

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Criminal Justice Committee

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BILL: SB 472

INTRODUCER: Senator Dean

SUBJECT: DNA Testing

DATE: January 10, 2008

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			JA	
4.				
5.				
6.				

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**I. Summary:**

Senate Bill 472 expands the Florida Department of Law Enforcement DNA database by requiring biological sample collections from people convicted of certain misdemeanor offenses, and in cases where the court finds a crime was committed for the purpose of furthering the interests of a criminal street gang.

The bill deletes superfluous language from the statute that made the collections in certain types of cases contingent upon specific appropriations, as the appropriations have been made and the collections are currently occurring.

This bill substantially amends section 943.325 of the Florida Statutes.

**II. 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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> Ch. 89-335, Laws of Florida.

<sup>2</sup> *Id.*

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.<sup>3</sup>

In its current form, s. 943.325, F.S., requires incarcerated persons and persons who are under some form of community supervision<sup>4</sup> to submit blood or other biological specimens<sup>5</sup> if they have been convicted of any of the following enumerated offenses:

- Chapter 794, F.S. (sexual battery), chapter 800, F.S. (lewdness and indecent exposure), s. 782.04, F.S. (murder), s. 784.045, F.S. (aggravated battery), s. 810.02, F.S. (burglary), s. 812.133, F.S. (carjacking), or s. 812.135, F.S. (home-invasion robbery).
- Effective July 1, 2002, and contingent upon specific appropriation, s. 812.13, F.S. (robbery), or s. 812.131, F.S. (robbery by sudden snatching).
- Effective July 1, 2003, and contingent upon specific appropriation, chapter 787, F.S. (kidnapping, false imprisonment, luring or enticing a child), or s. 782.07, F.S. (manslaughter).
- Effective July 1, 2004, and contingent upon specific appropriation, any forcible felony, as described in s. 776.08, F.S., aggravated child abuse, as described in s. 827.03(2), F.S., aggravated abuse of an elderly person or a disabled adult, as described in s. 825.102(2), F.S., or any felony violation of chapter 790, F.S., 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." Although there was a brief period when appropriations were not made, the Legislature agreed to fund a two-year "phase-in" beginning in 2006 and as of this date, FDLE is collecting DNA specimens for inclusion in the database for any felony offense.

### III. Effect of Proposed Changes:

Senate Bill 472 deletes the timetable language outlined above and removes language indicating that the requirement of expanding the DNA database is subject to appropriation. The appropriations have been made and FDLE is collecting specimens for any felony, therefore the language is superfluous.

The bill adds certain misdemeanor offenses for inclusion in the database.

Offenders who are convicted of misdemeanor violations of ss. 784.048, 810.14, 847.011, 847.013, 847.0135, or 877.26, F.S., or have previously been convicted and are still under some form of incarceration, juvenile commitment, or court-ordered supervision, will be required to submit biological specimens.

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<sup>3</sup> Ch. 2001-97, Laws of Florida.

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

<sup>5</sup> DNA is most commonly collected using an oral swab.

The misdemeanor offenses currently prohibited by these sections of law are:

- Section 784.048(2), F.S. – Stalking
  - Any person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree.
- Section 810.14(1), F.S. – Voyeurism
  - A person commits the offense of voyeurism when he or she, with lewd, lascivious, or indecent intent, secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy. A first violation is a misdemeanor of the first degree.
- Section 847.011, F.S. - Prohibition of certain acts in connection with obscene, lewd, etc., materials
  - Any person who knowingly sells, lends, gives away, distributes, transmits, shows, or transmutes, or offers to sell, lend, give away, distribute, transmit, show, or transmute, or has in his or her possession, custody, or control with intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise in any manner, any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose; or who knowingly designs, copies, draws, photographs, poses for, writes, prints, publishes, or in any manner whatsoever manufactures or prepares any such material, matter, article, or thing of any such character; or who knowingly writes, prints, publishes, or utters, or causes to be written, printed, published, or uttered, any advertisement or notice of any kind, giving information, directly or indirectly, stating, or purporting to state, where, how, of whom, or by what means any, or what purports to be any, such material, matter, article, or thing of any such character can be purchased, obtained, or had; or who in any manner knowingly hires, employs, uses, or permits any person knowingly to do or assist in doing any act or thing mentioned above, is guilty of a misdemeanor of the first degree.
  - The knowing possession by any person of three or more identical or similar materials, matters, articles, or things coming within the provisions of the previous paragraph is prima facie evidence of the violation of said paragraph.

- A person who knowingly has in his or her possession, custody, or control any obscene book, magazine, periodical, pamphlet, newspaper, comic book, story paper, written or printed story or article, writing, paper, card, picture, drawing, photograph, motion picture film, film, any sticker, decal, emblem or other device attached to a motor vehicle containing obscene descriptions, photographs, or depictions, any figure, image, phonograph record, or wire or tape or other recording, or any written, printed, or recorded matter of any such character which may or may not require mechanical or other means to be transmuted into auditory, visual, or sensory representations of such character, or any article or instrument for obscene use, or purporting to be for obscene use or purpose, without intent to sell, lend, give away, distribute, transmit, show, transmute, or advertise the same, is guilty of a misdemeanor of the second degree. A person who, after having been convicted of violating this subsection, thereafter violates any of its provisions is guilty of a misdemeanor of the first degree. In any prosecution for such possession, it shall not be necessary to allege or prove the absence of such intent.
- Any person who knowingly promotes, conducts, performs, or participates in an obscene show, exhibition, or performance by live persons or a live person before an audience is guilty of a misdemeanor of the first degree.
- Section 847.013, F.S. - Exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations
  - It is unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell or rent a videotape of a motion picture to a minor or knowingly sell to a minor an admission ticket or pass or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.
  - It is unlawful for any person knowingly to rent or sell, or loan to a minor for monetary consideration, a videocassette or a videotape of a motion picture, or similar presentation, which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.
  - It is unlawful for any minor, or any person, to falsely represent to the owner, or to the owner's agent, that such minor is 17 years of age or older, or that he or she is the parent of the minor, with the intent to procure such minor's admission to such premises, or such minor's purchase or rental of a videotape, for a monetary consideration.
  - A violation of any of these provisions constitutes a misdemeanor of the first degree.

- Section 847.0135, F.S. - Computer pornography
  - It is a first degree misdemeanor for any owner or operator of a computer on-line service, Internet service, or local bulletin board service knowingly to permit a subscriber to utilize the service to violate the laws against computer pornography.
- Section 877.26, F.S. - Direct observation, videotaping, or visual surveillance of customers in merchant's dressing room
  - It is a first degree misdemeanor for any merchant to directly observe or make use of video cameras or other visual surveillance devices to observe or record customers in the merchant's dressing room, fitting room, changing room, or restroom when such room provides a reasonable expectation of privacy.

The bill would also require DNA sample collection from persons who have been found by the court to have committed offenses for the purpose of benefiting, promoting, or furthering the interests of a criminal street gang. The definition of criminal street gang is found in s. 874.03(1), F.S., which states: "Criminal street gang" means a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols and have two or more members who, individually or collectively, engage in or have engaged in a pattern of criminal street gang activity.

The bill becomes effective July 1, 2008.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

The categories of offenses qualifying for DNA collection upon conviction have been steadily and deliberately expanded since the inception of the convicted-offender DNA database provided in s. 943.325, F.S., in 1990. Effective July 1, 2002, and each succeeding year up through 2005, qualifying offenses have been added at a measured pace, with each year's expansion made "contingent upon specific appropriation."

The final step, for July 1, 2005, was to take in "any felony offense." However, the specific appropriation needed to make this provision effective was not enacted during the 2005 Legislative Session. Statutory authority remained, however, for collection for all felony convictions "upon specific appropriation."

In 2006, the Legislature approved a 2-year phase-in process for funding the collection of DNA specimens from all convicted felons. During FY 2006-2007, funding was appropriated for all remaining felony offenses under ch. 812, F.S., theft, robbery, and related crimes, not already covered by existing DNA collection law (FDLE received 2 FTE and \$1,085,601 for FY 2006-07). During FY 2007-2008, the funding was allocated to include funding for all remaining felony offenses not previously collected (FDLE received 2 FTE and \$3,007,929 for FY 2007-08).

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 and that the department will be able to absorb the small number of submissions expected without additional funding requests.

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

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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