16) REMOVAL FROM DATABASE.--

363 (a) Unless the department determines that a person is
364 otherwise required by law to submit a DNA sample for inclusion
365 in the statewide DNA database, the department shall, upon
366 receipt and completion of such verification as may be required
367 of the information noted below, promptly remove from the
368 statewide DNA database the DNA analysis and any DNA biological
369 samples that may have been retained of a person included therein
370 on the basis of:

371 1. A conviction for a qualifying offense specified in
372 paragraph (2)(g)2.a. or b., if the department receives, from the
373 person seeking removal of DNA information from the statewide DNA
374 database, for each qualifying offense, a certified copy of a
375 final court order establishing that such conviction has been
376 overturned on direct appeal or set aside in a postconviction
377 proceeding; or

378 2. An arrest, if the department receives, from the person
379 seeking removal of DNA information from the statewide DNA
380 database, for each charge against the person on the basis of
381 which the analysis was or could have been included in the
382 statewide DNA database, a certified copy of the no information
383 or nolle prosequi filed by the state attorney, or final court
384 order or other official documentation establishing that such
385 charge has been dismissed or has resulted in an acquittal or
386 that no charge was filed within the applicable time period.

387
388 For purposes of this paragraph, a court order is not final if
389 time remains for an appeal or application for discretionary
390 review with respect to the order, or if a case has been remanded
391 for retrial or other proceedings and has not been resolved after
392 remand, or time remains for appeal or discretionary review of
393 the remanded case or any other such proceedings that have not
394 concluded and rendered the case resolved with finality.

395 (b) The department shall, by rule, establish the procedure
396 by which a person seeking removal of his or her DNA analysis and
397 biological sample from the statewide DNA database shall submit
398 the certified information required in this subsection to the
399 department.

400 Section 3. Paragraph (a) of subsection (2) of section
401 760.40, Florida Statutes, is amended to read:

402 760.40 Genetic testing; informed consent; confidentiality;
403 penalties; notice of use of results.--

404 (2) (a) Except for purposes of criminal prosecution, except
405 for purposes of determining paternity as provided in s. 409.256
406 or s. 742.12(1), and except for purposes of acquiring specimens
407 ~~from persons convicted of certain offenses or as otherwise~~
408 provided in s. 943.325, DNA analysis may be performed only with
409 the informed consent of the person to be tested, and the results
410 of such DNA analysis, whether held by a public or private
411 entity, are the exclusive property of the person tested, are
412 confidential, and may not be disclosed without the consent of
413 the person tested. Such information held by a public entity is

CS/HB 1151

2009

414 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
415 of the State Constitution.

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

418 948.014 Requirement to submit to drawing of blood or other
419 biological specimens.--

420 (1) As a condition of probation, community control, or any
421 other court-ordered community supervision, the court shall order
422 offenders ~~order persons convicted of offenses specified in s.~~
423 ~~943.325~~ to submit to the drawing of the blood or other
424 biological specimens when required under s. 943.325 ~~as~~
425 ~~prescribed in that section~~ as a condition of the probation,
426 community control, or other court-ordered community supervision.

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