

Committee Substitute for  
Committee Substitute for Senate Bill No. 2276

An act relating to a DNA database; providing a short title; amending s. 943.325, F.S.; providing legislative intent; providing definitions; providing a phase-in schedule whereby persons arrested for specified felony offenses will be required to provide DNA samples to the Department of Law Enforcement; requiring reports; providing for a statewide automated personal identification system capable of classifying, matching, and storing analyses of DNA and other data; providing for access; specifying duties of the department; providing that the database may contain DNA for certain types of samples; specifying offenders from whom DNA is to be collected; authorizing the use of reasonable force to collect samples; providing an exemption from liability for use of such force; providing for collection of samples from specified offenders from out of state; requiring the department to provide sample containers; providing requirements for information to be submitted with each sample; providing for court orders for samples; authorizing prosecutors to seek court orders in certain circumstances; requiring that a convicted person pay the actual costs of collecting the approved DNA samples unless declared indigent; providing that certain failures to strictly comply with statute or protocol are not grounds for challenging the validity of the collection or the use of a DNA sample in court, and evidence based upon or derived from the collected DNA sample may not be excluded by a court; providing that the detention, arrest, or conviction of a person based upon a database match or database information may not be invalidated if it is later determined that the sample was obtained or placed in the database by mistake; providing for retention of samples; providing for analysis of samples; requiring that DNA analysis and the comparison of analytic results be released only to criminal justice agencies; continuing a public-records exemption for such information; prohibiting the willful refusal to provide a DNA sample; providing penalties; prohibiting specified offenses relating to disclosing DNA records, using records without authorization, or tampering with DNA samples or analysis results; providing penalties; providing circumstances that require removal of the DNA analysis and DNA sample from the statewide DNA database of a person whose DNA analysis and sample was included in the database as a result of a conviction for a qualifying offense; providing circumstances that require removal of the DNA analysis and DNA sample from the statewide DNA database of a person whose DNA analysis and sample was included in the database as a result of an arrest; authorizing the Department of Law Enforcement to adopt rules related to the implementation of the removal of DNA analyses and samples from the statewide DNA database; amending ss. 760.40 and 948.014, F.S.; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the “DNA Database Act.”

Section 2. Section 943.325, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 943.325, F.S., for present text)

943.325 DNA database.—

(1) LEGISLATIVE INTENT.—

(a) The Legislature finds that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of criminal investigations or prosecutions and in detecting recidivist acts. It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. Therefore, it is in the best interests of the citizens of this state to establish a statewide DNA database containing DNA samples submitted by persons convicted of or arrested for felony offenses and convicted of certain misdemeanor offenses. Additionally, the statewide DNA database shall include DNA records and samples necessary for the identification of missing persons and unidentified human remains, including DNA samples voluntarily contributed by relatives of missing persons.

(b) The Legislature also finds that upon establishment of the Florida DNA database a match between casework evidence DNA samples from a criminal investigation and DNA samples from a state or federal DNA database of certain offenders may be used to find probable cause for the issuance of a warrant to obtain the DNA sample from an offender.

(2) DEFINITIONS.—As used in this section, the term:

(a) “Arrested” means apprehended or physically taken into custody, resulting in the submission of arrest fingerprints to the department, pursuant to s. 943.051.

(b) “CODIS” means 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.

(c) “Convicted” means 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.

(d) “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.

(e) “DNA record” means 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.

(f) “DNA sample” means a buccal or other approved biological specimen capable of undergoing DNA analysis.

(g) “Qualifying offender” means any person, including juveniles and adults, who is:

1.a. Committed to a county jail;

b. Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105;

c. Committed to or under the supervision of the Department of Juvenile Justice;

d. Transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985; or

e. Accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941; and who is:

2.a. Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;

b. Convicted of a misdemeanor violation of s. 784.048, s. 810.14, s. 847.011, s. 847.013, s. 847.0135, or s. 877.26, or an offense that was found, pursuant to s. 874.04, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03; or

c. Arrested for any felony offense or attempted felony offense in this state.

### (3) COLLECTION OF SAMPLES.—

(a) Each qualifying offender shall submit a DNA sample at the time he or she is booked into a jail, correctional facility, or juvenile facility.

(b) DNA samples collected under paragraph (a) from persons arrested for any felony offense or attempted felony offense in this state are subject to sufficient funding appropriations passed by the Legislature and approved by the Governor according to the following schedule:

1. Beginning January 1, 2011, all felonies defined by chapters 782, 784, 794, and 800.

2. Beginning January 1, 2013, all felonies defined by chapters 810 and 812.

3. Beginning January 1, 2015, all felonies defined by chapters 787 and 790.

4. Beginning January 1, 2017, all felonies defined by chapter 893.

5. Beginning January 1, 2019, all remaining felony offenses.

The department may reject DNA samples submitted pursuant to this subsection if submitted before the funding of any phase or if received before the department issues an official notification to the submitting agency that the department is sufficiently prepared to receive the samples.

(c) On or before February 1, 2010, and by February 1 of each even-numbered year thereafter through 2018, the department shall submit a report to the Legislature listing the funding, infrastructure, facility, and personnel requirements necessary to operate the DNA database and DNA evidentiary analysis for the expansion phase scheduled for the following year.

(4) STATEWIDE DNA DATABASE.—The department, through the statewide criminal laboratory analysis system shall 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 department shall be the administrator of the statewide DNA database. All accredited local government crime laboratories within the state shall have access through CODIS to the statewide DNA database in accordance with the rules and agreements established by the department.

(5) DUTIES.—The department shall:

(a) Receive, process, and store DNA and the data derived therefrom furnished pursuant to this section.

(b) Collect, process, maintain, and disseminate information and records as provided by this section.

(c) Strive to maintain and disseminate only accurate and complete records.

(d) Participate in the national DNA database program administered by the Federal Bureau of Investigation.

(e) Provide for liaison with the Federal Bureau of Investigation and other criminal justice agencies relating to the state's participation in the CODIS program and the national DNA index system.

(f) 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 this section.

(6) SAMPLES.—The statewide DNA database may contain DNA data obtained from the following types of biological samples:

(a) Crime scene samples.

(b) Samples obtained from qualifying offenders required by this section to provide a biological sample for DNA analysis and inclusion in the statewide DNA database.

(c) Samples lawfully obtained during the course of a criminal investigation.

(d) Samples from deceased victims or suspects that were lawfully obtained during the course of a criminal investigation.

(e) Samples from unidentified human remains.

(f) Samples from persons reported missing.

(g) Samples voluntarily contributed by relatives of missing persons.

(h) Other samples approved by the department.

(7) COLLECTION OF DNA SAMPLES FROM OFFENDERS.—

(a) Any qualifying offender, who is:

1. Arrested in this state;

2. Incarcerated in this state; or

3. On probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision in this state,

shall be required to submit a DNA sample to a department-designated facility.

(b) Arrested qualifying offenders must submit a DNA sample at the time they are booked into a jail, correctional facility, or juvenile facility.

(c) Incarcerated persons and those in the custody of the Department of Juvenile Justice must submit required DNA samples not less than 45 days before their presumptive date of release from such incarceration or commitment.

(d) Upon the conviction of any qualifying offender which results in the commitment of the offender to a county jail, correctional facility, or juvenile facility, the entity responsible for the jail or facility shall ensure that a DNA sample is promptly secured and transmitted to the department. Personnel at the jail, correctional facility, or juvenile facility shall collect the DNA samples as part of the regular processing of qualifying offenders committed to the jail or facility.

(e) If a qualifying offender is not incarcerated following conviction, that offender may not be released from the custody of the court at the time of sentencing or released pursuant to a bond or surety until the DNA sample required by this section has been taken by the sheriff or his or her designee. The sheriff shall secure, process, and transmit the DNA sample to the department in a timely manner.

(8) REASONABLE FORCE.—Duly authorized law enforcement and corrections 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 such reasonable force.

(9) OUT-OF-STATE OFFENDERS.—Any qualifying offender who is:

(a) Transferred to this state under the Interstate Compact on Juveniles, part XIII of chapter 985, for a felony offense or attempted felony offense; or

(b) Accepted under Article IV of the Interstate Corrections Compact, part III of chapter 941, for a felony offense or attempted felony offense,

shall provide a DNA sample pursuant to this section to the entity responsible for supervision of the offender, who shall ensure that the DNA sample is collected in a manner approved by the department and promptly secured and transmitted to the department.

(10) COLLECTION; LIABILITY.—

(a) 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.

(b) 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 the department 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.

(11) SAMPLES.—The department will provide the DNA sample collection kits, labels, or other appropriate containers and instructions for the collection of the DNA samples. After collection, the DNA samples shall be forwarded to the department for analysis to determine genetic markers and characteristics for the purpose of individual identification of the person submitting the sample.

(a) At minimum, the following information must be included with each submission:

1. The qualifying offender's last name, first name, date of birth, race, gender, and State Identification (SID) number if known.

2. The statute number of each offense charged.

3. The collecting agency's name and address.

4. The name and telephone number of the person performing the collection of the DNA sample or witnessing the collection of the sample.

(b) If a DNA sample submitted to the department under this section cannot be used by the department in the manner and for the purposes required by this section, the department may require that another DNA sample be obtained.

(12) COURT ORDERS; COSTS.—The sentencing court shall 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.

(a) Unless a convicted person has been declared indigent by the court, the convicted person shall pay the actual costs of collecting the approved biological specimens required under this section.

(b) If the order of a sentencing court fails to order a qualifying offender to submit a DNA sample as mandated by this section, the prosecutor may seek an amended order from the sentencing court requiring submission of a DNA sample in compliance with this section. In the alternative, the department, the Department of Corrections, a law enforcement agency, or a prosecutor may apply to the appropriate circuit court with jurisdiction for an order authorizing the seizure of the qualifying offender for the purpose of securing the required DNA sample.

1. The court shall issue the order upon a showing of probable cause.

2. Following issuance of the order, the DNA sample shall be collected in a reasonable manner and the qualifying offender shall be released unless there is cause to justify retaining the offender in custody.

(c) Failure by a law enforcement agency or other entity involved in collection of DNA samples under this section to strictly comply with this 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 and evidence based upon or derived from the collected DNA sample may not be excluded by a court.

(d) The detention, arrest, or conviction of a person based upon a database match or database information may not be invalidated if it is later determined that the sample was obtained or placed in the database by mistake.

(e) All DNA samples submitted to the department for any reason shall be retained in the statewide DNA database and may be used for all lawful purposes as provided in this section.

(13) ANALYSIS OF DNA SAMPLES.—

(a) The department shall specify procedures for the collection, submission, identification, analysis, storage, and disposition of the DNA samples and DNA records collected under this section. These procedures shall also ensure compliance with national quality assurance standards so that the DNA records may be accepted into the national DNA database.

(b) The analyses of DNA samples collected under this 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.

(c) When completed, the results of DNA analysis shall be entered into the statewide DNA database maintained and administered by the department for such purpose, as provided in this section.

(14) RESULTS.—The results of a DNA analysis and the comparison of analytic results shall be released only to criminal justice agencies as defined in s. 943.045(10), at the request of the agency. Otherwise, such information is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(15) OFFENSES AND PENALTIES.—

(a) Any person subject to the requirements of this section who willfully refuses to provide a DNA sample commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who:

1. 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 this section;

2. Knowingly or intentionally uses or receives DNA records, including the results of DNA analysis, for purposes other than those authorized under this section; or

3. 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,

commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(16) PROCEDURES FOR REMOVAL.—Unless the department determines that a person is otherwise required by law to submit a DNA sample for inclusion in the statewide DNA database, the department shall, upon receipt and completion of such verification of the information noted below as may be required, promptly remove from the statewide DNA database the DNA analysis and any DNA biological samples that may have been retained of a person included therein:

(a) On the basis of a conviction for a qualifying offense specified in subparagraph (2)(g)2., if the department receives, from the person seeking removal of DNA information from the statewide DNA database, for each qualifying offense, a certified copy of a final court order establishing that such conviction has been overturned on direct appeal or set aside in a postconviction proceeding; or

(b) On the basis of an arrest, if the department receives from the person seeking removal of DNA information from the statewide DNA database, for each charge against the person on the basis of which the analysis was or could have been included in the statewide DNA database, 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 time period.



For purposes of this section, a court order is not final if time remains for an appeal or application for discretionary review with respect to the order, or if a case has been remanded for retrial or other proceedings 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.

(17) RULES.—The department shall, by rule, establish the procedure by which a person seeking removal of his or her DNA analysis and biological sample from the statewide DNA database shall submit the certified information required in subsection (16) to the department.

Section 3. Paragraph (a) of subsection (2) of section 760.40, Florida Statutes, is amended to read:

760.40 Genetic testing; informed consent; confidentiality; penalties; notice of use of results.—

(2)(a) Except for purposes of criminal prosecution, except for purposes of determining paternity as provided in s. 409.256 or s. 742.12(1), and except for purposes of acquiring specimens ~~from persons convicted of certain offenses or~~ as otherwise provided in s. 943.325, DNA analysis may be performed only with the informed consent of the person to be tested, and the results of such DNA analysis, whether held by a public or private entity, are the exclusive property of the person tested, are confidential, and may not be disclosed without the consent of the person tested. Such information held by a public entity is exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 4. Subsection (1) of section 948.014, Florida Statutes, is amended to read:

948.014 Requirement to submit to drawing of blood or other biological specimens.—

(1) As a condition of probation, community control, or any other court-ordered community supervision, the court shall ~~order offenders order persons convicted of offenses specified in s. 943.325~~ to submit to the drawing of the blood or other biological specimens when required under s. 943.325 as prescribed in that section as a condition of the probation, community control, or other court-ordered community supervision.

Section 5. This act shall take effect July 1, 2009.

Approved by the Governor June 16, 2009.

Filed in Office Secretary of State June 16, 2009.