

By Senator Oelrich

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

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30 challenging the validity of the collection or the use  
31 of a DNA sample in court and evidence based upon or  
32 derived from the collected DNA sample may not be  
33 excluded by a court; providing that the detention,  
34 arrest, or conviction of a person based upon a  
35 database match or database information will not be  
36 invalidated if it is later determined that the sample  
37 was obtained or placed in the database by mistake;  
38 providing for retention of samples; providing for  
39 analysis of samples; requiring that DNA analysis and  
40 the comparison of analytic results shall be released  
41 only to criminal justice agencies; providing a public  
42 records exemption for such information; prohibiting  
43 willfully refusing to provide a DNA sample; providing  
44 penalties; prohibiting specified offenses relating to  
45 disclosing DNA records, using records without  
46 authorization, or tampering with DNA samples or  
47 analysis results; providing penalties; amending ss.  
48 760.40 and 948.014, F.S.; conforming provisions to  
49 changes made by this act; providing an effective date.  
50

51 Be It Enacted by the Legislature of the State of Florida:

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

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

56 (Substantial rewording of section. See  
57 s. 943.325, F.S., for present text)  
58 943.325 DNA database.-

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59       (1) LEGISLATIVE INTENT.—

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

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

82       (2) DEFINITIONS.—As used in this section, the term:

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

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

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88 of DNA records submitted by federal, state, and local forensic  
89 DNA laboratories.

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

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

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

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

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

115 1. Convicted of any felony offense or attempted felony  
116 offense or a similar offense in another jurisdiction, or any

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117 misdemeanor violation of s. 784.048, s. 787.025, s. 794.027, s.  
118 800.02, s. 800.03, s. 810.14, s. 847.011, s. 847.013, s.  
119 847.0135, or s. 877.26, or an offense that was found, pursuant  
120 to s. 874.04, to have been committed for the purpose of  
121 benefiting, promoting, or furthering the interests of a criminal  
122 gang as defined in s. 874.03; or

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

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

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

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

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

141 (IV) Beginning January 1, 2017, all felonies defined by  
142 chapter 893.

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

144 b. The department may reject submissions of samples  
145 received for any felony arrests prior to funding of any phase

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146 set forth in this subparagraph or received prior to the  
147 department's official notification to the submitting agency as  
148 provided in this section.

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

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

165 (4) DUTIES.—The department shall:

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

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

170 (c) Strive to maintain and disseminate only accurate and  
171 complete records.

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

174 (e) Provide for liaison with the Federal Bureau of

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175 Investigation and other criminal justice agencies relating to  
176 the state's participation in the CODIS program and the national  
177 DNA index system.

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

182 (5) SAMPLES.—The statewide DNA database may contain DNA  
183 data obtained from the following types of biological samples:

184 (a) Crime scene samples.

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

188 (c) Samples lawfully obtained during the course of a  
189 criminal investigation.

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

192 (e) Samples from unidentified human remains.

193 (f) Samples from persons reported missing.

194 (g) Samples voluntarily contributed by relatives of missing  
195 persons.

196 (h) Other samples approved by the department.

197 (6) COLLECTION OF DNA SAMPLES FROM OFFENDERS.—

198 (a) Any qualifying offender, who is:

199 1. Arrested in this state;

200 2. Incarcerated in this state; or

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

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204  
205 shall be required to submit a DNA sample to a department-  
206 designated facility.

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

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

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

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

230 (7) REASONABLE FORCE.-Duly authorized law enforcement and  
231 corrections personnel may employ reasonable force in cases where  
232 a qualified offender refuses to provide a DNA sample required

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233 under this section, and no such employee shall be civilly or  
234 criminally liable for the use of such reasonable force.

235 (8) OUT-OF-STATE OFFENDERS.—Any qualifying offender who is:

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

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

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

248 (9) COLLECTION; LIABILITY.—

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

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

259 (10) SAMPLES.—The department will provide the DNA sample  
260 collection kits, labels, or other appropriate containers and  
261 instructions for the collection of the DNA samples. After

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262 collection, the DNA samples shall be forwarded to the department  
263 for analysis to determine genetic markers and characteristics  
264 for the purpose of individual identification of the person  
265 submitting the sample.

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

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

271 2. The statute number of each offense charged.

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

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

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

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

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

288 (b) If the order of a sentencing court fails to order a  
289 qualifying offender to submit a DNA sample as mandated by this  
290 section, the prosecutor may seek an amended order from the

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291 sentencing court requiring submission of a DNA sample in  
292 compliance with this section. In the alternative, the  
293 department, the Department of Corrections, a law enforcement  
294 agency, or a prosecutor may apply to the appropriate circuit  
295 court with jurisdiction for an order authorizing the seizure of  
296 the qualifying offender for the purpose of securing the required  
297 DNA sample.

298 1. The court shall issue the order upon a showing of  
299 probable cause.

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

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

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

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

318 (12) ANALYSIS OF DNA SAMPLES.—

319 (a) The department shall specify procedures for the

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320 collection, submission, identification, analysis, storage, and  
321 disposition of the DNA samples and DNA records collected under  
322 this section. These procedures shall also ensure compliance with  
323 national quality assurance standards so that the DNA records may  
324 be accepted into the national DNA database.

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

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

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

340 (14) OFFENSES AND PENALTIES.—

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

345 (b) Any person who:

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

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349 this section;

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

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

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

359 Section 3. Paragraph (a) of subsection (2) of section  
360 760.40, Florida Statutes, is amended to read:

361 760.40 Genetic testing; informed consent; confidentiality;  
362 penalties; notice of use of results.-

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

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

377 948.014 Requirement to submit to drawing of blood or other

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378 biological specimens.-

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

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