

561-164AXA-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

Representative(s) Ball offered the following:

Amendment (with title amendment)

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

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

925.11 Postsentencing DNA testing.--

(1) Petition for examination.--

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

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

1. Two years following the date that the judgment and
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. This act shall take effect October 1, 2001.

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

10 And the title is amended as follows:

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

12

13 and insert in lieu thereof:

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A bill to be entitled

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An act relating to DNA evidence; creating s.

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925.11, F.S.; providing for the examination of

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DNA evidence collected at the time a crime is

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investigated; providing a procedure under which

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a defendant who has been found guilty may

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petition the trial court to order an

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examination of DNA evidence; providing

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guidelines for seeking postsentencing DNA

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testing; requiring that the court make certain

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findings; providing for right to appeal;

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creating s. 943.3251, F.S.; prescribing duties

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of the Department of Law Enforcement with

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respect to postsentencing DNA testing;

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providing an effective date.

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