SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SBs 1864 & 2086

SPONSOR: Criminal Justice Committee and Senators Bronson and Burt

SUBJECT: Criminal Justice

DATE: April 10, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gardner/Erickson	Cannon	CJ	Favorable/CS
2.			CA	
3.			AHS	
4.			APJ	
5.			AP	
6.				

I. Summary:

Committee Substitute for Senate Bills 1864 and 2086 makes numerous changes to the law of relevance to state and local law enforcement agencies. The primary features of the CS are as follows:

- Renames the Florida Violent Crime Council as the Florida Violent Crime and Drug Control Council, adds the Director of the Office of Drug Control and the Comptroller to the Council, and expands the Councils duties to address money laundering and drug control.
- Sets caps on disbursement of funds for a single investigation and a single agency.
- Requires adoptions of rules setting forth criteria for determining eligibility as and effectiveness of a multi-agency or statewide investigation or task force effort relating to money laundering or drug control, as well as requirements for expenditures, accounting for funds received, used or disbursed, and performance reporting by recipient agencies.
- Provides for expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors who have been arrested for a nonviolent offense and who do not have a prior criminal history.
- Adds several sexual offense violations, the criminal history records of which may not be sealed or expunged.
- Requires FDLE to collect specimens from criminals who committed an enumerated offense, but were placed on probation rather than sentenced to prison.

- Requires FDLE to collect specimens from persons who committed an offense in another jurisdiction that is similar to a Florida enumerated offense, and is incarcerated or on probation in Florida.

- Authorizes FDLE to accept biological specimens such as oral swabs, in addition to blood.

- Authorizes FDLE to accept specimens from persons other than those who have committed an enumerated offense.

- Authorizes persons other than medically trained professionals to draw blood if they have been trained.

- Authorizes any person to collect other specimens if they do it in a reasonable manner.

- Provides for enhanced penalties and a misdemeanor offense relating to unlawful interception of police radio communications or the divulging of information obtained from such communications.

This CS substantially amends or creates the following sections of the Florida Statutes: 760.40; 843.167; 943.031; 943.042; 943.0582; 943.0585; 943.059; 943.325; and 985.3065.

II. Present Situation:

Florida Violent Crime Council

The Florida Violent Crime Council was created by the Legislature in 1993 to meet critical statewide issues of violent crime in Florida. s. 943.031, F.S. *Annual Report to the Legislature*, Florida Violent Crime Council (December 2000) (information for this subsection comes from this report).

The Council is composed of 12 members, with both state and local representation, who advise the Commissioner of the Florida Department of Law Enforcement (FDLE), make recommendations regarding the development and implementation of violent crime initiatives, and disburse funds from the Violent Crime Emergency Account, s. 943.042, F.S., to law enforcement agencies requesting supplemental funding for violent crime investigations. (For a description of the particular provisions of law relevant to the Violent Crime Council that are amended by the CS, see the "Effect of Proposed Changes.")

Diversion Programs for Minors

When juvenile offenders are detained for relatively minor offenses, certain jurisdictions make diversion programs available to those offenders. These programs provide supervision of the offenders and typically require the completion of conditions to satisfactorily complete the program, such as victim restitution, a letter of apology, and community service hours.

Most diversion programs limit eligibility to those offenders who have never had a prior arrest. However, to ascertain this information, FDLE records are often accessed and the access creates a criminal record for the juvenile offender.

Section 985.3065, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest diversion program. This section also allows for suspension of the driver's license of a minor in such program for a period of up to 90 days, as well as a similar suspension for failure of the minor to comply with program requirements.

Sealing and Expunction of Criminal History Records

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The Florida Department of Law Enforcement (FDLE) can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency other than the FDLE. Criminal justice agencies are allowed to make a notation indicating compliance with an expunction order. FDLE, on the other hand, is required to retain expunged records. When a record is sealed it is not destroyed, but access is limited to the subject of the record, his attorney, and certain specified agencies. Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first-degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of employment, petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction. It is then up to the court to decide whether the sealing or expunction is appropriate.

A criminal history record may be expunged by a court if the petitioner has obtained a certificate of eligibility and swears that he or she: has not previously been adjudicated guilty of any offense or adjudicated delinquent for certain offenses; has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged; has not obtained a prior sealing or expungement; and is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court. In addition, the record must have been sealed for ten years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court. s. 943.0585, F.S. The same criteria apply for sealing a criminal history record under s. 943.059, F.S. Any person knowingly providing false information on the sworn statement commits a felony of the third degree.

The Legislature also prohibits criminal history records relating to certain offenses in which a defendant (adult or juvenile) has been found guilty or has pled guilty or nolo contendere, regardless of whether adjudication was withheld, from being sealed or expunged. These offenses include the following: sexual battery; lewd, lascivious, or indecent assault upon a child; communications fraud; sexual performance by a child; offenses by public officers and employees; drug trafficking; and other dangerous crimes such as arson, aggravated assault or battery, kidnapping, murder, robbery, and burglary. ss. 943.0585 and 943.089, F.S.

DNA Data Bank and Testing

In 1989, the Legislature created s. 943.325, F.S., to establish a state DNA data bank under the control of FDLE. See ch.89-335, L.O.F. The purpose of the DNA data bank is to accumulate and analyze blood specimens from known criminals and then compare those known standards to DNA profiles that result from the testing of blood and other biological evidence collected from crime scenes to help solve crimes. According to FDLE, the DNA database has helped to resolve over 350 case investigations in this manner, where no known suspect had been identified.

The law has been amended periodically over the past ten years to increase the number of enumerated felony offenses which qualify those known convicted criminals to have their DNA profile added to the DNA database. There are currently over 75,000 individual criminals whose DNA profiles have been compiled in the Florida DNA database. Due to last session's addition of burglary as one of the enumerated offenses, the growth in the number of profiles has accelerated and there is a backlog of specimens to be analyzed and filed. At present, s. 943.325, F.S., in part, requires the convicted felon to submit two blood specimens to a FDLE designated testing facility as directed by the department, if that person is:

1. Convicted or was previously convicted and is still incarcerated in this state for any offense or attempted offense in:

   - ch. 794, F.S. (sexual battery);
   - ch. 800, F.S. (lewdness and indecent exposure);
   - s. 782.04, F.S. (murder);
   - s. 784.045, F.S. (aggravated battery);
   - s. 812.133, F.S. (carjacking);
   - s. 812.135, F.S. (home-invasion robbery); and
   - s. 810.02, F.S. (burglary); or

2. Is no longer incarcerated, but is still on supervision in Florida.

Currently, the only substance FDLE is allowed to accept for analysis to add to the DNA data bank is blood. The requirement for blood for DNA analysis was established when the DNA data bank was created by the Legislature in 1989. According to the director of FDLE's DNA data bank, technological advances have made it possible to extract DNA analysis from smaller samples, and from substances other than blood. The collection of the blood specimens has to be

performed under the supervision of a physician, registered nurse, licensed practical nurse, or duly licensed medical personnel.

Interception of Police Communications

Section 843.16, F.S., in part, prohibits a person, firm, or corporation from installing in any motor vehicle or business establishment, except an emergency vehicle or crime watch vehicle or a place established by municipal, county, state, or federal authority for governmental purposes, any frequency modulation radio receiving equipment so adjusted or tuned as to receive messages or signals on frequencies assigned by the Federal Communications Commission to police or law enforcement officers of any city or county of the state or to the state or any of its agencies.

While s. 934.03(2), F.S., provides that it is unlawful to intercept any communication for the purpose of committing any criminal act, any communication does not include police radio communications. The section applies to wire communication, oral communication, and electronic communication and is essentially applicable to wiretapping.

III. Effect of Proposed Changes:

Provided is a section-by section analysis of CS/SBs 1864 and 2086:

Section 1.

Section 1 is a recommendation of the Statewide Drug Policy Advisory Council, FDLE, and the Office of Drug Control, and has also been proposed by the majority of drug enforcement workshop participants at more than one Statewide Drug Control Summit.

The CS amends s. 943.031, F.S., which creates the Florida Violent Crime Council, and sets forth its duties, membership and other matters relevant to the Council's operation. The amendment renames the Council as the "Florida Violent Crime and Drug Control Council."

Legislative findings relevant to the Council are amended to indicate that the Legislature finds that there is a need to develop and implement a statewide strategy to address drug control efforts by state and local law enforcement agencies, including investigations of illicit money laundering.

Membership of the Council increases from 12 members to 14 members. The two new members added are the Director of the Office of Drug Control (or the Director's designee) and the Comptroller (or the Comptroller's designee).

A designee appearing on behalf of a Council member who is unable to attend a Council meeting may vote on issues before the Council to the same extent as the designating Council member.

Reimbursements for per diem and travel expenses of the Council members must be paid from funds available in the Violent Crime Emergency and Drug Control Strategy Implementation Account with FDLE. Reference to the Department of Law Enforcement Operating Trust Fund is deleted.

Additional meetings of the Council may be held when it is determined by the chair that extraordinary circumstances prompt an additional meeting of the Council. Currently, the chair or a majority of the Council members can call for additional meetings when appropriate.

Duties of the Council are added as specified:

1. Establishing a program which provides grants to law enforcement agencies for the purpose of investigative or task force efforts relating to money laundering and drug control, which are determined by the Council to significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, which represent a significant investigative effort into money laundering, or which otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council.

   Current law provides for establishing a program that provides grants to criminal justice agencies that develop and implement effective violent crime prevention and investigative programs. This duty is retained but expanded as previously described. Under current law, the grant program must include an innovations grant program; the bill makes it discretionary. The CS provides that the grants program provide startup funding for new initiatives by local and state law enforcement agencies to implement law enforcement drug-control or money-laundering investigative or task force efforts. Those efforts include:

   a. Such efforts that cannot be reasonably totally funded by alternative sources and that significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, that represent a significant investigative effort into money laundering, or that otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council.

      Current law specifies start-up funding of law enforcement initiatives to combat violent crime. The bill retains that duty.

      The CS provides that the law enforcement drug-control or money-laundering investigative or task force efforts include providing funding of multi-agency or statewide investigations or task force efforts relating to money laundering and drug control.

   b. Methods to enhance multi-agency or statewide investigations or task force efforts relating to money laundering or drug control which significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, which represent a significant investigative effort into money laundering, or which otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council.

   c. Enhancements to criminal justice training programs that address investigative techniques or efforts relating to illicit money laundering or drug control.

      Current law specifies enhancing criminal justice training programs that address violent crime. The CS retains that duty.

d. Periodic reports from regional violent crime investigation and statewide drug-control strategy implementation coordinating teams related to violent crime trends or investigative needs or successes in the regions, and factors and trends relevant to the implementation of the statewide drug strategy and the results of investigative efforts funded in part by the Council and relating to drug control and money laundering.

Current law requires the Council to advise the executive director on the creation of regional violent crime investigation coordinating teams.

e. Maintenance and use of criteria for the disbursement of funds from the Violent Crime Emergency and Drug Control Strategy Implementation Account within the Department of Law Enforcement Operating Trust Fund. Funding from the Council for any single investigative effort is limited to a maximum of $100,000. No individual investigating agency may receive more than $200,000 in Council funding during the agency's fiscal year. The Council is required to establish an expedited approval procedure for rapid disbursement of funds in violent crime emergency situations.

Current law requires the Council to develop criteria for disbursement of funds from the Violent Crime Emergency Account within FDLE. This law also requires the Council to establish an expedited approval procedure for rapid disbursement of funds in "emergency" situations.

f. Comments and responses of the executive director of the Council to the Council's annual report are to be included in the annual report.

Current law specifies that the Council's director must respond in writing to the annual report and recommendations contained therein, and those responses must be forwarded to the Council members, the Senate President, the House Speaker, and the chairs of the Committees on Criminal Justice in both chambers. The CS does not delete this forwarding requirement; it only places the director's responses within the annual report of the Council.

g. Maintain and use criteria for disbursing funds to reimburse law enforcement agencies for costs associated with providing victim and witness protective or temporary location services.

Current law specifies that criteria are to be developed.

Duties of the Council are deleted as specified:

1. Creating a criminal justice research and behavioral science center.

2. Advising the executive director of the Council on the development of a statewide violent crime information system.

3. Requiring the chair of the Council to provide a written declaration of necessity for closure of Council meetings, which is a public record filed with the official records of the Council.

Finally, the CS authorizes the Victim and Witness Protection Review Committee to conduct its meeting by teleconference or conference phone calls when the chair of the Committee finds that the need for reimbursement is such that delaying until the next scheduled Council meeting will adversely affect the requesting agency's ability to provide the protection services.

Section 2.

The CS amends s. 943.042, F.S., which creates a Violent Crime Emergency Account within the Department of Law Enforcement. The amendment renames this account as the "Violent Crime Emergency and Drug Control Strategy Implementation Account."

The CS expands the uses of this account to include funding multi-agency or statewide investigations or task force efforts relating to money laundering and drug control which significantly contribute to achieving the state's goal of reducing drug-related crime as articulated by the Office of Drug Control, which represent a significant investigative effort relating to money laundering, or which otherwise significantly support statewide strategies developed by the Statewide Drug Policy Advisory Council.

The CS modifies and/or expands upon rules FDLE is required to maintain (in current law "promulgate"):

1. Guidelines that establish a $100,000 maximum limit on the amount that may be disbursed on a single investigation and a $200,000 maximum limit on funds that may be provided to a single agency during the agency's fiscal year.

   Current law specifies establishing guidelines that establish limits on the amount that may be disbursed on a single investigation.

2. Procedures for law enforcement agencies to use when applying for funds, including certification by the head of the agency that a request complies with the requirements established by the Council.

   Current law does not include this certification requirement.

3. With regard to the funding of investigations or task force efforts relating to money laundering or drug control, rules that, at a minimum, address the following:

   a. Criteria for determining what constitutes a multi-agency or statewide investigation or task force effort relating to money laundering or drug control and eligibility to seek funding under this section.

   b. Criteria for determining whether a multi-agency or statewide investigation or task force effort significantly contributes to achieving the state's goals and strategies.

c. Limitations upon the amount that may be disbursed yearly to a single multi-agency or statewide money laundering or drug control investigation or task force.

d. Procedures to use when applying for funds, including a required designation of the amount of matching funds being provided by the task force or participating agencies and a signed commitment by the head of each agency seeking funds that funds so designated will be used as represented if Council funding is provided.

e. Requirements to expend Council-provided funds in the manner authorized by the Council and a method of accounting for the receipt, use, and disbursement of any funds expended in money laundering or drug control investigative or task force efforts funded in part under the authority of this section.

f. Requirements for reporting by recipient agencies of their performance and accomplishments secured by the investigative or task-force efforts, including a requirement that the reports demonstrate how the state's drug-control goals and strategies have been promoted by the efforts and how other investigative goals have been met, including arrests due to such efforts, results of prosecutions based on such arrests, the impact upon organized criminal enterprise structures by reason of efforts, property or currency seizures made, money laundering operations disrupted or otherwise impacted, forfeiture of assets by reason of such efforts, and anticipated or actual use of assets received by reason of a forfeiture based in whole or in part upon an investigation funded in whole or in part by Council funds.

The CS provides that, except as allowed in this section, a disbursement from the Violent Crime Emergency and Drug Control Strategy Implementation Account shall not be used to supplant existing appropriations of state and local law enforcement agencies and counties or to otherwise fund expenditures that are ordinarily or reasonably predictable for the operation of a state or local law enforcement agency.

Current law only prohibits using the account to supplement existing appropriations of law enforcement agencies.

The CS provides that, upon a finding by a majority of the members of the Council, any unexcused failure by recipient agencies or task forces to use funds in the manner authorized by this section and the Florida Violent Crime and Drug Control Council or to timely provide required accounting, reports, or other information requested by the Council or by FDLE related to funding requested or provided, shall constitute a basis for a demand by the Council for the immediate return of all or any portion of funds previously provided to the recipient by the Council; or result in termination or limitation of any pending funding by the Council under this section.

This unexcused failure may, upon specific direction of a majority of the Council, result in disqualification of the involved agencies or task force from consideration of additional or future funding for efforts as provided by this section for a period of not more than 2 years following the

Council's action. The Council, by and through FDLE, is authorized to pursue any collection remedies necessary if a recipient agency fails to return funds as demanded.

Section 3.

The CS creates s. 943.0582, F.S., which provides that, notwithstanding any law dealing generally with the preservation and destruction of public records, FDLE may provide by rule for the expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program for minors as authorized by s. 985.3065, F.S.

As used in this section, the term "expunction" has the same meaning ascribed in s. 943.0585, F.S., the expunction statute. The provisions of the expunction statute relating to the effect of expunction of criminal history records do not apply, except that such record of a person whose record is expunged pursuant to this section must be made available only to criminal justice agencies for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. For all other purposes, this person may lawfully deny or fail to acknowledge the arrest or charge covered by the expunged record.

Records maintained by local criminal justice agencies in the county in which the arrest occurred which are eligible for expunction pursuant to this section must be sealed as that term is used in s. 943.09, F.S., the sealing statute.

As used in this section, the term "nonviolent misdemeanor" includes simple assault or battery when prearrest or postarrest diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

FDLE must expunge the nonjudicial arrest record of a minor who has successfully completed a prearrest or postarrest diversion program if the minor:

- Submits an FDLE-form application for expunction signed by the minor's parent or legal guardian, or by the minor if he or she has reached the age of majority at the time of applying, within 6 months after completion of the diversion program. The application must include an official written statement from the state attorney for the county in which the arrest occurred certifying that the minor has completed that county's diversion program and that such program is strictly limited to minors arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed a criminal offense or comparable ordinance violation.

- Participates in a diversion program that expressly permits such expunction and on the basis of an arrest that is not an act of domestic violence.

- Has never, prior to filing the expunction application, been charged with or found to have committed a criminal offense or comparable ordinance violation.

FDLE is authorized to collect a $75 processing fee for each expunction application. The fee is to be placed in the Department of Law Enforcement Trust Fund, unless the fee is waived by the executive director.

The CS provides for retroactive application of this section to permit expunction of any nonjudicial record of the arrest of a minor who has successfully completed a prearrest or postarrest diversion program on or after July 1, 2000, provided that, in the case of a minor whose completion of the program occurred before the effective date of this section, the application for expunction is submitted by January 1, 2002.

Expunction or sealing under this section does not preclude the minor who received such relief from petitioning for sealing or expunction of a later criminal history record as provided in ss. 943.0585 and 943.09, F.S., if he or she is otherwise eligible under those sections.

Section 4.

The CS amends s. 983.3065, F.S., relating to prearrest diversion programs to provide that a law enforcement agency or school district, in cooperation with the state attorney, may establish a postarrest diversion program.

The CS makes the child in the postarrest diversion program subject to the provisions currently in this section that provide that a child in a prearrest program may be required to surrender his or her driver's license, or refrain from applying for such license, for a period of not more than 90 days, and further provides that if the child fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period of not more than 90 days.

The CS authorizes the prearrest or postarrest diversion program, upon agreement of the agencies that establish the program, to provide for the expunction of the nonjudicial records of a minor who successfully completes such a program

Section 5.

The CS amends s. 943.0585, F.S., relating to expunction of criminal history records, to expand on the list of offenses from which criminal records relating to those offenses may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The offenses added include: s. 787.025, F.S. (luring or enticing a child); s. 796.03, F.S. (procuring a minor for prostitution); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult); s. 847.0133, F.S. (selling, renting, loaning, giving away, distributing, transmitting or showing obscene materials to a minor); s. 847.0135, F.S. (computer pornography and computer solicitation of a minor to engage in sexual activity); and s. 847.0145, F.S. (selling or buying of minors). Conforming changes are made to the provision relating to a certificate of eligibility for expunction.

The offenses added are all qualifying offenses for purposes of sexual predator and sexual offender registration. The inclusion of these offenses would prevent a person from having their record expunged for any of those offenses, thereby trying to circumvent the registration requirements.

Section 6.

The CS amends s. 943.059, F.S., relating to sealing of criminal history records, to expand on the list of offenses from which criminal records relating to these offenses may not be sealed, without regard to whether adjudication was withheld, if the defendant was found guilty of or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The offenses added include: s. 787.025, F.S. (luring or enticing a child); s. 796.03, F.S. (procuring a minor for prostitution); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult); s. 847.0133, F.S. (selling, renting, loaning, giving away, distributing, transmitting or showing obscene materials to a minor); s. 847.0135, F.S. (computer pornography and computer solicitation of a minor to engage in sexual activity); and s. 847.0145, F.S. (selling or buying of minors).

Section 7.

Effective October 1, 2001, the CS expands the pool of criminals who are required to submit biological specimens for DNA analysis. For example, this would apply the law to someone who has been transferred to Florida under an interstate compact and has previously committed an offense in another jurisdiction similar to an enumerated offense, or someone who is incarcerated or on supervision in Florida, and has previously committed an offense in another jurisdiction similar to an enumerated offense. The Department of Corrections could not provide the number of persons who would qualify under this provision, but advised that this would be small.

The second provision has a much larger impact on the DNA data bank. Requiring criminals who were convicted for committing an enumerated offense in this state and were sentenced directly to probation without having ever been incarcerated increases the number of persons to be tested by approximately 9,000 per year. These people are the criminals who are living in the community. This amendment would have much the same impact on the resources of the DNA data bank, as would the addition of another enumerated offense, such as adding burglary or robbery.

The CS allows FDLE to accept biological substances other than blood for DNA analysis and entry into the FDLE DNA data bank. That could include an oral swab collected on a Q-tip or cotton ball. The collection of a blood specimen would still have to be performed in a medically approved manner, but this CS adds the provision that blood could be drawn by other trained and competent personnel. The CS does not describe such personnel or training.

The collection of other FDLE-approved biological specimens could be performed by any person using a collection kit provided or accepted by FDLE in a manner approved by FDLE. According to FDLE, the oral swab method is less intrusive than drawing blood.

The CS allows the DNA data bank to accept a biological specimen for analysis from persons who are not described in s. 943.325(1), F.S, which requires criminals who have committed one or more of the enumerated offenses to submit blood or other approved biological specimens for DNA analysis.

The CS also deals with use of force. It provides that a person who collects an approved biological specimen other than blood will not be held civilly or criminally liable as long as the collector used a FDLE kit, and the collection is done by instruction or in a reasonable manner. Such a person could not be charged with battery or invasion of privacy.

Finally, the CS allows the agency taking the convict into custody to collect the biological specimens at the location of the arrest if that can be done in a reasonable manner, rather than having to transport the convict to a medical location. According to FDLE, such a biological specimen can be collected with an oral swab in a less intrusive manner, at any location. This section applies to persons who were incarcerated for an enumerated offense, but were released to some form of community supervision before they could be tested.

Section 8.

Effective October 1, 2001, the CS amends s. 760.40, F.S, as it relates to informed consent of a person to his or her DNA tested and the results of that testing remain the exclusive property of the person and not be disclosed, in order to indicate that one exception relates to acquiring specimens from persons convicted of certain offenses or as provided in s. 943.325, F.S., relating to blood specimen testing for DNA analysis.

Section 9.

The CS creates s. 843.167, F.S., which provides that a person may not intercept any police radio communication by use of a scanner or any other means for the purpose of using that communication to assist in committing a crime or to escape from or avoid detection, arrest, trial, conviction, or punishment in connection with the commission of such crime. The penalty for a crime committed as previously described is enhanced one misdemeanor or felony degree as appropriate, or in the case of a first degree misdemeanor is punished as if it were a third degree felony.

It appears that the previously described provision is in the nature of a set of criteria that, if satisfied, trigger an enhanced penalty for a criminal offense, even though satisfaction of the previously described provision is described as a "violation" and the act or conduct is proscribed ("[a] person may not intercept any police communication"). There are no criminal sanctions for commission of the act as a separate and distinct offense.

A person commits a first degree misdemeanor if he or she divulges the existence, contents, substance, purpose, effect, or meaning of a police radio communication to any person he or she knows to be a suspect in the commission of a crime with the intent that the suspect may escape from or avoid detection, arrest, trial, conviction, or punishment.

A person is presumed to have unlawfully intercepted a police radio communications as previously described if the person is charged with a crime and during the time such crime was committed, possessed or used a police scanner or similar device capable of receiving police radio transmissions. This presumption does not appear to be a presumption that an element of the crime (subject to the enhanced penalty) is met on proof of a basic or evidentiary fact but rather a presumption that the criteria for the enhanced penalty have been satisfied upon proof that the person committing the crime used a police radio scanner or similar device during the time the crime was committed.

Section 10.

Except as otherwise expressly provided, the bill takes effect July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There could be an impact on the private sector if the volume of analysis needing to be done is greater than FDLE can handle, requiring the state to contract out the work.

C. Government Sector Impact:

A recommended $2,000,000 in recurring General Revenue appears in the Governor's Recommended Budget (FY 2001-02) for expansion of the Florida Violent Crime Council to include drug investigation funding.

Requiring the DNA testing of certain probationers would require approximately 9,000 additional samples to be collected each year. The cost of using an oral swab is about the same as the cost of using blood for DNA analysis, according to the director of FDLE's DNA data bank. The cost of collecting and analyzing a biological specimen for the data bank is currently about $53.00 per sample. According to FDLE, advances in technology and

economies of scale are holding down or reducing the costs, and they can fully absorb the additional costs with the resources they now have.

Section 9 of the CS was the substance of a bill last session and was determined by the Criminal Justice Estimating Conference at that time to have an indeterminate impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.