

**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.)

Prepared By: The Professional Staff of the Judiciary Committee

**BILL:** CS/CS/SB 2276

**INTRODUCER:** Judiciary Committee, Governmental Oversight and Accountability Committee, and Senator Oelrich

**SUBJECT:** DNA Database

**DATE:** April 16, 2009      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Fav/2 amendments</b>
2.	Wilson	Wilson	GO	<b>Fav/CS</b>
3.	Treadwell	Maclure	JU	<b>Fav/CS</b>
4.			JA	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill requires that persons who are arrested for or charged with any felony offense submit a DNA sample at the time they are booked into a jail, correctional facility, or juvenile facility. This requirement will occur, as funding is provided, over the next 10 years. The first phase will begin on January 1, 2011, and will require the DNA sample from persons arrested for felony crimes set forth in chapters 782 (murder), 784 (assault and battery), 794 (sexual battery), and 800 (lewd or lascivious acts), F.S.

The bill is also a reorganization of s. 943.325, F.S., commonly known as the DNA Database statute. This has required a substantial rewording of the section; however, current law is mostly clarified or simplified.

The notable changes and additions to the section include:

- New misdemeanor offenses, which upon conviction will require that a DNA sample be provided. The new misdemeanors include:
  - o Unnatural or lascivious act, s. 800.02, F.S.

- o Exposure of sexual organs, s. 800.03, F.S.
- o Luring or enticing a child, s. 787.025, F.S.
- o Duty to report sexual battery, s. 794.027, F.S.;
- New requirement that both adult and juvenile sex offenders and sexual predators provide DNA samples, if they have not already done so upon conviction in Florida;
- Definitions of certain terms as used in the statutory reorganization are created;
- A reporting requirement that the Florida Department of Law Enforcement (FDLE) must fulfill in even-numbered years;
- New FDLE administrative duties;
- A delineation of the types of samples that may be kept in the database;
- More specificity with regard to who may take a DNA sample;
- Requirements for obtaining DNA samples from juveniles, who otherwise qualify, transferred to Florida through the Interstate Compact on Juveniles, and adults, who otherwise qualify, transferred through the Interstate Corrections Compact;
- Requirements regarding the information collecting agencies must submit to FDLE with a sample;
- Restrictions on the use of DNA samples; and
- Legislative findings.

The section reorganization also includes the creation of two new crimes related to the misuse of DNA records or samples, and refusal to provide a DNA sample.

This bill substantially amends section 943.325, Florida Statutes, and amends sections 760.40 and 948.014, Florida Statutes, for the purpose of conforming those sections to the provisions of the bill.

## II. **Present Situation:**

Currently, any person who is convicted of one of the following offenses is required to submit two biological (DNA) samples to the Department of Law Enforcement (FDLE):<sup>1</sup>

- Any felony offense;
- Any misdemeanor violation of stalking (s. 784.048, F.S.), voyeurism (s. 810.14, F.S.), obscenity (s. 847.011, F.S.), exposing a minor to harmful materials (s. 847.013, F.S.), computer pornography (s. 847.0135, F.S.), or direct observation, videotaping, or visual surveillance of customers in merchant's dressing rooms (s. 877.26, F.S.); or
- An offense that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

FDLE processes submitted DNA offender samples and stores the record in Florida's DNA database. FDLE also contributes DNA samples to the Federal Bureau of Investigation's (FBI) CODIS (Combined DNA Index System). CODIS contains two indexes: one contains DNA profiles of offenders, and the other contains forensic samples, generally evidence collected at crime scenes. Most commonly, forensic samples are searched against the offender index to

---

<sup>1</sup> Section 943.325(1)(a) and (b), F.S.

attempt to establish the identity of a person who might have committed a criminal offense and against other forensic samples to establish potential links between cases being investigated. Since the inception of the Florida convicted offender database, the number of known DNA samples gathered and entered into the system could be safely characterized as staggering. As of the end of August 2008, slightly over half a million samples from Florida have been analyzed and loaded into the system, and a total of 9,052 investigations have been aided because of those samples.

The FDLE Forensic Services Unit runs an average of 10,000 known samples per month. Each week state and national “match reports” come through the system, when known samples are run against forensic unknown samples from crime scenes and other sources. Florida has an approximate 50-percent match rate – that is, about half the time a known sample is linked to a forensic (unknown) sample.

The known DNA samples arrive at FDLE from the agencies that collect them from convicted offenders. At present there are approximately 500 “collection agencies.” The collection kits are provided by FDLE. They are tracked by barcode with the identifying information provided by the agency taking the sample. According to information obtained from FDLE, this particular part of the process tends to create a bottleneck. Frequently, samples cannot be analyzed and loaded into the system because agencies forward the samples with incomplete data, which leads to a system slow-down while the FDLE staff verifies and completes the data.

One example of the cost inefficiency that sometimes occurs due to incomplete data and record-checking at the collection site is found in the number of duplicate samples received by the lab. This happens when a known sample is submitted for the same individual more than once – likely in an abundance of caution, but for reasons only known by the collection agency. It is estimated that the duplication rate is currently running at a full 20 percent of the samples received. The estimated cost associated with the duplicate samples is \$4 per duplicate. Using the average number of samples run per month of 10,000, and assuming the 20 percent duplication rate and cost of \$4 is correct, this amounts to an annual cost of \$96,000 that could be avoided if efficiency measures were created or put in place at the collection sites.

To date, 13 states – Maryland’s bill having recently been signed into law – have passed and implemented legislation authorizing the collection of DNA samples from felony arrestees. There are variations among the states because of their unique systems of criminal justice, but there are some recurring themes.

Six of the 13 states require DNA in all felony arrests, and four of those six states are implementing the program in a phased-in manner or upon specific funding. The seven remaining states are only taking arrestee samples in limited felony arrests. The states are also fairly evenly split on the issue of whether expungement of the sample and record is automatic under certain circumstances or if the arrestee has to initiate the process of expungement.

The federal government is set to implement collection of DNA samples from anyone charged with a federal crime and from non-U.S. citizens who face deportation. Congress enacted the

measure in late 2005, and the federal rule which will implement the measure is forthcoming.<sup>2</sup> It is estimated that the new requirements will add approximately 1.2 million samples a year to the federal DNA database.<sup>3</sup> The federal law allows an arrested person to have his or her DNA purged from the state and national DNA Index, upon a showing that his or her arrest did not culminate in a charge being filed, if the case was dismissed, or if he or she was acquitted.

### III. Effect of Proposed Changes:

As amended by the bill, subsections (3) and (7) of s. 943.325, F.S., will provide that any “qualifying offender” who is arrested<sup>4</sup> in this state, incarcerated in this state, or on probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision in the state will be required to submit a DNA sample<sup>5</sup> to a department-designated facility.

The term “qualifying offender” is defined to include any person convicted<sup>6</sup> of any felony offense or attempted a felony offense, or the misdemeanor offenses included under current law (specified above).<sup>7</sup>

The definition of “qualifying offender” will also include any person *arrested for* a felony offense committed in this state under the following conditions relating to funding:

. . . subject to sufficient funding appropriations passed by the Legislature and approved by the Governor according to the following schedule:

- Beginning January 1, 2011, all felonies defined by chapters 782 (murder), 784 (assault and battery), 794 (sexual battery), and 800 (lewd or lascivious offenses), F.S.
- Beginning January 1, 2013, all felonies defined by chapters 810 (burglary and trespass) and 812 (theft and robbery), F.S.

<sup>2</sup> Pub. L. 109-162, s. 1002 (2006); 28 C.F.R. s. 28.1.

<sup>3</sup> Debra Cassens Weiss, *U.S. Plans to Collect DNA From Every Federal Arrestee*, ABA JOURNAL (Apr. 17, 2008).

<sup>4</sup> The term “arrested” is defined to mean “apprehended or physically taken into custody, resulting in the submission of arrest fingerprints to the department, pursuant to s. 943.051.”

<sup>5</sup> The bill provides the following definition of the term “DNA”:

“DNA” means deoxyribonucleic acid. DNA is located in the cells and provides an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

The bill defines the term “DNA sample” to mean “a buccal or other approved biological specimen capable of undergoing DNA analysis.”

<sup>6</sup> The bill defines the term “convicted” to mean “a finding of guilt by a court of competent jurisdiction, or entry of a plea of nolo contendere or guilty, or, in the case of a juvenile, the finding of delinquency, regardless of adjudication.”

<sup>7</sup> The term “qualifying offender” also includes juveniles and adults committed to a county jail or committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105, F.S., and persons transferred to this state under the Interstate Compact on Juveniles, part XIII of ch. 985, F.S., or accepted under Article IV of the Interstate Corrections Compact, part III of ch. 941, F.S., and any person required to register as a sexual offender or sexual predator as defined in ss. 943.0435, 775.21, 944.607, or 985.4815, F.S.

- Beginning January 1, 2015, all felonies defined by chapters 787 (kidnapping), and 790 (firearm offenses), F.S.
- Beginning January 1, 2017, all felonies defined by chapter 893 (controlled substances), F.S.
- Beginning January 1, 2019, all felony offenses.

The bill authorizes FDLE to reject submissions of samples received for any felony arrests prior to funding of any phase of expansion or prior to FDLE's notification to submitting agencies. The bill requires FDLE, on or before February 1, 2010, and by February 1 of each even-numbered year through 2018, to provide the Legislature with a report listing the funding, infrastructure, facility, and personnel requirements for the DNA database and DNA evidentiary analysis for the expansion phase scheduled for the following year.

### **Establishment of Statewide DNA Database:**

As amended by the bill, subsection (4) of s. 943.325, F.S., will contain language similar to that currently located in subsection (8) which requires FDLE, through the statewide criminal laboratory analysis system, to establish, implement, and maintain a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA and other biological molecules and related data.

The bill specifies that FDLE will be the administrator of the statewide DNA database and that all accredited local government crime laboratories within the state shall have access through CODIS<sup>8</sup> to the statewide database in accordance with the rules and agreements established by the department.

### **Duties of FDLE**

As amended by the bill, subsection (5) of s. 943.325, F.S., will contain language similar to language currently located in subsection (9) to require FDLE to:

- Receive, process, and store DNA and the data derived therefrom furnished pursuant to the section.
- Collect, process, maintain, and disseminate information and records as provided by the section.
- Strive to maintain and disseminate only accurate and complete records.

Subsection (5) will also require FDLE to perform the following duties which are not specified in current law:

- Participate in the national DNA database program administered by the Federal Bureau of Investigation (FBI);
- Provide for liaison with the FBI and other criminal justice agencies relating to the state's participation in the CODIS program and the national DNA index system; and

---

<sup>8</sup> The bill defines "CODIS" to mean "the Federal Bureau of Investigation's Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories."

- Adopt rules specifying the proper procedure, including requisite identification information, for state and local law enforcement and correctional agencies to collect and submit DNA samples pursuant to the section.

### **Types of Samples**

Current law does not specify the types of DNA samples that can be kept in the DNA database. In subsection (6) of s. 943.325, F.S., the bill specifies that the statewide DNA database may contain DNA data obtained from the following types of biological samples:

- Crime scene samples;
- Samples contained from qualifying offenders required by this section to provide a biological sample for DNA analysis and inclusion in the statewide DNA database.
- Samples lawfully obtained during the course of a criminal investigation;
- Samples from deceased victims or suspects that were lawfully obtained during the course of a criminal investigation;
- Samples from unidentified human remains;
- Samples from persons reported missing;
- Samples voluntarily contributed by relatives of missing persons; and
- Other samples approved by the department.

### **Out-of-State Offenders**

The bill adds language in subsection (9) of s. 943.325, F.S., which is not in current law and requires the following offenders to provide a DNA sample to the entity responsible for supervision of the offender, which then is required to ensure that the DNA sample is collected and transmitted to FDLE:

- A qualifying offender who is transferred to this state under the Interstate Compact on Juveniles,<sup>9</sup> for a felony offense or attempted felony offense; or
- A qualifying offender who is accepted under Article IV of the Interstate Corrections Compact,<sup>10</sup> for a felony offense or attempted felony offense.

### **Collection of DNA and Liability**

Current law does not specifically state who is responsible for collecting a DNA sample. Current paragraph (10)(e) of s. 943.325, F.S., refers to a law enforcement officer or correctional officer taking a sample and also refers to medical personnel. Originally, DNA was collected through a blood draw; currently, it is collected through a cheek swab. The bill provides in s. 943.325(10), F.S., that the collection of DNA samples may be performed by any person using a collection kit approved by the department as directed in the kit or pursuant to other procedures approved by or acceptable to the department.

---

<sup>9</sup> See part XIII of ch. 985, F.S.

<sup>10</sup> See part III of ch. 941, F.S.

As amended by the bill, paragraph (10)(b) of s. 943.325, F.S., will contain language similar to that currently found in paragraph (10)(e), which provides that any person who collects or assists in the collection of a DNA sample is not civilly or criminally liable if a collection kit provided or approved by FDLE is used and the collection is done as directed in the kit, in a manner approved by the department, or is performed in an otherwise reasonable manner.

### **Reasonable Force**

As amended by the bill, subsection (8) of s. 943.325, F.S., will contain language similar to that currently found in paragraph (10)(e) to provide that duly authorized law enforcement and correctional personnel may employ reasonable force in cases where a qualifying offender refuses to provide a DNA sample required under this section, and no such employee shall be civilly or criminally liable for the use of reasonable force.

### **Sample Collection and Use**

As amended by the bill, subsection (11) of s. 943.325, F.S., will contain language similar to that currently found in subsection (5) which:

- Requires FDLE to provide DNA sample collection kits, labels, or other appropriate containers and instructions for the collection of DNA samples; and
- Provides that after collection, DNA samples must be forwarded to FDLE for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

The bill also adds language in paragraph (11)(a) of s. 943.325, F.S., which is not contained in current law, which provides that, at a minimum, the following information must be included with each submission:

- The qualifying offender's last name, first name, date of birth, race, gender, and State Identification (SID) number if known;
- The statute number of each offense charged;
- The collecting agency's name and address; and
- The name and telephone number of the person performing the collection of the DNA sample or witnessing the collection of the sample.

As amended by the bill, paragraph (11)(b) of s. 943.325, F.S., will contain language which is currently found in subsection (4) which provides that if a DNA sample submitted to FDLE cannot be used in the manner and for the purposes required by the section, FDLE may require that another sample be obtained.

### **Court Orders and Costs**

The bill moves language within s. 943.325, F.S., as follows:

- Subsection (12) will contain language similar to that currently found in paragraph (10)(a) which provides that the sentencing court must include in the judgment order for a qualifying offender a provision requiring collection of a DNA sample from the defendant in a manner consistent with this section.
- Paragraph (12)(a) will contain language similar to that currently found in subsection (12), which provides that unless the convicted person has been found indigent by the court, the person must pay the costs of collecting the approved biological specimens required under the section.
- Paragraph (12)(b) contains language similar to that currently found in paragraph (10)(f) and subsection (11) and provides that if the order of the sentencing court fails to order a qualifying offender to submit a DNA sample as mandated by the section, the prosecutor may seek an amended order. Alternatively, FDLE, the Department of Corrections, a law enforcement agency, or a prosecutor may apply to the circuit court for an order authorizing the seizure of the qualifying offender for the purpose of securing the required sample.
- Paragraph (12)(c) contains language that is currently found in subsection (13) which states that failure by a law enforcement agency or other entity involved in the collection of DNA samples under this section to strictly comply with the section or to abide by a statewide protocol for collecting DNA samples is not grounds for challenging the validity of the collection or the use of a DNA sample in court. Additionally, evidence based upon or derived from a collected DNA sample may not be excluded by a court.

To the extent that the evidentiary provision eliminates the ability of a defendant to challenge DNA evidence or present a defense at trial based upon the collection of DNA, the provision may be subject to scrutiny by the courts. If a court determines that the preclusion of evidentiary challenges in the bill is connected to solely ministerial acts of DNA collection, it may choose to uphold application of this provision.

The bill also adds language in paragraphs (12)(d) and (e) of s. 943.325, F.S., that is not contained in current law which provides that:

- The detention, arrest, or conviction of a person based upon a database match or database information will not be invalidated if it is later determined that the sample was obtained or placed in the database by mistake.
- All DNA samples submitted to the FDLE for any reason shall be retained in the statewide database and may be used for all lawful purposes as provided in the section.

### **Analysis of DNA Samples and Prohibitions on Use**

The bill creates language in subsection (13) of s. 943.325, F.S., that is not currently in law to provide that FDLE must specify procedures for the collection, submission, identification,

analysis, storage, and disposition of the DNA samples and DNA records<sup>11</sup> collected under the section. The procedures must also ensure compliance with national quality assurance standards so that the DNA records may be accepted into the national DNA database.

The bill also adds language providing that the analyses of DNA samples collected under the section shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains or missing persons, and may not be used for identification of any medical or genetic condition. The bill further provides that when completed, the results of DNA analysis shall be entered into the statewide DNA database maintained and administered by FDLE for such purpose, as provided in the section.

### **Releasing Results of Analysis**

As amended by the bill, subsection (14) of s. 943.325, F.S., will contain language currently contained in subsection (7), which provides that the results of a DNA analysis and the comparison of analytical results shall be released only to criminal justice agencies as defined in s. 943.045(10), F.S., at the request of the agency. Otherwise, such information is confidential and exempt from public records laws.

### **Criminal Penalties**

The bill creates the following two criminal offenses in subsection (15) of s. 943.325, F.S., which are not in current law. The bill makes it a second-degree misdemeanor for any person subject to the requirements of the section to willfully refuse to provide a DNA sample.

The bill creates a third-degree felony offense for any person who:

- Knowingly or intentionally discloses a DNA record, including the results of a DNA analysis, to a person or agency other than one authorized to have access to such records under the section;
- Knowingly or intentionally uses or receives DNA records, including the results of DNA analysis, for purposes other than those authorized under this section; or
- Knowingly or intentionally tampers or attempts to tamper with any DNA sample, the result of any analysis of a DNA sample, or a DNA sample collection container.

### **Procedures for Removal**

In subsection (16), the bill provides that unless FDLE determines that a person is otherwise required by law to submit a DNA sample for inclusion in the statewide database, FDLE must, upon proper verification of the information submitted by a person requesting removal of the DNA information, promptly remove DNA analysis and any biological samples from the statewide DNA database.

A person seeking removal of DNA information must:

---

<sup>11</sup> The bill defines the term “DNA record” to mean “all information associated with the collection and analysis of a person’s DNA sample, including the distinguishing characteristics collectively referred to as a DNA profile.”

- Provide a certified copy of a final court order establishing that the conviction has been overturned on direct appeal or set aside in a postconviction proceeding if the basis of the conviction is a qualifying offense specified in this bill; or
- Provide a certified copy of the No Information or *Nolle Prosequi* filed by the state attorney, or final court order or other official documentation establishing that such charge has been dismissed or has resulted in an acquittal, or that no charge was filed within the applicable timeframe if the person seeks removal of the DNA information on the basis of an arrest.

The bill specifies that a court order is not considered final if:

- Time remains for an appeal or application for discretionary review with respect to the order;
- A case has been remanded for retrial or other proceeding and has not been resolved after remand; or
- Time remains for appeal or discretionary review of the remanded case or any other such proceedings that have not concluded and rendered the case resolved with finality.

### **Rulemaking Authority**

Subsection (17) of the bill authorizes the department to establish rules creating the procedure by which a person seeking removal of his or her DNA analysis and biological sample from the statewide DNA database submits the required information.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

The amendments to s. 760.40, F.S., could be read to expand the scope of public records exemptions held in compliance with the new DNA testing regimen. Because these tests cover a wider range of subjects, as a result of the deletion of the condition of “convicted,” this provision effectively could extend confidential and exempt status to a broader range of participants. At the same time, current law exempts such tests from the public records. The section of law in which the status of test results is located is particularly difficult to read. A subsequent redrafting of this section would improve clarity and readability and may avoid any untoward result.

### **C. Trust Funds Restrictions:**

None.

#### D. Other Constitutional Issues:

Although fingerprints are taken in the course of the booking procedure in all arrests, critics assert that the taking of a DNA sample upon arrest – even by mouth swab – is a violation of the Fourth Amendment right against unreasonable search and seizure. Because this is a new area of the law (arrestee DNA), the courts are just beginning to rule on the various legal issues that are being raised for the first time in this context. While it is true that courts have considered cases involving DNA sample collection upon conviction, it could be many years before there is a clear message from the courts as to how the Constitution applies when the state seeks a DNA sample from a person who has been arrested.

The Virginia arrestee DNA law was challenged on search and seizure violation grounds and was upheld by the Supreme Court of Virginia. The case, *Anderson v. Virginia*, cites the reasoning of four different federal courts (predominantly *Jones v. Murray*,<sup>12</sup> a convicted felon DNA sample case) and three state appellate courts in concluding that the taking of a DNA sample from an arrestee, even by a blood draw, is “no different in character than acquiring fingerprints upon arrest.”<sup>13</sup> The Virginia Supreme Court, in making its ruling, reasoned that the state’s interest in collecting and keeping a record of the arrestees’ identification for purposes of solving crimes outweighs the arrestees’ right to privacy and protection from government intrusion. The Virginia court, therefore, found no violation of the constitutional protection against unreasonable search and seizure.

A Minnesota court reached a different conclusion on the search and seizure issue in a 2006 case.<sup>14</sup> The Minnesota court determined that the state (law enforcement) should obtain a search warrant in order to take the DNA sample, except under the limited exceptions to the warrant requirement. Because no exception to the 4th Amendment warrant requirement existed, and because no search warrant was obtained, law enforcement intrusion into the human body to gather DNA was a violation of the right not to be subjected to unreasonable search and seizure.

Although the state argued that a judicial determination of probable cause for the arrest had been made, pursuant to the statutory requirement, the court found that probable cause for an arrest did not meet the same constitutional criteria as an impartial magistrate’s decision to issue a search warrant for the sample, nor was it a sufficient reason to allow the DNA to be taken.

The state also urged the court to consider the issue by applying a “general balancing test” to the individual’s rights and the state’s interests. This was the analysis used by the federal court in the *Jones* case, relied upon by the Virginia court in *Anderson*. In its application of this balancing test, the Minnesota court opined that the person who is merely charged with a criminal offense has a greater expectation of privacy than one who has actually been convicted, which therefore weighs more heavily in the balance than the state’s interest in gathering the DNA.

---

<sup>12</sup> *Jones v. Murray*, 962 F.2d 302 (4th Cir.), cert. denied, 506 U.S. 977, 113 S. Ct. 472 (1992).

<sup>13</sup> *Anderson v. Virginia*, 650 S.E. 2d 702 (Va. 2007).

<sup>14</sup> *In the Matter of the Welfare of C.T.L., Juvenile*, 722 N.W.2d 484 (Minn. App. 2006).

Until a Florida court, the Eleventh Circuit, or the U.S. Supreme Court issues a ruling providing guidance as to these issues related to DNA collection and use, the Fourth Circuit and Virginia state court opinions only provide some guidance as to how courts may address challenges related to these issues.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference has not yet considered the potential prison bed impact of the new felony offense created by this bill.

the Department of Law Enforcement (FDLE) has recommended that if DNA is to be collected from all offenders arrested for a felony, it should be phased in as provided in the bill. FDLE indicates that, currently, a person collecting DNA from an offender cannot immediately verify whether DNA has previously been collected from the offender in a prior case. This results in FDLE being sent DNA samples for offenders that are already in the database. The FDLE also receives DNA samples that do not have the required demographic information attached. This results in additional workload for the department. The FDLE recommends placing equipment at each of the 600 sites where DNA is collected so that the person could verify whether the DNA database already contained a sample from the offender in question. This would also reduce instances of DNA being submitted with insufficient demographic information attached.

The following is the information submitted by FDLE regarding the fiscal impact of this bill, if funded, through fiscal year 2018-2019:

**-Continued on Next Page-**

**Fiscal Timeline for Expanding DNA Collections  
to Include all Persons Arrested for Felony Offenses**

<b><i>Year 1 2009-2010</i></b>	<b><i>Phase One</i></b> \$418,071 recur; \$1,526,472 NR <sup>15</sup>	<b><i>Build Collection Infrastructure and Regional Casework Capacity</i></b> <ul style="list-style-type: none"> <li>▪ Rapid ID equipment at each collection site (600 total collection sites) to facilitate real time access to the State’s DNA database</li> <li>▪ 6 Crime Laboratory Analysts</li> </ul>
<b><i>Year 2 2010-2011</i></b>	<b><i>Phase Two</i></b> \$489,580 recur; \$418,071 NR	<b><i>Add Felony Arrests for Homicide, Assault, Battery, Sex Crimes (Chs. 782, 784, 794, and 800, F.S.)</i></b> <ul style="list-style-type: none"> <li>▪ Workload Processing Costs; No new resources</li> </ul>
<b><i>Year 3 2011-2012</i></b>	<b><i>Phase Three</i></b> \$1,151,514 recur; \$747,532 NR	<b><i>Build Casework Capacity in FDLE- Daytona Crime Laboratory</i></b> <ul style="list-style-type: none"> <li>▪ 1 Crime Laboratory Analyst Supervisor</li> <li>▪ 6 Crime Laboratory Analysts</li> <li>▪ 4 Forensic Technologists</li> <li>▪ Increased space requirements for Daytona Crime Laboratory</li> <li>▪ Laboratory construction/renovation</li> <li>▪ Laboratory equipment</li> <li>▪ Laboratory supplies</li> </ul>
<b><i>Year 4 2012-2013</i></b>	<b><i>Phase Four</i></b> \$1,151,514 recur; \$593,152 NR	<b><i>Add Felony Arrests for Burglary, Theft, Robbery (Chs. 810 and 812, F.S.)</i></b> <ul style="list-style-type: none"> <li>▪ Workload Processing Costs; No new resources</li> </ul>
<b><i>Year 6 2014-2015</i></b>	<b><i>Phase Five</i></b> \$1,151,514 recur; \$79,016 NR	<b><i>Add Felony Arrests for Kidnapping, Weapons (Chs. 787 and 790, F.S.)</i></b> <ul style="list-style-type: none"> <li>▪ Workload Processing Costs; No new resources</li> </ul>
<b><i>Year 8 2016-2017</i></b>	<b><i>Phase Six</i></b> \$1,151,514 recur; \$404,348 NR	<b><i>Add Felony Arrests for Drug Offenses (Ch. 893, F.S.)</i></b> <ul style="list-style-type: none"> <li>▪ Workload Processing Costs; No new resources</li> </ul>
<b><i>Year 10 2018-2019</i></b>	<b><i>Phase Seven</i></b> \$1,151,514 recur; \$1,066,352 NR	<b><i>Add All Remaining Felony Arrests</i></b> <ul style="list-style-type: none"> <li>▪ Workload Processing Costs; No new resources</li> </ul>

<sup>15</sup> NR means non-recurring.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Office of the State Courts Administrator provided the following information on circuit and county court dispositions for the fiscal year ending June 30, 2008. There were 29,124 felony dispositions resulting in a dismissal of charges as a result of speedy trial, dismissal, or bench or jury acquittal. An additional 16,623 dispositions were placed in an “other” category, which included *nolle prosequi* among possible dispositions. In county court for the same time period, there were 155,893 similar dismissal or acquittals for criminal offenses. An additional 41,072 cases were classified in the “other” category.

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

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

**CS/CS by Judiciary on April 15, 2009:**

The committee substitute substitutes the defined term “qualifying offender” for references to a “qualified offender.”

**CS by Governmental Oversight and Accountability on April 7, 2009:**

The committee substitute incorporates previously adopted amendments, barcodes 742992 and 524656, into the committee substitute which:

- Remove the four new misdemeanor convictions for which DNA would have been collected under the provisions of the bill.
- Remove the requirement that sex offenders and sexual predators give DNA samples based simply on their status. These persons are currently giving DNA at the time of conviction or because they are incarcerated or under Department of Corrections supervision.
- Reorganize the definition of “qualifying offender” without changing the content.
- Provide for the removal of DNA samples and analyses from the statewide DNA database, which had been included by virtue of conviction or arrest, is provided for under certain circumstances.
- Give the department rulemaking authority to create the administrative process, beyond what is required in the bill, for that removal.

**B. Amendments:**

None.