

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 29 DNA Testing

SPONSOR(S): Snyder and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>10 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Cunningham</u>	<u>Havlicak</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

HB 29 provides that incarcerated persons and persons under community supervision are required to submit blood or other biological specimens for inclusion in the statewide DNA data bank if they have been convicted of any felony offense, certain misdemeanors, and any offense that was found to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

Additionally the bill removes unnecessary language indicating that the requirement to submit blood or other biological specimens is "subject to appropriation" because the required appropriation was provided in 2007.

This bill takes effect July 1, 2008.

This bill has an insignificant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – HB 29 expands the list of offenses which would require a person convicted of such offense to submit blood or biological specimens.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

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

As indicated above, qualifying offenses have been added at a measured pace, with each year's expansion made "contingent upon specific appropriation." While there was statutory authority for the collection of all felony convictions as of July 1, 2005, the specific appropriation needed to make this provision effective was not provided until 2007.

¹ Fla. Laws ch. 89-335.

² *Id.*

³ Fla. Laws ch. 2001-97.

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

⁵ DNA is most commonly collected using an oral swab.

Effect of the Bill

HB 29 deletes the now obsolete timetable language outlined above and, because the required appropriation has already been made, removes language indicating that the requirement is subject to appropriation. The bill then specifies that incarcerated persons and persons under some form of community supervision are required to submit blood or other biological specimens for inclusion in the statewide DNA data bank if they have been convicted of *any felony offense*.

HB 29 also adds additional crimes to the list of offenses which would require a person to submit blood or biological specimens. Specifically, the bill adds:

- Misdemeanor violations of ss. 784.048 (stalking), 810.14 (voyeurism), 847.011 (prohibiting certain acts in connection with obscene materials), 847.013 (exposing minors to harmful motion pictures, exhibitions, shows, presentations, or representations), 847.0135 (computer pornography), 877.26 (direct observation, videotaping, or visual surveillance of customers in merchant's dressing room).
- Any offense that was found, pursuant to s. 874.04, F.S., to have been committed for the purposes of benefiting, promoting, or furthering the interests of a criminal gang⁶.

C. SECTION DIRECTORY:

Section 1. Amends s. 943.325, F.S., relating to blood or other biological specimen testing for DNA analysis.

Section 2. This bill takes effect July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Insignificant (See Fiscal Comments).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁶ Section 874.04, F.S., as amended by HB 43, authorizes a court to enhance penalties if it is found that the defendant committed the charged offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

FDLE stated the following in their analysis of this bill:

The effect on the DNA Database operation will be minimal. Based on criminal history records, there have been 16 convictions under section 847.03 since records have been maintained. There are less than 300 convictions per year under ss. 784.048, 810.14, 847.011, 847.013, 847.0135, and 877.26, F.S.

FDLE will be able to absorb the small number of DNA submissions expected without any additional funding requests (300 convictions per year @ \$28 per DNA Database sample completion = \$8,400).

The fiscal impact of collecting DNA for all felony offenses was funded by the Legislature as part of FDLE's 2007-2008 Legislative Budget Request.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

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

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

The chair of the Safety & Security Council chose not to submit any further comments regarding the council substitute.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On January 23, 2008, the Safety & Security Council adopted one amendment and reported the bill favorably as a council substitute. The amendment makes technical changes conforming language to the terminology used in HB 43.

This analysis is drafted to the council substitute.