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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 misdemeanor of the first degree, punishable as  
371 provided in s. 775.082 or s. 775.083.

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.