

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 697

DNA Testing

SPONSOR(S): Snyder

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>7 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>13 Y, 0 N</u>	<u>Cunningham</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u>27 Y, 0 N</u>	<u>Leznoff</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Current law requires incarcerated persons and persons who are under some form of community supervision to submit blood or other biological specimens if they have been convicted of any of the following enumerated offenses:

- Chapter 794 (sexual battery), chapter 800 (lewdness and indecent exposure), s. 782.04 (murder), s. 784.045 (aggravated battery), s. 810.02 (burglary), s. 812.133 (carjacking), or s. 812.135 (home-invasion robbery).
- Effective July 1, 2002, and contingent upon specific appropriation, s. 812.13 (robbery) or s. 812.131 (robbery by sudden snatching).
- Effective July 1, 2003, and contingent upon specific appropriation, chapter 787 (kidnapping, false imprisonment, luring or enticing a child) or s. 782.07 (manslaughter).
- Effective July 1, 2004, and contingent upon specific appropriation, any forcible felony, as described in s. 776.08, aggravated child abuse, as described in s. 827.03(2), aggravated abuse of an elderly person or a disabled adult, as described in s. 825.102(2), or any felony violation of chapter 790 involving the use or possession of a firearm.
- Effective July 1, 2005 and contingent upon specific appropriation, any felony offense.

HB 697 expands the list of enumerated offenses to include any felony offense irrespective of specific appropriation, certain misdemeanors, and any offense that the court found at sentencing was committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang.

This bill takes effect July 1, 2007.

The Florida Department of Law Enforcement has requested 2 FTE and \$3,007,929 from General Revenue for FY 2007-08 to expand the DNA database to include all felons.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 2/23/2007

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – HB 697 expands the list of offenses which would require a person convicted of such offense to submit blood or biological specimens.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1989, the Legislature enacted s. 943.325, F.S., which required the Florida Department of Law Enforcement (FDLE) to establish and maintain a statewide DNA data bank.¹ Originally, the statute only required persons convicted of offenses relating to sexual battery or lewd and lascivious conduct to submit blood samples to the FDLE.² However, in 2001, the statute was amended by expanding the list of felony offenses which would require a person to submit blood specimens, and by establishing a timetable in which such felony offenses would become effective.³

In its current form, s. 943.325, F.S., requires incarcerated persons and persons who are under some form of community supervision⁴ to submit blood or other biological specimens⁵ if they have been convicted of any of the following enumerated offenses:

- Chapter 794 (sexual battery), chapter 800 (lewdness and indecent exposure), s. 782.04 (murder), s. 784.045 (aggravated battery), s. 810.02 (burglary), s. 812.133 (carjacking), or s. 812.135 (home-invasion robbery).
- Effective July 1, 2002, and contingent upon specific appropriation, s. 812.13 (robbery) or s. 812.131 (robbery by sudden snatching).
- Effective July 1, 2003, and contingent upon specific appropriation, chapter 787 (kidnapping, false imprisonment, luring or enticing a child) or s. 782.07 (manslaughter).
- Effective July 1, 2004, and contingent upon specific appropriation, any forcible felony, as described in s. 776.08, aggravated child abuse, as described in s. 827.03(2), aggravated abuse of an elderly person or a disabled adult, as described in s. 825.102(2), or any felony violation of chapter 790 involving the use or possession of a firearm.
- Effective July 1, 2005, and contingent upon specific appropriation, any felony offense.

As indicated above, qualifying offenses have been added at a measured pace, with each year's expansion made "contingent upon specific appropriation." While there was statutory authority for the collection of all felony convictions, the specific appropriation needed to make this provision effective has not yet been fully enacted.

Effect of the Bill

¹ Fla. Laws ch. 89-335.

² *Id.*

³ Fla. Laws ch. 2001-97.

⁴ Community supervision generally includes probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision.

⁵ DNA is most commonly collected using an oral swab.

HB 697 deletes the timetable language outlined above and removes language indicating that the requirement is subject to appropriation. The effect of the deletions is that incarcerated persons and persons under some form of community supervision are required to submit blood or other biological specimens for inclusion in the statewide DNA data bank if they have been convicted of any felony offense, irrespective of whether there is specific appropriation.

HB 697 also adds additional crimes to the list of offenses which would require a person to submit blood or biological specimens. Specifically, the bill adds:

- any offense that the court found at sentencing was committed for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang⁶;
- misdemeanor violations of ss. 784.048 (stalking), 810.14 (voyeurism), 847.011 (prohibiting certain acts in connection with obscene materials), 847.013 (exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations), 847.0135 (computer pornography), 877.26 (direct observation, videotaping, or visual surveillance of customers in merchant's dressing room), and any offense.

C. SECTION DIRECTORY:

Section 1. Amends s. 943.325, F.S., deleting obsolete language and adding offenses for which a conviction requires the person convicted to provide biological specimens.

Section 2. This bill has an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant (See Fiscal Comments).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Insignificant (See Fiscal Comments).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Law Enforcement has requested 2 FTE and \$3,007,929 from General Revenue for FY 2007-08 to expand the DNA database to include all felons. Of this amount, \$828,277 represents

⁶ Section 874.04, F.S., authorizes a court to enhance penalties if the court finds, at sentencing, that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. Section 874.03, F.S., defines "criminal street gang" and sets forth the criteria used to determine whether a person is a "criminal street gang member."

annual recurring costs⁷ of additional staff and consumable supplies and \$2,179,652 represents non-recurring infrastructure and other start-up costs. This request is made to address the testing of all felons, which under current law is contingent upon specific appropriation. The bill removes current law provisions that make DNA collection from all felons contingent upon appropriations.

Aside from the removal of the requirement of specific appropriation regarding the testing of all felons, this bill expands the number of qualifying offenders by adding specified misdemeanors. The department indicates that the number resultant from this change is likely to be modest. It indicates that funding of their current request, as described above will be sufficient to accommodate the increased workload.

More specifically, the department identified 226 offenders sentenced for qualifying misdemeanors in 2005 who did not already have a felony conviction that would require a DNA sample under current law. No data exist to estimate the impact of misdemeanors specified in this bill that might be done in furtherance of a criminal street gang, but the department feels that the impact would be minimal.

Similarly, any impact on local governments from collecting and submitting additional samples to the Department of Law Enforcement is expected to be insignificant because of the small number of projected offenders who will be added to the database if this bill becomes law.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

This legislation will enhance the criminal justice system's ability to identify offenders and should also result in more compelling evidence for juries. DNA evidence has become a mainstay of prosecution efforts and oftentimes is indispensable for successful prosecutions.

Expanding the DNA base to include convicted misdemeanants who have committed crimes revealing a possible nexus with sex crimes will provide an enhanced level of protection for our most vulnerable of victims.

⁷ This figure does not attempt to estimate the impact of future legislative decisions such as the pay package that would increase future costs.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES