

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1105 Rapid DNA Grant Program

**SPONSOR(S):** Temple

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1140

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N	Leshko	Hall
2) Justice Appropriations Subcommittee	12 Y, 0 N	Saag	Keith
3) Judiciary Committee			

### SUMMARY ANALYSIS

The statewide DNA database assists law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. The Florida Department of Law Enforcement (FDLE) administers the statewide DNA database, which contains DNA samples submitted by persons convicted of or arrested for felony offenses and specified misdemeanor offenses and is capable of classifying, matching, and storing analyses of such DNA samples and related data. Currently, all DNA samples collected in a jail setting are forwarded to FDLE for analysis prior to being entered into the statewide DNA database and being submitted to the FBI's Combined DNA Index System (CODIS). According to the Florida Sheriffs Association, DNA testing of an arrestee can take weeks or months to process due to the nature of the testing and the current backlog of submissions.

CODIS is the general term used to describe the FBI's program of support for local, state, and national criminal justice DNA databases as well as the software used to run such databases. The National DNA Index System (NDIS) is the national level component of CODIS and contains DNA profiles contributed by federal, state, and local participating forensic laboratories, which enables law enforcement to exchange and compare DNA profiles electronically, thereby linking a crime or a series of crimes to each other or to a known offender.

Rapid DNA is the fully-automated process of generating a DNA profile from a person's buccal swab in less than two hours, without the need for human intervention or review. Rapid DNA systems allow county jails and sheriffs' offices to submit qualifying arrestee DNA profiles directly to the CODIS database during the booking process, completely bypassing the need for FDLE review and analysis. In order for a law enforcement agency to input a DNA profile from an approved Rapid DNA system into CODIS the agency's systems need information technology enhancements, such as Live Scan integration, criminal history information integration, and automated qualifying offense integration.

HB 1105 creates s. 943.324, F.S., to establish the Rapid DNA Grant Program within FDLE to award grants to county jails or sheriffs' offices to procure Rapid DNA machines and other necessary supplies required to rapidly process DNA samples in support of the statewide DNA database under s. 943.325, F.S. The bill requires FDLE to annually award funds received from the federal government and any appropriations specific to the grant program to county jails and sheriffs' offices. The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill appropriates a non-recurring sum of \$200,000 for the 2023-2024 fiscal year from the General Revenue Fund to FDLE to implement the Rapid DNA Grant Program.

The bill may have an indeterminate positive fiscal impact on local governments as certain county jails and sheriffs' offices will receive grant funds.

The bill provides an effective date of July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Statewide DNA Database

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells. Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.<sup>1</sup>

The statewide DNA database was established in 1989<sup>2</sup> to assist law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. The Florida Department of Law Enforcement (FDLE) administers the statewide DNA database, which is capable of classifying, matching, and storing analyses of DNA and other biological molecules and related data.<sup>3</sup>

##### *DNA Sample Collection and Analysis*

Multiple agencies share the responsibility of collecting DNA samples<sup>4</sup> from qualifying offenders, including the Florida Department of Corrections (DOC), the Florida Department of Juvenile Justice (DJJ), sheriffs' offices, and county correctional facilities.<sup>5</sup>

Qualifying offenders include both juveniles and adults who are:

- Committed to a county jail;
- Committed to or under the supervision of DOC or DJJ;
- Convicted of specified misdemeanor offenses; or
- Convicted of or arrested for any felony offense or attempted felony offense.<sup>6</sup>

A qualifying offender is required to submit a DNA sample for inclusion in the statewide database if he or she is:

- Arrested or incarcerated in Florida; or
- On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.<sup>7</sup>

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility.<sup>8</sup> An incarcerated person and a juvenile in the custody of DJJ must submit a DNA sample at least 45 days before his or her presumptive release date.<sup>9</sup>

The statewide database may contain DNA data obtained from the following types of biological samples:

- Crime scene samples.
- Samples required by law to be obtained from qualifying offenders.

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<sup>1</sup> FindLaw, *How DNA Evidence Works*, <https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html> (last visited Mar. 22, 2023).

<sup>2</sup> Ch. 89-335, Laws of Fla.

<sup>3</sup> S. 943.325(4), F.S.

<sup>4</sup> "DNA sample" means a buccal or other approved biological specimen capable of undergoing DNA analysis. S. 943.325(2)(f), F.S.

<sup>5</sup> FDLE, *DNA Database*, <https://www.fdle.state.fl.us/Forensics/Disciplines/DNA-Database> (last visited Mar. 22, 2023).

<sup>6</sup> S. 943.325(2)(g), F.S.

<sup>7</sup> S. 943.325(7), F.S.

<sup>8</sup> S. 943.325(7)(b), F.S.

<sup>9</sup> S. 943.325(7)(c), F.S.

- Samples lawfully obtained during the course of a criminal investigation, including those from deceased victims or deceased suspects.
- Samples from unidentified human remains.
- Samples from persons reported missing.
- Samples voluntarily contributed by relatives of missing persons.
- Other samples approved by FDLE.<sup>10</sup>

The collection of DNA samples may be performed by any person using a collection kit approved by FDLE as directed in the kit or pursuant to other procedures approved by or acceptable to FDLE.<sup>11</sup> After collection, the DNA samples are forwarded to FDLE for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person from whom the sample was taken.<sup>12</sup> When an analysis is complete it is entered into the statewide DNA database.<sup>13</sup> The analysis results allow for the comparison of DNA from unresolved cases to the DNA of both known offenders and that from other unresolved cases in an attempt to identify the perpetrator.<sup>14</sup> All accredited local government crime laboratories in Florida have access to the statewide DNA database in accordance with rules and agreements established by FDLE.<sup>15</sup>

FDLE specifies database procedures to maintain compliance with national quality assurance standards to ensure that DNA records will be accepted into the National DNA Index System. Results of any DNA analysis may only be released to criminal justice agencies.<sup>16</sup> Otherwise, the information is confidential and exempt from s. 119.07(1), F.S., and art. I, s. 24(a), of the Florida Constitution.<sup>17</sup>

### *State Funding*

DNA samples collected from persons arrested for any felony offense or attempted felony offense are subject to sufficient funding appropriations.<sup>18</sup> Additionally, a convicted qualifying offender must pay the actual costs of collecting the approved DNA sample, unless he or she is declared indigent by the court.<sup>19</sup>

### FBI's Combined DNA Index System (CODIS)

The most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats or satellite tandem repeats (STRs).<sup>20</sup> In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS).<sup>21</sup> CODIS is now the general term used to describe the FBI's program of support for local, state, and national criminal justice DNA databases as well as the software used to run these databases.<sup>22</sup>

### *National DNA Index System (NDIS)*

<sup>10</sup> S. 943.325(6), F.S.

<sup>11</sup> Fla. Admin. Code R. 11D-6.001 and 11D-6.003.

<sup>12</sup> S. 943.325(10-11), F.S.

<sup>13</sup> S. 943.325(13)(c), F.S.

<sup>14</sup> FDLE, *Submission FAQ DNA Database*, <https://www.fdle.state.fl.us/Forensics/Submission-FAQ/DNA-Database> (last visited Mar. 22, 2023).

<sup>15</sup> S. 943.325(4), F.S.

<sup>16</sup> Criminal justice agencies include the court, the Florida Department of Law Enforcement, the Department of Juvenile Justice, components of the Department of Children and Families, components of the Department of Financial Services, and other governmental agencies that administrate criminal justice. S. 943.045(11), F.S.

<sup>17</sup> S. 943.325(14), F.S.

<sup>18</sup> S. 943.325(3)(b), F.S.

<sup>19</sup> S. 943.325(12)(a), F.S.

<sup>20</sup> Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), <https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf> (last visited Mar. 22, 2023).

<sup>21</sup> *Id.*

<sup>22</sup> FBI, *Frequently Asked Questions on CODIS and NDIS*, <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet> (last visited Mar. 22, 2023).

The DNA Identification Act of 1994 (DNA Act)<sup>23</sup> authorized the government to establish a National DNA Index, and in 1998 the National DNA Index System (NDIS) was established. NDIS is the national level component of CODIS and contains DNA profiles contributed by federal, state, and local participating forensic laboratories,<sup>24</sup> enabling law enforcement to exchange and compare DNA profiles electronically, thereby linking a crime or a series of crimes to each other or to a known offender. If a match is identified, the laboratories involved exchange information to verify the match and establish coordination between the two agencies. This match can provide probable cause for law enforcement to obtain a warrant to collect a biological reference sample from an offender. A laboratory can then perform DNA analysis on the known biological sample and present the analysis as evidence in court.<sup>25</sup>

A state seeking to participate in NDIS must sign a memorandum of understanding with the FBI agreeing to the DNA Act's requirements, including record-keeping requirements and other procedures. To submit a DNA record to NDIS, a participating laboratory must adhere to federal law regarding expungement<sup>26</sup> procedures, and the DNA sample must:

- Be generated in compliance with the FBI Director's Quality Assurance Standards;
- Be generated by an accredited and approved laboratory;
- Be generated by a laboratory that undergoes an external audit every two years to demonstrate compliance with the FBI Director's Quality Assurance Standards;
- Be from an acceptable data category, such as:
  - Convicted offender;
  - Arrestee;
  - Detainee;
  - Forensic case;
  - Unidentified human remains;
  - Missing person; or
  - Relative of a missing person.
- Meet minimum CODIS requirements for the specimen category; and
- Be generated using an approved kit.<sup>27</sup>

### DNA Evidence Backlog

The U.S. Government Accountability Office found that the backlog in DNA evidence testing requests at state and local crime labs, with a delay of 30 days or longer between when the labs receive the DNA evidence and when the labs return the results, has increased 85 percent in recent years.<sup>28</sup> Since 2004, the U.S. Justice Department has spent more than \$1 billion to help state and local labs expand their capacity to complete DNA test requests, however, these efforts have failed to keep pace with the increasing number of requests.<sup>29</sup>

According to the Florida Sheriffs Association, DNA testing of an arrestee can take weeks or months to process due to the nature of the testing and the current backlog of submissions.<sup>30</sup>

### *DNA Capacity Enhancement for Backlog Reduction Program*

The DNA Capacity Enhancement for Backlog Reduction Program (CEBR) provides funding to states and units of local government with existing crime laboratories that conduct DNA analysis to increase

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<sup>23</sup> 34 U.S.C. § 12592.

<sup>24</sup> All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate in NDIS. *Supra* note 22.

<sup>25</sup> *Supra* note 22.

<sup>26</sup> See 34 U.S.C. § 12592(d)(2)(A)(i-ii) (requiring states to expunge a DNA record when a conviction is overturned or a charge is dismissed, results in an acquittal, or when no charge is filed).

<sup>27</sup> *Supra* note 22.

<sup>28</sup> U.S. News, *DNA Evidence Backlog Has Soared by 85 Percent*, <https://www.usnews.com/news/national-news/articles/2019-03-22/dna-evidence-backlog-has-soared-by-85-percent> (last visited Mar. 22, 2023).

<sup>29</sup> *Id.*

<sup>30</sup> Florida Sheriffs Association, *Funding for Rapid DNA Systems in County Jails* (on file with the Criminal Justice Subcommittee).

the laboratories' capacity to process more DNA samples for entry into CODIS.<sup>31</sup> Applicants for funding through CEBR must ensure:

- That all eligible DNA profiles are entered into CODIS, and where applicable, NDIS.
- That all DNA profiles uploaded to NDIS follow the NDIS DNA Data Acceptance Standards.
- That each DNA analysis conducted and the resulting profile generated are maintained pursuant to all applicable federal privacy requirements.<sup>32</sup>

### *Debbie Smith DNA Backlog Grant Program*

The Debbie Smith DNA Backlog Grant Program also provides funding to support public crime laboratories' work to build capacity to process DNA evidence.<sup>33</sup> Among other requirements, funding under this program requires states receiving funds to create explicit and transparent plans for the reduction of the backlog and meeting privacy standards when DNA evidence is collected from crime scenes or sexual assault forensic exams.<sup>34</sup>

### Rapid DNA

Rapid DNA is the fully-automated process of generating a DNA profile from a person's buccal swab in less than two hours, without the need for human intervention or review.<sup>35</sup> Rapid DNA systems allow states to submit qualifying arrestee DNA profiles directly to the CODIS database during the booking process, which allows the arrestee's DNA profile to be immediately searched against DNA profiles from unsolved crimes of special concern.<sup>36</sup> The Wants and Warrants system will immediately send a message involving any exact DNA matches to the booking and investigative agencies. Searches against other unsolved crimes not designated as special concern will be conducted per normal CODIS operation and match notifications will follow the existing CODIS process. In order for a law enforcement agency to input a DNA profile from an approved Rapid DNA system into CODIS the agency's systems need information technology enhancements, such as Live Scan integration, criminal history information integration, and automated qualifying offense integration.<sup>37</sup> Rapid DNA systems are not authorized, however, for use on crime scene samples. Crime scene DNA samples must be processed by an accredited forensic DNA laboratory that follows the FBI Quality Assurance Standards to be eligible for upload and search on the CODIS system.<sup>38</sup>

In 2020, Florida was selected by the FBI, along with four other states, to participate in the Rapid DNA pilot project. FDLE's technology was approved by the FBI and at the time Florida was the only participating state utilizing a fully-automated process. The FBI used data from this project to establish national standards for Rapid DNA.<sup>39</sup>

### **Effect of Proposed Changes**

HB 1105 creates s. 943.324, F.S., to establish the Rapid DNA Grant Program within FDLE to award grants to county jails or sheriffs' offices to procure Rapid DNA machines and other necessary supplies required to rapidly process DNA samples in support of the statewide DNA database under s. 943.325,

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<sup>31</sup> U.S. Department of Justice, *FY 2022 DNA Capacity Enhancement for Backlog Reduction (CEBR) Program (Formula)*, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/O-BJA-2022-171344.pdf> (last visited Mar. 22, 2023).

<sup>32</sup> *Id.*

<sup>33</sup> 34 U.S.C. § 40701.

<sup>34</sup> *Id.*

<sup>35</sup> FBI, *Rapid DNA Executive Summary – FBI's Vision of Rapid DNA*, <https://www.fbi.gov/file-repository/rapid-dna-executive-summary-9-25-17-final.pdf/view> (last visited Mar. 22, 2023).

<sup>36</sup> Unsolved crimes of special concern are crimes involving a significant public safety threat and are determined by state-wide policies. *Supra* note 36.

<sup>37</sup> FBI, *Booking Station Rapid DNA and Combined DNA Index System (CODIS)*, <https://le.fbi.gov/science-and-lab-resources/biometrics-and-fingerprints/codis/rapid-dna> (last visited Mar. 22, 2023).

<sup>38</sup> *Supra* note. 36.

<sup>39</sup> FDLE, *FDLE, LCSO unveils nation's first automated rapid DNA collection*, <https://www.fdle.state.fl.us/News/2020/February/FDLE,-LCSO-unveils-nation%E2%80%99s-first-automated-rapid#:~:text=Florida%E2%80%99s%20Pilot%3A%20Florida%20is%20one%20of%20five%20states,pilots%20to%20establish%20national%20standards%20for%20Rapid%20DNA> (last visited Mar. 22, 2023).

F.S. The bill requires FDLE to annually award funds received from the federal government and any appropriations specific to the grant program to county jails and sheriffs' offices.

The bill authorizes FDLE to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

The bill appropriates a non-recurring sum of \$200,000 for the 2023-2024 fiscal year from the General Revenue Fund to FDLE to implement the Rapid DNA Grant Program.

The bill provides an effective date of July 1, 2023.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 943.324, F.S., relating to Rapid DNA Grant Program for county jails or sheriffs' offices.

**Section 2:** Provides an appropriation.

**Section 3:** Provides an effective date of July 1, 2023.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill appropriates a non-recurring sum of \$200,000 for the 2023-2024 fiscal year from the General Revenue Fund to FDLE to implement the Rapid DNA Grant Program. The bill specifies that the total amount of grant awards may not exceed funding appropriated for the program.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill may have an indeterminate positive fiscal impact on local governments as certain county jails and sheriffs' offices will receive grant funds.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have an indeterminate positive impact on the private sector as the bill allows for FDLE to grant funds to local governments for the purchase of Rapid DNA machines, which may be from a private entity.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants FDLE authority to establish criteria and set specific time periods for the acceptance of applications and for the selection process for awarding grant funds.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.