

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 533 DNA Samples from Inmates

**SPONSOR(S):** Fabricio

**TIED BILLS:** IDEN./SIM. BILLS: SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N	Leshko	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee	17 Y, 0 N	Leshko	Kramer

### SUMMARY ANALYSIS

Florida's 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 is capable of classifying, matching, and storing analyses of such DNA samples and related data.

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

Under s. 943.325, F.S., 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.

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.

An arrested offender must submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility. 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.

HB 533 creates an unnumbered section of law, requiring each inmate in the custody of DOC to submit a DNA sample to DOC no later than September 30, 2024, if he or she has not previously provided a DNA sample pursuant to s. 943.325, F.S., relating to the Florida's statewide DNA database. The bill directs DOC to collect and process such samples in accordance with s. 943.325, F.S.

The bill is not anticipated to have a fiscal impact on DOC or FDLE. See Fiscal Analysis.

The bill provides an effective date of upon becoming a law.

# 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>

Florida's 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>

Under s. 943.325, F.S., 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> When an offender is received into DOC's custody, reception center staff reviews the statewide database to determine if a DNA sample is already on file for that offender. If no sample is currently on file, a DNA sample is taken and forwarded to FDLE. If FDLE notifies DOC that a submitted DNA sample was rejected, a new DNA sample is taken and re-submitted to FDLE.<sup>9</sup>

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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 Jan. 25, 2024).

<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 Jan. 25, 2024).

<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> DOC, *Agency Analysis of 2024 Senate Bill 524*, p. 2 (Jan. 19, 2023)(on file with the House Judiciary Committee).

DNA reviews are also conducted when an incarcerated person leaves DOC's custody to attend a court hearing or is transferred to a private correctional facility.<sup>10</sup> Additionally, 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>11</sup>

If an offender is released from custody to supervision, another DNA review is conducted. Moreover, within the first 60 days of supervision, a case management review is conducted to ensure that a DNA sample has been collected and forwarded to FDLE for processing.<sup>12</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.
- 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>13</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>14</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>15</sup>

When an analysis is complete it is entered into the statewide DNA database.<sup>16</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>17</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>18</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>19</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>20</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>21</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

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<sup>10</sup> DOC, *supra* at note 9.

<sup>11</sup> S. 943.325(7)(c), F.S.

<sup>12</sup> DOC, *supra* at note 9.

<sup>13</sup> S. 943.325(6), F.S.

<sup>14</sup> Fla. Admin. Code R. 11D-6.001 and 11D-6.003.

<sup>15</sup> S. 943.325(10-11), F.S.

<sup>16</sup> S. 943.325(13)(c), F.S.

<sup>17</sup> FDLE, *Submission FAQ DNA Database*, <https://www.fdle.state.fl.us/Forensics/Submission-FAQ/DNA-Database> (last visited Jan. 25, 2024).

<sup>18</sup> S. 943.325(4), F.S.

<sup>19</sup> Criminal justice agencies include the court, FDLE, DJJ, 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>20</sup> S. 943.325(14), F.S.

<sup>21</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 Jan. 25, 2024).

System (CODIS).<sup>22</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>23</sup>

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

The DNA Identification Act of 1994 (DNA Act)<sup>24</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>25</sup> enabling law enforcement to exchange and compare DNA profiles electronically in an attempt to link 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>26</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>27</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>28</sup>

### **Effect of Proposed Changes**

HB 533 creates an unnumbered section of law, requiring each inmate in the custody of the Florida Department of Corrections (DOC) to submit a DNA sample to DOC no later than September 30, 2024, if he or she has not previously provided a DNA sample pursuant to s. 943.325, F.S. The bill directs DOC to collect and process such samples in accordance with s. 943.325, F.S.

The bill provides an effective date of upon becoming a law.

#### **B. SECTION DIRECTORY:**

**Section 1:** Creates an unnumbered section of law.

**Section 2:** Provides an effective date of upon becoming a law.

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<sup>22</sup> *Id.*

<sup>23</sup> FBI, *Frequently Asked Questions on CODIS and NDIS*, <https://www.fbi.gov/how-we-can-help-you/dna-fingerprint-act-of-2005-expungement-policy/codis-and-ndis-fact-sheet> (last visited Jan. 25, 2024).

<sup>24</sup> 34 U.S.C. § 12592.

<sup>25</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 23.

<sup>26</sup> *Supra* note 23.

<sup>27</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>28</sup> *Supra* note 23.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill is not anticipated to have a fiscal impact on DOC or FDLE.<sup>29</sup> DOC reported that as of November 20, 2023 there were 48 inmates in Florida from which DNA samples had not been collected. Additionally, FDLE reported that there is no expected fiscal impact to FDLE's lab due to the collection of DNA samples as required by the bill.<sup>30</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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<sup>29</sup> DOC, *supra* at note 9.

<sup>30</sup> FDLE, Agency Analysis of 2024 House Bill 533, p. 2 (Nov. 27, 2023)(on file with the House Criminal Justice Subcommittee).

