

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 Committee on Judiciary

BILL: CS/SB 920

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: DNA Database

DATE: April 5, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Jones</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cibula</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 920 revises the legislative intent found in s. 943.325(1)(b), F.S., the statute establishing a statewide DNA database. In establishing the database, the Legislature expressed the intent that

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.

As revised by the bill, the legislative intent states that the Legislature intends for matches between casework evidence DNA samples and DNA databases of offenders to be used for an additional purpose—finding probable cause to obtain a warrant for an offender’s arrest.

The bill may reduce costs to establish probable cause to arrest a person based on DNA evidence by eliminating a perceived requirement that multiple DNA tests are necessary to establish probable cause.

The bill is effective July 1, 2019.

II. Present Situation:

Using DNA to Solve Crimes

A person's unique Deoxyribonucleic acid (DNA) profile is present in bodily fluids, a strand of hair, and even skin cells.¹ Because a perpetrator often leaves DNA at the scene of a crime, that DNA evidence can be used to aid in solving crimes in two ways:

- In cases where there is a suspect, by comparing the suspect's DNA (known sample) to DNA evidence collected at the crime scene (unknown sample); and
- If there is no known suspect, by comparing DNA evidence gathered at the crime scene to DNA database profiles to help identify the perpetrator if he or she has a sample in a database.²

Forensic crime laboratories extract and analyze DNA found at a crime scene. To identify the DNA contributor, the crime scene DNA profile must be matched either to a known suspect or to a DNA profile stored in a database.³ Accurate identification depends upon factors such as:

- The quality of the DNA sample;
- The number of genetic markers analyzed;
- Whether the sample was prepared properly; and
- The ability of those doing the analysis to interpret the results.⁴

All 50 states and the federal government have laws requiring the collection of DNA samples from some category of offenders. There currently exists a network of local, state, and federal DNA databases available to law enforcement agencies for the purpose of comparing crime scene evidence to DNA profiles. State DNA profiles are sent to the National DNA Index System. This national database can be searched using a technology platform, developed by the Federal Bureau of Investigation, known as the Combined DNA Index System (CODIS).⁵

CODIS searches the national database system weekly and, if there is a match between a crime scene DNA sample and a DNA database profile, the agency that submitted the profile is notified, making it possible to link suspects to unsolved crimes.⁶ CODIS is also capable of linking DNA evidence from crime scenes in different locations, potentially aiding multi-jurisdictional cooperation in solving crimes attributable to serial offenders.⁷

¹ William Harris, HowStuffWorks, *How DNA Evidence Works*, Jan. 18, 2001, available at <https://science.howstuffworks.com/life/genetic/dna-evidence2.htm> (last visited Apr. 5, 2019).

² United States Department of Justice, *Advancing Justice through DNA Technology: Using DNA to Solve Crimes*, updated March 7, 2017, available at <https://www.justice.gov/archives/ag/advancing-justice-through-dna-technology-using-dna-solve-crimes>.

³ See note 1, *supra*.

⁴ Stephen Leahy, *Alleged Golden State Killer Busted by DNA. But are Tests 100% Accurate?*, NATIONAL GEOGRAPHIC, Apr. 25, 2018, available at <https://news.nationalgeographic.com/2018/04/dna-testing-accuracy-golden-state-killer-science-spd/> (last visited Apr. 5, 2019). *Note, this link contains a graphic video of an autopsy.

⁵ *Id.*

⁶ *Id.*

⁷ Federal Bureau of Investigation, *Combined DNA Index System (CODIS)*, available at <https://www.fbi.gov/services/laboratory/biometric-analysis/codis> (last visited Apr. 5, 2019)

Current Law

Section 943.325, F.S., created the DNA database within the Florida Department of Law Enforcement (FDLE) in 1989, and required persons convicted of certain sex crimes to provide blood samples to be tested for genetic markers for the purpose of personal identification of the person submitting the sample.⁸ The results from the blood samples were then entered into a DNA database maintained by the FDLE to be available in a statewide automated personal identification system for classifying, matching, and storing DNA analyses.⁹

Since its creation, the statewide DNA database has evolved to the point where the FDLE now accepts oral swab samples (known samples) from qualifying offenders, which means any person meeting two criteria:

(1) a person who is:

- Committed to a county jail;
- Committed to or under the supervision of the Department of Corrections, including persons incarcerated in a private correctional institution;
- Committed to or under the supervision of the Department of Juvenile Justice;
- 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.;¹⁰ and

(2) a person who is:

- Convicted of any felony offense or attempted felony offense in this state or of a similar offense in another jurisdiction;
- Convicted of a violation of ss. 784.048, 810.14, 847.011, 847.013, 847.0135, or 877.26, F.S., or an offense that was found, pursuant to s. 874.04, F.S., to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang as defined in s. 874.03, F.S.;¹¹ or
- Arrested for any felony offense or attempted felony offense in this state.¹²

The collection of samples from a person booked into a jail, correctional facility, or juvenile facility for a felony has been a phased-in process. The process started in January 2011 with the last phase slated to begin January 1, 2019, subject to sufficient funding appropriations passed by the Legislature and approved by the Governor.¹³

⁸ Ch. 89-335, Laws of Fla.

⁹ *Id.*

¹⁰ Section 943.325(2)(g)1.a.-e., F.S.

¹¹ These offenses are: stalking; voyeurism; certain acts in connection with obscene, or lewd, materials; renting, selling, or loaning harmful motion pictures, exhibitions, shows, presentations, or representations to minors; computer pornography, prohibited computer usage, or traveling to meet a minor; direct observation, videotaping, or visual surveillance of customers in a merchant's dressing room; and criminal gang related offenses.

¹² Section 943.325(2)(g)2.a.-c., F.S.

¹³ Section 943.325(3)(b), F.S.

Legislative Intent in Section 943.325, F.S.

Section 943.325(1)(b), F.S., contains legislative findings approving the use of a DNA match between crime scene evidence and a DNA database sample match to establish probable cause for a judge to issue a search warrant to obtain a suspect's DNA (known) sample. Section 943.325(1)(b), F.S., states:

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.

Once the law enforcement officer serves the search warrant on the person, the officer can then obtain a DNA sample from the suspect that will be compared to the sample from the crime scene and the match sample from a DNA database. The timetable for the laboratory comparison of the three DNA samples cannot be stated with certainty. If the known sample confirms that the match is accurate, the officer may then arrest the suspect. This is at best a two-step process for the law enforcement officer who must first obtain the suspect's sample, wait for results from a lab confirming the three DNA profiles match one another (crime scene, database, and officer-obtained suspect sample), and then arrest the suspect.¹⁴

Case Law

In a factual scenario similar to the one that may result under the bill, a Florida court has found that a DNA sample in the FDLE database and a match to DNA crime scene evidence is "sufficient to create probable cause to arrest the defendant."¹⁵ In the case, a voluntary DNA swab was obtained from the defendant during the investigation of an unrelated crime. The DNA – a known sample – was then analyzed and stored in the FDLE DNA database. Crime scene DNA evidence from an unsolved sexual battery, also in the database, and the defendant's known DNA sample matched.¹⁶

The defendant was arrested for the unsolved sexual battery based on the DNA match. At the police station, subsequent to his arrest, the defendant provided another known DNA sample, for identification confirmation. Later, the defendant argued that the second known sample should not be admissible at trial because the first match did not constitute probable cause to arrest the defendant.¹⁷

The court disagreed with the defendant's argument, noting that the taking of DNA samples has been widely accepted by courts as analogous to the taking of fingerprints. The court further explained that because the comparison of latent fingerprints and known fingerprints on file

¹⁴ Information based upon Senate Criminal Justice Committee staff conversations with law enforcement officer representatives on March 7, 8, and 12, 2019, and a conference call with law enforcement representatives and FDLE representatives on March 8, 2019.

¹⁵ *Myles v. State*, 54 So. 3d 509, 512 (Fla. 3rd DCA 2010), *rev. den.* 72 So. 3d 746 (Fla. 2011).

¹⁶ *Id.* at 510-11.

¹⁷ *Id.*

provide probable cause for an arrest, a DNA match to a DNA database is also probable cause for an arrest.¹⁸

III. Effect of Proposed Changes:

The bill revises the legislative intent in s. 943.325(1)(b), F.S., which describes how the Legislature intends for the statewide DNA database to be used. As revised, the Legislature intends that matches between casework evidence DNA samples and DNA databases of offenders be used to find probable cause to obtain a warrant for an offender's arrest. This is in addition to the current stated intent that matches between casework evidence and DNA databases be used to find probable cause for the issuance of a warrant to obtain a DNA sample from an offender. The revised language creates the potential for or clarifies that a law enforcement officer may avoid taking an identification confirmation DNA sample from a suspect pursuant to a search warrant, prior to arrest.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None Identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁸ *Id.* at 512.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will reduce costs to establish probable cause to arrest a criminal suspect to the extent that the existing intent language is understood by law enforcement agencies to require an additional DNA test after a DNA sample from a criminal investigation is found to match a sample in a DNA database.

VI. Technical Deficiencies:

None.

VII. Related Issues:

If no identification confirmation DNA sample is taken prior to a defendant's arrest, it may be problematic in the criminal proceedings because once a suspect is arrested the right to a speedy trial attaches, both procedurally and constitutionally.¹⁹ Essentially this means that if a defendant asserts his or her right to a speedy trial under the Florida Rules of Criminal Procedure and, barring any procedural issues or delays by the defendant, the trial must commence within 60 days.²⁰ If the identification confirmation DNA analysis and comparison has not been completed in a timely manner, the prosecutor may not be able to prove beyond a reasonable doubt that the defendant committed the crime.

VIII. Statutes Affected:

This bill substantially amends section 943.325 of the Florida Statutes.

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

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

CS by Criminal Justice on March 18, 2019:

The Committee Substitute restores current language in s. 943.325(1)(b), F.S., providing for a DNA match to be used for a judge to find probable cause to issue a search warrant to obtain a DNA sample from an offender.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. CONST. amend. VI; *see also* Fla. R. Crim. P. 3.191.

²⁰ Fla. R. Crim. P. 3.191.