

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1021 DNA Database
SPONSOR(S): Criminal Justice Subcommittee, Latvala
TIED BILLS: **IDEN./SIM. BILLS:** SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Frost	Hall
2) Judiciary Committee	17 Y, 0 N	Frost	Poche

SUMMARY ANALYSIS

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells. Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile. DNA is frequently collected at a crime scene from biological material, such as hair, skin cells, blood, semen, saliva, and other bodily substances, and analyzed to assist in convicting or exonerating a suspect.

Established in 1998, the National DNA Index System (NDIS) contains DNA profiles contributed by federal, state, and local participating forensic laboratories. NDIS enables a law enforcement agency to exchange and compare DNA profiles electronically, thereby linking a crime or a series of crimes to each other or to a known offender. The Combined DNA Index System (CODIS) is a software platform maintained by the FBI and used to compare an existing DNA profile to a DNA sample found at a crime scene to identify the source of the sample.

Florida requires an oral DNA swab, known as a buccal swab, from any person:

- Committed to a county jail;
- Committed to or under the supervision of:
 - The Department of Corrections;
 - A private correctional institution; or
 - The Department of Juvenile Justice.
- Transferred to Florida or accepted under an interstate compact;
- Convicted of a felony offense or attempted felony offense anywhere;
- Convicted of certain misdemeanor offenses; or
- Arrested for a felony offense or attempted felony offense in Florida.

Legislative findings in Florida statute provide that a match between a person's DNA sample in a criminal investigation to a DNA profile from a state or federal DNA database may be probable cause for a judge to issue a search warrant to acquire a confirming DNA sample from an individual; however, case law indicates a DNA database match is sufficient probable cause for an arrest warrant.

CS/HB 1021 amends s. 943.325(1)(b), F.S., to include the Legislature's intent that a match between a person's DNA sample in a current criminal investigation to a state or federal DNA database may be probable cause for an arrest warrant; as such, a judge may find probable cause based on a DNA database match for an arrest warrant or a search warrant for a second DNA sample. The bill provides guidance to law enforcement as to the actions an officer may take after receiving matching DNA information for a crime. A judge must still determine that the initial DNA match is sufficient probable cause for an arrest.

The bill may have an indeterminate fiscal impact on state government.

The bill provides an effective date of July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

DNA

Deoxyribonucleic acid (DNA) is hereditary material existing in the cells of all living organisms. A DNA profile may be created by testing the DNA in a person's cells.¹ Similar to fingerprints, a person's DNA profile is a unique identifier, except for identical twins, who have the exact same DNA profile.² DNA is frequently collected at a crime scene and analyzed to assist in convicting or exonerating a suspect. DNA evidence may be collected from any biological material, such as hair, teeth, bones, skin cells, blood, semen, saliva, urine, feces, and other bodily substances.³ A DNA sample may be used to solve a current crime or a crime which occurred before DNA-testing technology.⁴

CODIS and NDIS

The most common form of DNA analysis used to match samples and test for identification in forensic laboratories analyzes only certain parts of DNA, known as short tandem repeats or satellite tandem repeats (STRs).⁵ In the early 1990s, the Federal Bureau of Investigation (FBI) chose 13 STRs as the basis for a DNA identification profile, and the 13 STRs became known as the Combined DNA Index System (CODIS).⁶ CODIS is now the general term used to describe the software maintained by the FBI and used to compare an existing DNA profile to a DNA sample found at a crime scene to identify the source of the crime scene sample.⁷

The DNA Identification Act of 1994 (DNA Act)⁸ authorized the government to establish a National DNA Index, and in 1998 the National DNA Index System (NDIS) was established. NDIS contains DNA profiles contributed by federal, state, and local participating forensic laboratories,⁹ enabling a law enforcement agency to exchange and compare DNA profiles electronically, thereby linking a crime or a series of crimes to each other or to a known offender. A state seeking to participate in NDIS must sign a memorandum of understanding with the FBI agreeing to the DNA Act's requirements, including record-keeping requirements and other procedures. To submit a DNA record to NDIS, a participating laboratory must adhere to federal law regarding expungement¹⁰ procedures, and the DNA sample must:

- Be generated in compliance with the FBI Director's Quality Assurance Standards;
- Be generated by an accredited and approved laboratory;
- Be generated by a laboratory that undergoes an external audit every two years to demonstrate compliance with the FBI Director's Quality Assurance Standards;

¹ FindLaw, *How DNA Evidence Works*, <https://criminal.findlaw.com/criminal-procedure/how-dna-evidence-works.html> (last visited Apr. 3, 2019).

² *Id.*

³ *Id.*

⁴ *Id.*; Dr. Alec Jeffreys developed the DNA profiling technique in 1984.

⁵ Kelly Lowenberg, *Applying the Fourth Amendment when DNA Collected for One Purpose is Tested for Another*, 79 U. Cin. L. Rev. 1289, 1293 (2011), <https://law.stanford.edu/wp-content/uploads/2011/11/APPLYING-THE-FOURTH-AMENDMENT-WHEN-DNA-COLLECTED-FOR-ONE-PURPOSE.pdf> (last visited Apr. 3, 2019).

⁶ *Id.*

⁷ *Id.* at 1294.

⁸ 42 U.S.C. § 14132.

⁹ All 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, and Puerto Rico participate in NDIS. FBI Services, *Laboratory Services, Frequently Asked Questions on CODIS and NDIS*, <https://www.fbi.gov/services/laboratory/biometric-analysis/codis/codis-and-ndis-fact-sheet> (last visited Apr. 3, 2019).

¹⁰ See 42 U.S.C. § 14132(d)(2)(A)(ii) (requiring states to expunge a DNA record when a charge is dismissed, results in an acquittal, or when no charge is filed).

- Be from an acceptable data category, such as:
 - Convicted offender;
 - Arrestee;
 - Detainee;
 - Forensic case;
 - Unidentified human remains;
 - Missing person; or
 - Relative of a missing person.
- Meet minimum CODIS requirements for the specimen category; and
- Be generated using an approved kit.

Florida's DNA Database

In 1989 the Legislature created the DNA database within the Florida Department of Law Enforcement (FDLE), requiring a blood DNA sample from a person convicted of certain sexual offenses to be entered into a statewide database maintained by FDLE as an automated personal identification system for classifying, matching, and storing DNA profiles.¹¹ Due to technological advancements, FDLE no longer requires a blood sample, and instead uses an oral swab, known as a buccal swab, to collect epithelial cells from a person's mouth, specifically the inner cheek.¹² A buccal swab is required from any person.¹³

- Committed to a county jail;
- Committed to or under the supervision of:
 - The Department of Corrections;
 - A private correctional institution; or
 - The Department of Juvenile Justice.
- Transferred to Florida or accepted under an interstate compact;¹⁴
- Convicted of a felony offense or attempted felony offense anywhere;
- Convicted of certain misdemeanor offenses;¹⁵ or
- Arrested for a felony offense or attempted felony offense in Florida.

Fourth Amendment

The Fourth Amendment to the United States Constitution guarantees:

- The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and
- No warrants shall issue without probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.¹⁶

Under Fourth Amendment jurisprudence, a search occurs whenever the government intrudes upon an area in which a person has a reasonable expectation of privacy.¹⁷ The Florida Constitution similarly protects a person against an unreasonable search and seizure, and that right is construed in conformity with the Fourth Amendment of the U.S. Constitution.¹⁸ Both the Florida and federal constitutions require a warrant to be supported by probable cause, as established by oath or affirmation, and to particularly describe the place to be searched and items or people to be seized. While governmental DNA

¹¹ Ch. 89-335, Laws of Fla.

¹² S. 943.325(f), F.S.

¹³ S. 943.325(2)(g), F.S.

¹⁴ S. 943.325(2)(g)1.b.-c., F.S.

¹⁵ Including stalking, s. 784.048, F.S.; voyeurism, s. 810.14, F.S.; certain acts connected with obscene, lewd, etc., materials, s. 847.011, F.S.; exposing minors to harmful motion pictures, exhibitions, shows, presentation, or representations, s. 847.013, F.S.; computer pornography, prohibited computer usage by an owner or operator of a computer service, s. 847.0135, F.S.; direct observation, videotaping, or visual surveillance of customers in a merchant's dressing room, etc., s. 877.26, F.S.; certain gang-related offenses committed pursuant to s. 874.04, F.S., for the purpose of benefitting, promoting, or furthering criminal gang interests.

¹⁶ U.S. Const. Amend. IV.

¹⁷ *Katz v. United States*, 389 U.S. 347 (1967).

¹⁸ Art. I, s. 12, Fla. Const.

collection is a search, the United States Supreme Court has held it is constitutional and no different than other legitimate police booking procedures such as fingerprinting or photographing.¹⁹

Legislative Intent

Section 943.325(1)(b), F.S., contains legislative findings providing that a match between a DNA sample in a current criminal investigation and a state or federal DNA database may be probable cause²⁰ for a judge to issue a search warrant to acquire a confirming DNA sample from an individual.²¹

While legislative findings are not codified law, when interpreting law is an issue, courts commonly resort to the rules of statutory construction to determine the proper application of statutory language to the facts at hand. In applying the rules of statutory construction, a court must choose an interpretation that most closely fits the Legislature's intent by examining the:

- Problem the Legislature faced when considering the bill that enacted the language in question;
- Public policy issues the problem raised;
- Drafting solutions explored during the Legislature's consideration of the bill; and
- Specific intent expressed in the statutory language.
 - Any uncertainty regarding the Legislature's intent should be resolved by an interpretation providing the most public benefit.²²

DNA Search Warrant

When a law enforcement agency receives information indicating a person's DNA profile in an ongoing criminal investigation matches a DNA profile from another state or federal database, an officer typically applies for a search warrant to obtain an additional DNA sample from the individual. Once a law enforcement officer locates and serves a search warrant for a DNA sample on a person, the officer may collect the additional DNA sample for FDLE to analyze and confirm the match.²³

Processing times may vary, and during the time it takes to compare the DNA samples a second time, a suspect may flee, go into hiding, or become hostile when law enforcement returns to execute an arrest.²⁴ While many law enforcement agencies follow the multi-step process, some agencies seek an arrest warrant directly after receiving DNA match information.²⁵

While law enforcement agencies using the multi-step process are adhering to current legislative intent, a Florida court has held that identification by a DNA match is analogous to identification by a fingerprint match, and as such, a match between a DNA profile in the FDLE database and a DNA sample from a crime scene is sufficient probable cause to arrest an offender.²⁶ Florida courts have also held that a match between latent fingerprints and known fingerprints is sufficient probable cause for a warrantless arrest.²⁷ As such, a law enforcement officer may arguably arrest an individual without a warrant based on a DNA database match.²⁸

¹⁹ *Maryland v. King*, 569 U.S. 435 (2013).

²⁰ *See State v. Cortez*, 705 So.2d 676, 678 (Fla. 3d DCA 1998) ("Probable cause to arrest exists when the totality of the facts and circumstances within the officer's knowledge would cause a reasonable person to believe that an offense has been committed and that the defendant is the one who committed it").

²¹ S. 943.325, F.S.

²² *Devin v. City of Hollywood*, 351 So. 2d 1022 (Fla. 4th DCA 1976).

²³ House Judiciary Committee staff conversations with law enforcement officer representatives (Mar. 5, 8, 21, and 22, 2019); and with FDLE and law enforcement representatives (Mar. 8, 2019).

²⁴ *Id.*

²⁵ House Judiciary Committee staff conversations with a law enforcement officer representative (Mar. 21, 2019).

²⁶ *Myles v. State*, 54 So. 3d 509 (Fla. 3rd DCA 2010).

²⁷ *Id.*

²⁸ *Id.* (holding that DNA evidence obtained from sample swabs performed on a victim of sexual assault are analogous to "latent prints" and a DNA sample legally acquired from a defendant equate to "known prints" on file).

Effect of Proposed Changes

CS/HB 1021 amends s. 943.325(1)(b), F.S., to include the Legislature's intent that a match between a person's DNA sample in a current criminal investigation to a state or federal DNA database may be probable cause for an arrest warrant; as such, a judge may find probable cause based on a DNA database match for an arrest warrant or a search warrant for a second DNA sample.

The bill provides guidance to law enforcement agencies throughout the state as to the actions an officer may take after receiving matching DNA information for a crime. The bill provides law enforcement authority to seek an arrest warrant for a DNA sample, based on an initial DNA database match, without first having to seek and provide a second confirming match. A judge must still determine that the initial DNA match is sufficient probable cause for an arrest, and has the option to issue a search warrant to acquire a second sample when deemed necessary.

The bill provides an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1: Amends s. 943.325, F.S., relating to DNA database.

Section 2: Provides an effective date of July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government by potentially increasing requests for expedited DNA sample processing.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2019, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment revised legislative findings to provide that a DNA database match may be probable cause for an arrest warrant or a warrant to obtain a DNA sample from an offender.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.