

By the Committees on Judiciary; and Governmental Oversight and Accountability; and Senator Oelrich

590-05184-09

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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;
8 requiring reports; providing for a statewide automated
9 personal identification system capable of classifying,
10 matching, and storing analyses of DNA and other data;
11 providing for access; specifying duties of the
12 department; providing that the database may contain
13 DNA for certain types of samples; specifying offenders
14 from whom DNA is to be collected; authorizing the use
15 of reasonable force to collect samples; providing an
16 exemption from liability for use of such force;
17 providing for collection of samples from specified
18 offenders from out of state; requiring the department
19 to provide sample containers; providing requirements
20 for information to be submitted with each sample;
21 providing for court orders for samples; authorizing
22 prosecutors to seek court orders in certain
23 circumstances; requiring that a convicted person pay
24 the actual costs of collecting the approved DNA
25 samples unless declared indigent; providing that
26 certain failures to strictly comply with statute or
27 protocol are not grounds for challenging the validity
28 of the collection or the use of a DNA sample in court,
29 and evidence based upon or derived from the collected

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30 DNA sample may not be excluded by a court; providing
31 that the detention, arrest, or conviction of a person
32 based upon a database match or database information
33 may not be invalidated if it is later determined that
34 the sample was obtained or placed in the database by
35 mistake; providing for retention of samples; providing
36 for analysis of samples; requiring that DNA analysis
37 and the comparison of analytic results be released
38 only to criminal justice agencies; continuing a
39 public-records exemption for such information;
40 prohibiting the willful refusal to provide a DNA
41 sample; providing penalties; prohibiting specified
42 offenses relating to disclosing DNA records, using
43 records without authorization, or tampering with DNA
44 samples or analysis results; providing penalties;
45 providing circumstances that require removal of the
46 DNA analysis and DNA sample from the statewide DNA
47 database of a person whose DNA analysis and sample was
48 included in the database as a result of a conviction
49 for a qualifying offense; providing circumstances that
50 require removal of the DNA analysis and DNA sample
51 from the statewide DNA database of a person whose DNA
52 analysis and sample was included in the database as a
53 result of an arrest; authorizing the Department of Law
54 Enforcement to adopt rules related to the
55 implementation of the removal of DNA analyses and
56 samples from the statewide DNA database; amending ss.
57 760.40 and 948.014, F.S.; conforming provisions to
58 changes made by the act; providing an effective date.

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

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

63 Section 2. Section 943.325, Florida Statutes, is amended to
64 read:

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

67 943.325 DNA database.—

68 (1) LEGISLATIVE INTENT.—

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

85 (b) The Legislature also finds that upon establishment of
86 the Florida DNA database a match between casework evidence DNA
87 samples from a criminal investigation and DNA samples from a

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88 state or federal DNA database of certain offenders may be used
89 to find probable cause for the issuance of a warrant to obtain
90 the DNA sample from an offender.

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

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

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

99 (c) "Convicted" means a finding of guilt by a court of
100 competent jurisdiction, or entry of a plea of nolo contendere or
101 guilty, or, in the case of a juvenile, the finding of
102 delinquency, regardless of adjudication.

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

107 (e) "DNA record" means all information associated with the
108 collection and analysis of a person's DNA sample, including the
109 distinguishing characteristics collectively referred to as a DNA
110 profile.

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

113 (g) "Qualifying offender" means any person, including
114 juveniles and adults, who is:

115 1.a. Committed to a county jail;

116 b. Committed to or under the supervision of the Department

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117 of Corrections, including persons incarcerated in a private
118 correctional institution operated under contract pursuant to s.
119 944.105;

120 c. Committed to or under the supervision of the Department
121 of Juvenile Justice;

122 d. Transferred to this state under the Interstate Compact
123 on Juveniles, part XIII of chapter 985; or

124 e. Accepted under Article IV of the Interstate Corrections
125 Compact, part III of chapter 941; and who is:

126 2.a. Convicted of any felony offense or attempted felony
127 offense in this state or of a similar offense in another
128 jurisdiction;

129 b. Convicted of a misdemeanor violation of s. 784.048, s.
130 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an
131 offense that was found, pursuant to s. 874.04, to have been
132 committed for the purpose of benefiting, promoting, or
133 furthering the interests of a criminal gang as defined in s.
134 874.03; or

135 c. Arrested for any felony offense or attempted felony
136 offense in this state.

137 (3) COLLECTION OF SAMPLES.-

138 (a) Each qualifying offender shall submit a DNA sample at
139 the time he or she is booked into a jail, correctional facility,
140 or juvenile facility.

141 (b) DNA samples collected under paragraph (a) from persons
142 arrested for any felony offense or attempted felony offense in
143 this state are subject to sufficient funding appropriations
144 passed by the Legislature and approved by the Governor according
145 to the following schedule:

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146 1. Beginning January 1, 2011, all felonies defined by
147 chapters 782, 784, 794, and 800.

148 2. Beginning January 1, 2013, all felonies defined by
149 chapters 810 and 812.

150 3. Beginning January 1, 2015, all felonies defined by
151 chapters 787 and 790.

152 4. Beginning January 1, 2017, all felonies defined by
153 chapter 893.

154 5. Beginning January 1, 2019, all remaining felony
155 offenses.

156
157 The department may reject DNA samples submitted pursuant to this
158 subsection if submitted before the funding of any phase or if
159 received before the department issues an official notification
160 to the submitting agency that the department is sufficiently
161 prepared to receive the samples.

162 (c) On or before February 1, 2010, and by February 1 of
163 each even-numbered year thereafter through 2018, the department
164 shall submit a report to the Legislature listing the funding,
165 infrastructure, facility, and personnel requirements necessary
166 to operate the DNA database and DNA evidentiary analysis for the
167 expansion phase scheduled for the following year.

168 (4) STATEWIDE DNA DATABASE.—The department, through the
169 statewide criminal laboratory analysis system shall establish,
170 implement, and maintain a statewide automated personal
171 identification system capable of, but not limited to,
172 classifying, matching, and storing analyses of DNA and other
173 biological molecules and related data. The department shall be
174 the administrator of the statewide DNA database. All accredited

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175 local government crime laboratories within the state shall have
176 access through CODIS to the statewide DNA database in accordance
177 with the rules and agreements established by the department.

178 (5) DUTIES.—The department shall:

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

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

183 (c) Strive to maintain and disseminate only accurate and
184 complete records.

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

187 (e) Provide for liaison with the Federal Bureau of
188 Investigation and other criminal justice agencies relating to
189 the state's participation in the CODIS program and the national
190 DNA index system.

191 (f) Adopt rules specifying the proper procedure, including
192 requisite identification information, for state and local law
193 enforcement and correctional agencies to collect and submit DNA
194 samples pursuant to this section.

195 (6) SAMPLES.—The statewide DNA database may contain DNA
196 data obtained from the following types of biological samples:

197 (a) Crime scene samples.

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

201 (c) Samples lawfully obtained during the course of a
202 criminal investigation.

203 (d) Samples from deceased victims or suspects that were

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204 lawfully obtained during the course of a criminal investigation.

205 (e) Samples from unidentified human remains.

206 (f) Samples from persons reported missing.

207 (g) Samples voluntarily contributed by relatives of missing
208 persons.

209 (h) Other samples approved by the department.

210 (7) COLLECTION OF DNA SAMPLES FROM OFFENDERS.—

211 (a) Any qualifying offender, who is:

212 1. Arrested in this state;

213 2. Incarcerated in this state; or

214 3. On probation, community control, parole, conditional
215 release, control release, or any other type of court-ordered
216 supervision in this state,

217
218 shall be required to submit a DNA sample to a department-
219 designated facility.

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

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

227 (d) Upon the conviction of any qualifying offender which
228 results in the commitment of the offender to a county jail,
229 correctional facility, or juvenile facility, the entity
230 responsible for the jail or facility shall ensure that a DNA
231 sample is promptly secured and transmitted to the department.
232 Personnel at the jail, correctional facility, or juvenile

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233 facility shall collect the DNA samples as part of the regular
234 processing of qualifying offenders committed to the jail or
235 facility.

236 (e) If a qualifying offender is not incarcerated following
237 conviction, that offender may not be released from the custody
238 of the court at the time of sentencing or released pursuant to a
239 bond or surety until the DNA sample required by this section has
240 been taken by the sheriff or his or her designee. The sheriff
241 shall secure, process, and transmit the DNA sample to the
242 department in a timely manner.

243 (8) REASONABLE FORCE.—Duly authorized law enforcement and
244 corrections personnel may employ reasonable force in cases where
245 a qualifying offender refuses to provide a DNA sample required
246 under this section, and no such employee shall be civilly or
247 criminally liable for the use of such reasonable force.

248 (9) OUT-OF-STATE OFFENDERS.—Any qualifying offender who is:

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

252 (b) Accepted under Article IV of the Interstate Corrections
253 Compact, part III of chapter 941, for a felony offense or
254 attempted felony offense,

255
256 shall provide a DNA sample pursuant to this section to the
257 entity responsible for supervision of the offender, who shall
258 ensure that the DNA sample is collected in a manner approved by
259 the department and promptly secured and transmitted to the
260 department.

261 (10) COLLECTION; LIABILITY.—

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262 (a) The collection of DNA samples may be performed by any
263 person using a collection kit approved by the department as
264 directed in the kit or pursuant to other procedures approved by
265 or acceptable to the department.

266 (b) Any person who collects or assists in the collection of
267 a DNA sample is not civilly or criminally liable if a collection
268 kit provided or approved by the department is used and the
269 collection is done as directed in the kit, in a manner approved
270 by the department, or is performed in an otherwise reasonable
271 manner.

272 (11) SAMPLES.—The department will provide the DNA sample
273 collection kits, labels, or other appropriate containers and
274 instructions for the collection of the DNA samples. After
275 collection, the DNA samples shall be forwarded to the department
276 for analysis to determine genetic markers and characteristics
277 for the purpose of individual identification of the person
278 submitting the sample.

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

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

284 2. The statute number of each offense charged.

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

286 4. The name and telephone number of the person performing
287 the collection of the DNA sample or witnessing the collection of
288 the sample.

289 (b) If a DNA sample submitted to the department under this
290 section cannot be used by the department in the manner and for

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291 the purposes required by this section, the department may
292 require that another DNA sample be obtained.

293 (12) COURT ORDERS; COSTS.—The sentencing court shall
294 include in the judgment order for a qualifying offender a
295 provision requiring collection of a DNA sample from the
296 defendant in a manner consistent with this section.

297 (a) Unless a convicted person has been declared indigent by
298 the court, the convicted person shall pay the actual costs of
299 collecting the approved biological specimens required under this
300 section.

301 (b) If the order of a sentencing court fails to order a
302 qualifying offender to submit a DNA sample as mandated by this
303 section, the prosecutor may seek an amended order from the
304 sentencing court requiring submission of a DNA sample in
305 compliance with this section. In the alternative, the
306 department, the Department of Corrections, a law enforcement
307 agency, or a prosecutor may apply to the appropriate circuit
308 court with jurisdiction for an order authorizing the seizure of
309 the qualifying offender for the purpose of securing the required
310 DNA sample.

311 1. The court shall issue the order upon a showing of
312 probable cause.

313 2. Following issuance of the order, the DNA sample shall be
314 collected in a reasonable manner and the qualifying offender
315 shall be released unless there is cause to justify retaining the
316 offender in custody.

317 (c) Failure by a law enforcement agency or other entity
318 involved in collection of DNA samples under this section to
319 strictly comply with this section or to abide by a statewide

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320 protocol for collecting DNA samples is not grounds for
321 challenging the validity of the collection or the use of a DNA
322 sample in court and evidence based upon or derived from the
323 collected DNA sample may not be excluded by a court.

324 (d) The detention, arrest, or conviction of a person based
325 upon a database match or database information may not be
326 invalidated if it is later determined that the sample was
327 obtained or placed in the database by mistake.

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

331 (13) ANALYSIS OF DNA SAMPLES.—

332 (a) The department shall specify procedures for the
333 collection, submission, identification, analysis, storage, and
334 disposition of the DNA samples and DNA records collected under
335 this section. These procedures shall also ensure compliance with
336 national quality assurance standards so that the DNA records may
337 be accepted into the national DNA database.

338 (b) The analyses of DNA samples collected under this
339 section shall be used only for law enforcement identification
340 purposes or to assist in the recovery or identification of human
341 remains or missing persons and may not be used for
342 identification of any medical or genetic condition.

343 (c) When completed, the results of DNA analysis shall be
344 entered into the statewide DNA database maintained and
345 administered by the department for such purpose, as provided in
346 this section.

347 (14) RESULTS.—The results of a DNA analysis and the
348 comparison of analytic results shall be released only to

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

353 (15) OFFENSES AND PENALTIES.—

354 (a) Any person subject to the requirements of this section
355 who willfully refuses to provide a DNA sample commits a
356 misdemeanor of the second degree, punishable as provided in s.
357 775.082 or s. 775.083.

358 (b) Any person who:

359 1. Knowingly or intentionally discloses a DNA record,
360 including the results of a DNA analysis, to a person or agency
361 other than one authorized to have access to such records under
362 this section;

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

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

369
370 commits a felony of the third degree, punishable as provided in
371 s. 775.082, s. 775.083, or s. 775.084.

372 (16) PROCEDURES FOR REMOVAL.—Unless the department
373 determines that a person is otherwise required by law to submit
374 a DNA sample for inclusion in the statewide DNA database, the
375 department shall, upon receipt and completion of such
376 verification of the information noted below as may be required,
377 promptly remove from the statewide DNA database the DNA analysis

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378 and any DNA biological samples that may have been retained of a
379 person included therein:

380 (a) On the basis of a conviction for a qualifying offense
381 specified in subparagraph (2)(g)2., if the department receives,
382 from the person seeking removal of DNA information from the
383 statewide DNA database, for each qualifying offense, a certified
384 copy of a final court order establishing that such conviction
385 has been overturned on direct appeal or set aside in a
386 postconviction proceeding; or

387 (b) On the basis of an arrest, if the department receives
388 from the person seeking removal of DNA information from the
389 statewide DNA database, for each charge against the person on
390 the basis of which the analysis was or could have been included
391 in the statewide DNA database, a certified copy of the No
392 Information or Nolle Prosequi filed by the state attorney, or
393 final court order or other official documentation establishing
394 that such charge has been dismissed or has resulted in an
395 acquittal or that no charge was filed within the applicable time
396 period.

397
398 For purposes of this section, a court order is not final if time
399 remains for an appeal or application for discretionary review
400 with respect to the order, or if a case has been remanded for
401 retrial or other proceedings and has not been resolved after
402 remand, or time remains for appeal or discretionary review of
403 the remanded case or any other such proceedings that have not
404 concluded and rendered the case resolved with finality.

405 (17) RULES.—The department shall, by rule, establish the
406 procedure by which a person seeking removal of his or her DNA

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407 analysis and biological sample from the statewide DNA database
408 shall submit the certified information required in subsection
409 (16) to the department.

410 Section 3. Paragraph (a) of subsection (2) of section
411 760.40, Florida Statutes, is amended to read:

412 760.40 Genetic testing; informed consent; confidentiality;
413 penalties; notice of use of results.-

414 (2) (a) Except for purposes of criminal prosecution, except
415 for purposes of determining paternity as provided in s. 409.256
416 or s. 742.12(1), and except for purposes of acquiring specimens
417 ~~from persons convicted of certain offenses or as otherwise~~
418 provided in s. 943.325, DNA analysis may be performed only with
419 the informed consent of the person to be tested, and the results
420 of such DNA analysis, whether held by a public or private
421 entity, are the exclusive property of the person tested, are
422 confidential, and may not be disclosed without the consent of
423 the person tested. Such information held by a public entity is
424 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
425 of the State Constitution.

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

428 948.014 Requirement to submit to drawing of blood or other
429 biological specimens.-

430 (1) As a condition of probation, community control, or any
431 other court-ordered community supervision, the court shall order
432 offenders ~~order persons convicted of offenses specified in s.~~
433 ~~943.325~~ to submit to the drawing of the blood or other
434 biological specimens when required under s. 943.325 as
435 ~~prescribed in that section~~ as a condition of the probation,

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436 community control, or other court-ordered community supervision.

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