

561-164AXB-22

Bill No. CS/HB 147

Amendment No. ____ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

11 Representative(s) Ball and Heyman offered the following:

Amendment (with title amendment)

14 Remove from the bill: Everything after the enacting clause
15
16 and insert in lieu thereof:

17 Section 1. Section 925.11, Florida Statutes, is
18 created to read:

925.11 Postsentencing DNA testing.--

(1) Petition for examination.--

21 (a) A person who has been tried and found guilty of
22 committing a crime and has been sentenced by a court
23 established by the laws of this state may petition that court
24 to order the examination of physical evidence collected at the
25 time of the investigation of the crime for which he or she has
26 been sentenced which may contain DNA (deoxyribonucleic acid)
27 and which would exonerate that person.

28 (b) A petition for postsentencing DNA testing may not
29 be filed or considered after:

30 1. Two years following the date that the judgment and
31 sentence in the case becomes final if no direct appeal is

1 taken, 2 years following the date that the conviction is
2 affirmed on direct appeal if an appeal is taken, 2 years
3 following the date that collateral counsel is appointed or
4 retained subsequent to the conviction being affirmed on direct
5 appeal in a capital case, or October 1, 2003, whichever occurs
6 later; or

7 2. Two years following the date that a new,
8 scientifically reliable method of DNA testing is approved for
9 use in the courts of this state.

10 (2) Method for seeking postsentencing DNA testing.--

11 (a) The motion for postsentencing DNA testing must be
12 made under oath by the sentenced defendant and must include
13 the following:

14 1. A statement of the facts relied on in support of
15 the motion, including a description of the physical evidence
16 containing DNA to be tested and, if known, the present
17 location of the evidence and how it was originally obtained;

18 2. A statement that the evidence was not previously
19 tested for DNA or a statement that the results of any previous
20 DNA testing were inconclusive and that subsequent scientific
21 developments in DNA testing techniques would likely produce a
22 definitive result;

23 3. A statement that the sentenced defendant is
24 innocent and how the DNA testing requested by the motion will
25 exonerate the defendant of the crime for which the defendant
26 was sentenced;

27 4. A statement that identification of the defendant is
28 a genuinely disputed issue in the case, and why it is an
29 issue;

30 5. Any other facts relevant to the motion; and

31 6. A certificate that a copy of the motion has been

1 served on the prosecuting authority.

2 (b) Upon receiving the motion, the clerk of the court
3 shall file it and deliver the court file to the assigned
4 judge.

5 (c) The court shall review the motion and deny it if
6 it is insufficient. If the motion is sufficient, the
7 prosecuting authority shall be ordered to respond to the
8 motion within 30 days.

9 (d) Upon receiving the response of the prosecuting
10 authority, the court shall review the response and enter an
11 order on the merits of the motion or set the motion for
12 hearing.

13 (e) Counsel may be appointed to assist the sentenced
14 defendant if the motion proceeds to a hearing, if the court
15 makes the determination that the assistance of counsel is
16 necessary and makes the requisite finding of indigency.

17 (f) The court shall make the following findings when
18 ruling on the motion:

19 1. Whether the sentenced defendant has shown that the
20 physical evidence that may contain DNA still exists;

21 2. Whether the results of DNA testing of that physical
22 evidence would have been admissible at trial and whether there
23 exists reliable proof to establish that the evidence has not
24 been materially altered and would be admissible at a future
25 hearing; and

26 3. Whether there is a reasonable probability that the
27 sentenced defendant would have been acquitted if the DNA
28 evidence had been admitted at trial.

29 (g) If the court orders DNA testing of the physical
30 evidence, the cost of such testing may be assessed against the
31 sentenced defendant unless he or she is indigent. If the

1 sentenced defendant is indigent, the state shall bear the cost
2 of the DNA testing ordered by the court.

3 (h) Any DNA testing ordered by the court shall be
4 carried out by the Florida Department of Law Enforcement or
5 its designee, as provided in s. 943.3251.

6 (i) The results of the DNA testing ordered by the
7 court shall be provided to the court, the sentenced defendant,
8 and the prosecuting authority.

9 (3) Right to appeal; rehearing.--

10 (a) An appeal from the court's order on the motion for
11 postsentencing DNA testing may be taken by any adversely
12 affected party.

13 (b) An order denying relief shall include a statement
14 that the sentenced defendant has the right to appeal within 30
15 days after the order denying relief is entered.

16 (c) The sentenced defendant may file a motion for
17 rehearing of any order denying relief within 15 days after
18 service of the order denying relief. The time for filing an
19 appeal shall be tolled until an order on the motion for
20 rehearing has been entered.

21 (d) The clerk of the court shall serve on all parties
22 a copy of any order rendered with a certificate of service,
23 including the date of service.

24 Section 2. Section 943.3251, Florida Statutes, is
25 created to read:

26 943.3251 Postsentencing DNA testing.--

27 (1) When a court orders postsentencing DNA testing of
28 physical evidence pursuant to s. 925.11, the Florida
29 Department of Law Enforcement or its designee shall carry out
30 the testing.

31 (2) The cost of such testing may be assessed against

1 the sentenced defendant, pursuant to s. 925.11, unless he or
2 she is indigent.

3 (3) The results of postsentencing DNA testing shall be
4 provided to the court, the sentenced defendant, and the
5 prosecuting authority.

6 Section 3. Subsection (1) of section 943.325, Florida
7 Statutes, is amended to read:

8 943.325 Blood specimen testing for DNA analysis.--

9 (1)(a)1. Any person who is convicted or was previously
10 convicted in this state for any offense or attempted offense
11 defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s.
12 810.02, s. 812.133, or s. 812.135 and who is either:

13 a.1. Still incarcerated, or

14 b.2. No longer incarcerated but is within the confines
15 of the legal state boundaries and is on probation, community
16 control, parole, conditional release, control release, or any
17 other court-ordered supervision,

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19 shall be required to submit two specimens of blood to a
20 Department of Law Enforcement designated testing facility as
21 directed by the department.

22 2. The DNA data bank shall be expanded to include
23 these felony offenses on the following dates:

24 a. As of July 1, 2002, and contingent upon specific
25 appropriation, any person who is convicted or was previously
26 convicted in this state for any offense or attempted offense
27 defined in s. 812.13 or s. 812.131.

28 b. As of July 1, 2003, and contingent upon specific
29 appropriation, any person who is convicted or was previously
30 convicted in this state for any offense or attempted offense
31 defined in chapter 787 or s. 782.07.

1 c. As of July 1, 2004, and contingent upon specific
2 appropriation, any person who is convicted or was previously
3 convicted in this state for any violent felony offense or
4 attempted violent felony offense.

5 d. As of July 1, 2005, and contingent upon specific
6 appropriation, any person who is convicted or was previously
7 convicted in this state for any felony offense.

8 (b) For the purpose of this section, the term "any
9 person" shall include both juveniles and adults committed to
10 or under the supervision of the Department of Corrections, or
11 the Department of Juvenile Justice, or a private correctional
12 institution operated under contract pursuant to s. 944.105 or
13 s. 957.03 or committed to a county jail.

14 (c) In addition to those persons designated in
15 paragraph (a), any person described in paragraph (b) who was
16 previously convicted in this state for any offense or
17 attempted offense defined in chapter 787, s. 782.07, s.
18 812.13, or s. 812.131 shall be required to submit, not less
19 than 45 days prior to his or her presumptive date of release
20 from such custody, two specimens of blood as directed by the
21 Department of Law Enforcement to a testing facility designated
22 by the department.

23 Section 4. This act shall take effect October 1, 2001.

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26 ===== T I T L E A M E N D M E N T =====

27 And the title is amended as follows:

28 remove from the title of the bill: the entire title

29
30 and insert in lieu thereof:

31 A bill to be entitled

1 An act relating to DNA evidence; creating s.
2 925.11, F.S.; providing for the examination of
3 DNA evidence collected at the time a crime is
4 investigated; providing a procedure under which
5 a defendant who has been found guilty may
6 petition the trial court to order an
7 examination of DNA evidence; providing
8 guidelines for seeking postsentencing DNA
9 testing; requiring that the court make certain
10 findings; providing for right to appeal;
11 creating s. 943.3251, F.S.; prescribing duties
12 of the Department of Law Enforcement with
13 respect to postsentencing DNA testing; amending
14 s. 943.325, F.S.; requiring the Department of
15 Law Enforcement to add certain felony offenses
16 in a scheduled order to the DNA data bank's
17 enumerated offenses; requiring the Department
18 of Corrections to test certain violent felons
19 in addition to those enumerated in the statute
20 before being released from custody; providing
21 an effective date.

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