

1989

Session Law 89-335

Florida Senate & House of Representatives

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H 1267 GENERAL BILL/CS/1ST ENG by Criminal Justice; Irvine and others (Similar CS/S 1221)

Blood Specimen Testing/DNA Analysis; provides for blood specimen testing for DNA analysis of persons convicted of specified offenses; provides testing criteria; provides for designated testing facility; provides for limited release of information & provides exemption from public records law; provides recordkeeping duties. Creates 943.325. Effective Date: 01/01/90.

03/23/89 HOUSE Prefiled
03/27/89 HOUSE Referred to Criminal Justice; Appropriations
04/04/89 HOUSE Introduced, referred to Criminal Justice; Appropriations -HJ 122
04/06/89 HOUSE Subreferred to Subcommittee on Prosecution and Punishment
04/11/89 HOUSE On Committee agenda—Criminal Justice, 04/13/89, 8:00 am, 21-HOB—For ratification of referral to subcommittee
04/21/89 HOUSE On subcommittee agenda—Criminal Justice, 04/25/89, 8:30 am, 21-HOB
04/25/89 HOUSE Subcommittee Recommendation: Favorable as a proposed CS; On Committee agenda—Criminal Justice, 04/27/89, 1:30 pm, 21-HOB—Not considered
04/28/89 HOUSE On Committee agenda—Criminal Justice, 05/02/89, 8:30 am, 21-HOB
05/02/89 HOUSE Preliminary Committee Action by Criminal Justice: Favorable as a CS
05/11/89 HOUSE Comm. Report: CS by Criminal Justice -HJ 481; CS read first time -HJ 479; Now in Appropriations -HJ 481
05/22/89 HOUSE On Committee agenda—Appropriations, 05/23/89, 8:00 am, 21-HOB
05/23/89 HOUSE Preliminary Committee Action by Appropriations: Favorable with 1 amendment
05/24/89 HOUSE Comm. Report: Favorable with 1 amendment(s) by Appropriations, placed on Calendar -HJ 630
05/25/89 HOUSE Placed on Special Order Calendar; Read second time -HJ 649; Amendment adopted; Read third time; CS passed as amended; YEAS 107 NAYS 0 -HJ 650
05/26/89 SENATE In Messages
05/30/89 SENATE Received, referred to Judiciary—Criminal; Corrections Probation and Parole -SJ 567
05/31/89 SENATE Withdrawn from Judiciary—Criminal; Corrections, Probation and Parole; Substituted for CS/SB 1221; CS passed; YEAS 39 NAYS 0 -SJ 670
05/31/89 Ordered enrolled
06/20/89 Signed by Officers and presented to Governor
07/05/89 Approved by Governor; Chapter No. 89-335

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NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

****AS PASSED BY THE 1989 LEGISLATURE****

STORAGE NAME: h1267c.cj
DATE: June 30, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1267

RELATING TO: Blood Specimen Testing/DNA Analysis

SPONSOR(S): Criminal Justice and Representative Irvine and others

EFFECTIVE DATE: October 1, 1989

DATE BECAME LAW: July 5, 1989

CHAPTER #: 89-335, Laws of Florida

COMPANION BILL(S): SB 1221

OTHER COMMITTEES OF REFERENCE: (1) Appropriations
(2)

I. SUMMARY:

A. PRESENT SITUATION:

Section 943.32, F. S., established a statewide criminal analysis laboratory system operated under the jurisdiction of the Florida Department of Law Enforcement in Fort Myers, Jacksonville, Pensacola, Orlando, Tallahassee, Tampa and other areas. The criminal analysis laboratories provide criminal analysis laboratory services to criminal justice agencies in the state.

B. EFFECT OF PROPOSED CHANGES:

This bill would create s. 943.325, F. S., to provide for the collection of blood from persons convicted of the offense of or attempted offense of sexual battery defined in chapter 794, and lewd and lascivious conduct, defined in chapter 800 after January 1, 1990. The offender would be required to submit two specimens of blood to a Department of Law Enforcement designated testing facility upon conviction.

The Department of Law Enforcement would be responsible for providing specimen vials, mailing tubes, labels, and instructions for the collection of blood specimens which would be forwarded to the central testing facility to determine genetic markers and characteristics for the purpose of identification of the person submitting the sample. The completed analysis would be entered into an automated data base maintained by the Department of Law Enforcement. The analysis would not be included in the state central criminal justice information repository. The analysis or information derived from the analysis would be released only to

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criminal justice agencies defined in s. 943.045(1). The documentation associated with the analysis would be exempt from the public records laws, section 119.07(1).

The Department of Law Enforcement would be responsible for establishing, implementing and maintaining a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA (deoxyribonucleic acid) and other biological molecules available to all criminal justice agencies.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 provides for DNA typing through blood collection, provides responsibility for administering the program, and makes records associated with analysis exempt from s. 119.07(1), the public records laws.

Section 2 provides an effective date of October 1, 1989.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

	<u>1989-90</u>		<u>1990-91</u>	
	<u>Positions</u>	<u>Amount</u>	<u>Positions</u>	<u>Amount</u>
	5	\$278,644	5	\$387,456
Crime Laboratory Analysts	3		2	
Crime Laboratory Technicians	2		3	
	5		5	

2. Recurring or Annualized Continuation Effects:

	<u>1989-90</u>	<u>1990-91</u>
Special Equipment:		
Autoclaves (2 @ 16,250 & 2 @ 16,250)	\$32,500	\$32,500
Electrophoresis Equipment (2 @ 7,400 & 3 @ 7,400)	14,800	22,200
Centrifuge, Large Capacity (2 @ 5,500 & 3 @ 5,500)	11,000	16,500
Freezer, 070°C (1 @ 6,500 & 4 @ 6,500)	6,500	26,000
Water Baths and Incubators (1 @ 2,500 & 4 @ 2,500)	2,500	10,000
Geiger Counter (1 @ 1,000 & 4 @ 1,000)	1,000	4,000
X-Ray Cassettes (1 @ 2,500 & 4 @ 2,500)	2,500	10,000
X-Ray Developer (1 @ 7,000 & 4 @ 7,000)	7,000	28,000
Total Special Equipment	\$77,800	\$149,200
Summary of Request:		
Salaries	\$117,018	\$142,952
Other Personal Services	20,000	40,000
Expenses	31,331	29,384
Operating Capital Outlay	32,495	25,920
Special Equipment (000)	77,800	149,200
Total Request	\$278,644	\$387,456

3. Long Run Effects Other Than Normal Growth:

See above

4. Appropriations Consequences:

See above

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate

2. Direct Private Sector Benefits:

Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:

D. FISCAL COMMENTS:

\$110,000 was approved for 1988/89 to fund FDLE Research and Development.

III. LONG RANGE CONSEQUENCES:

This bill is consistent with the State Comprehensive Plan, S. 187.201, F. S., in that it could facilitate the punishment of criminal behavior.

IV. COMMENTS:

This bill is consistent with the Committee Mission Statement in that it would allow the criminal justice system to operate effectively and responsibly.

California has a law which requires convicted sex offenders to provide specimens of blood and saliva which is analyzed and categorized into blood groupings. The California law has not been challenged on appeal, to the knowledge of FDLE. According to FDLE, "A constitutional challenge to these inmate testing requirements is conceivable, but in view of the Supreme Court's rather restrictive

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reading of the reasonable expectation of privacy of prison inmates, Hudson v. Palmer, 468 U.S. 517 (1984), I doubt that it would succeed. Until a case is actually heard, however, that cannot be known with certainty."

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:



Susan G. Bisbee

Staff Director:



Robin S. Hassler

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Dugger</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav/CS</u>
2. <u>Wilson</u> <i>Rev</i>	<u>Wilson</u> <i>Rev</i>	2. <u>COR</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

The Statewide Criminal
Analysis Laboratory System

BILL NO. AND SPONSOR:

CS/SB 1221 by
Judiciary-Criminal Committee,
Senator Brown and Others

I. SUMMARY:

A. Present Situation:

Currently, there is no statute which requires a person convicted of certain sexual offenses to give blood specimens to any agency for the purpose of DNA analysis.

B. Effect of Proposed Changes:

The CS/SB 1221 would require persons convicted of certain sexual offenses committed after January 1, 1990, to give the Florida Department of Law Enforcement (FDLE) two blood specimens for the purpose of DNA analysis. Those sexual offenses would include: sexual battery; sexual activity with a child by a person with custodial authority; statutory rape; unnatural and lascivious act; exposure of sexual organs; lewd and lascivious assault upon a child; or the attempt to commit any of these offenses.

FDLE would be responsible for providing specimen vials, mailing tubes, labels, and instructions for the collection of blood specimens which would be forwarded to the designated testing facility to determine genetic markers and characteristics for the purpose of identifying the person submitting the sample. The completed analysis would be entered into an automated data base maintained by the FDLE. The analysis would not be included in the state central criminal justice information repository. The analysis or information derived from the analysis would be released only to criminal justice agencies defined in s. 943.045(1). The documentation associated with the analysis would be exempt from the public records laws.

FDLE would be responsible for establishing, implementing, and maintaining a statewide automated personal identification system capable of, but not limited to, classifying, matching, and storing analyses of DNA and other biological molecules. This system would be available to all criminal justice agencies. The department would also be responsible for adopting rules prescribing the proper procedure for state and local law enforcement and correctional agencies to collect and submit these blood samples.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to FDLE, the cost of implementing the CS/SB 1221 will be as follows:

<u>FY 89-90</u>	
Salaries & Benefits	63,750
Lab Equipment & Instruments	68,000
Start Up Expendables	5,000
Computer Hardware	26,385
Software Development	28,000
Per Sample Costs for 2,600 Samples	<u>62,120</u>
	\$253,255

<u>FY 90-91</u>	
Salaries & Benefits	\$ 70,125
Lab Equipment & Instruments	5,500
Computer Hardware	2,600
Per Sample Costs for 2,860 Samples	<u>74,932</u>
	\$153,157

<u>FY 91-92</u>	
Salaries & Benefits	\$ 77,137
Lab Equipment & Instruments	6,500
Computer Hardware	26,385
Software Development	2,800
Per Sample Costs for 3,146 Samples	<u>82,425</u>
	\$195,247

These calculations are based on 2,600 analyses per year, increasing by 10% per year for 20 years.

III. COMMENTS:

Under current law, fingerprints are required to be taken from a convicted felon in open court. The fingerprints are then made a part of the written judgment, as evidence that they are the fingerprints of the defendant against whom the judgment of conviction was rendered. s. 921.241, F.S. The CS requires blood to be withdrawn from certain persons, upon conviction, not for the purpose of identifying the defendant as the person who committed the instant crime, but rather for the purpose of identifying him for a potential future crime. It seems that under these circumstances, the Fourth Amendment to the United States Constitution, which protects persons against unreasonable searches and seizures, would apply.

The United States Supreme Court has stated that a police officer could conduct an intrusive search of a person's body by withdrawing blood, without a warrant, if that officer had probable cause to believe that the person was driving under the influence of alcohol or drugs and thus had probable cause to believe that relevant evidence of that crime would be discovered. Furthermore, exigent circumstances had to exist such that the evidence would have been lost if not taken immediately. Schmerber v. State of California, 384 U.S. 757 (1966). It seems doubtful whether the requisite probable cause or exigent circumstances could be found in the factual scenario envisioned under the CS.

However, in recent years the United States Supreme Court has dispensed with the usual Fourth Amendment warrant and probable cause requirements in upholding certain types of searches as being reasonable when the Court found that the government's asserted interest was compelling and it presented "special needs" beyond normal law enforcement that outweighed the individual's privacy concerns. Recent decisions justifying such departures on the basis of a compelling governmental interest requiring special needs have been made in the following areas: drug tests performed on certain public employees, Skinner v. Railway Labor Executives Association, 57 U.S.L.W. 4324 (March 21, 1989) and National Treasury Employees Union v. Raab, 57 U.S.L.W. 4338 (March 21, 1989); search of a probationer's home for weapons, Griffin v. Wisconsin, 483 U.S. ____, 107 S.Ct. 3164 (1987); search of the premises of a commercial business, New York v. Burger, 482 U.S. 691 (1987); search of employees' desks and offices, O'Connor v. Ortega, 480 U.S. 709 (1987) (plurality opinion); search of a student's purse by school

personnel, New Jersey v. T.L.O., 469 U.S. 325 (1985); search of prison inmates' cells, Hudson v. Palmer, 468 U.S. 517 (1984); and body cavity searches of incarcerated defendants, including pre-trial detainees and post-conviction inmates, Bell v. Wolfish, 441 U.S. 520 (1979).

The reasonableness of the searches seems to turn on balancing the government's interest and need for the search against the intrusion of the search. For example, in Skinner, the Court found that the government's interest in protecting the public's safety by regulating the behavior of railroad employees involved in certain train accidents was compelling and outweighed the minimal privacy expectations of the railroad employees required to be tested in the workplace under the federal regulations. 57 U.S.L.W. at 4330, 4331. The Court stated that the governmental interest in regulating employees to guarantee public safety". . . like its supervision of probationers or regulated industries, or its operation of a governmental office, school, or prison, . . ." also creates "special needs" requiring an exception to the warrant and probable cause requirement. Id. at 4329.

Similarly, in Bell, the Court found body cavity searches of incarcerated persons reasonable by recognizing the special needs within the prison, i.e., maintaining institutional security and preserving internal order, and the government's substantial interest in carrying out these purposes. The Court looked to the special needs of the probation system in Griffin, i.e., supervision of probationers reduces recidivism, to find a search of a probationer's home without a warrant or probable cause reasonable within the meaning of the Fourth Amendment.

If the DNA blood typing law were challenged as being an unreasonable search based on the absence of a warrant or probable cause, an argument could be made that the state has a compelling interest and special needs in regulating the conduct of convicted sex offenders by typing their blood to ensure the public's safety against the commission of future sex crimes, using a Skinner rationale. This compelling interest, balanced against the privacy interest of a class of persons, many of whom already have been found to have a diminished expectation of privacy under Bell and Griffin, could be found by a court to outweigh the offenders' privacy interests. If this finding were made, it could be used as the rationale for dispensing with the traditional requirements of a warrant and probable cause and upholding the search as reasonable.

According to FDLE's General Counsel, ". . . based on research and consultation with officials in the respective states, no constitutional challenge to the collection of blood for DNA sampling has been mounted in the states of California and Colorado, which currently have such legislation."

IV. AMENDMENTS:

None.