STORAGE NAME: h0147a.jo.doc
DATE: March 15, 2001

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS

BILL #: HB 147

RELATING TO: DNA Evidence

SPONSOR(S): Representative Ball and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
(2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
(3) COUNCIL FOR HEALTHY COMMUNITIES
(4)
(5)

I. SUMMARY:

HB 147 permits a person who has been tried and found guilty or who has pled guilty to petition the trial court to order the examination of physical evidence collected at the time of the investigation of the crime that may contain DNA that would exonerate the defendant. The bill contains specific pleading requirements, including requiring a description of the evidence that might contain DNA, a statement that the evidence has not been previously tested, a statement that the defendant is innocent and would be exonerated by the DNA test, a statement that identification of the defendant was at issue in the case, and other relevant facts. If the trial court denies the motion, the bill provides for appellate review.

The Committee on Crime Prevention, Corrections & Safety adopted an amendment that removes the language from the bill that allows defendants who have pled guilty to file a motion for DNA testing. The amendment is traveling with the bill.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes []	No []	N/A [x]
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

A defendant who is convicted of a crime is entitled to appeal his or her conviction or sentence. Art V, s. 4, Fla. Const. An indigent defendant is represented on appeal by appointed counsel, usually the Public Defender. Art. V, s. 18, Fla. Const. Issues raised on direct appeal usually relate to how the trial was conducted. Allegations that the trial court erred in an evidentiary ruling or in a procedural ruling are properly raised on direct appeal. If the appellate court affirms the defendant's conviction, a defendant may begin state postconviction proceedings, which are controlled by Florida Rule of Criminal Procedure 3.850.

Postconviction proceedings, also known as collateral review, usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence, or claims that the prosecution failed to disclose exculpatory evidence. A rule 3.850 motion must be filed in the trial court where the defendant was tried and sentenced. According to rule 3.850, unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and hold an evidentiary hearing. Fla.R.Crim P. 3.850(d). If the trial court denies the motion for postconviction relief with or without holding an evidentiary hearing, the defendant is then entitled to an appeal of this denial to the district court of appeal that has jurisdiction over the circuit court where the motion was filed.[1]

A rule 3.850 motion must be filed within two years of the defendant's judgment and sentence becoming final unless the motion alleges that the facts on which the claims is based where unknown to the defendant and could not have been ascertained by the exercise of due diligence. Fla. R. Crim. P. 3.850(b). In order to grant a new trial based on newly discovered evidence, the trial court must first find that the evidence was unknown and could not have been known at the time of trial through due diligence. Also, the trial court must find that the evidence is of such nature that it would probably produce an acquittal on retrial. Jones v. State, 709 So.2d 512 (Fla. 1998).

[1] Denials of postconviction motions in death penalty cases are appealed to the Florida Supreme Court, which has exclusive jurisdiction over death penalty appeals.

C. EFFECT OF PROPOSED CHANGES:

The bill creates a new section of statute that provides that any person who has been tried and found guilty or who has pled guilty may petition the trial court to order the examination of physical evidence collected at the time of the investigation of the crime that may contain DNA evidence that would exonerate the defendant.

The motion to examine DNA evidence must be made under oath by the defendant and include the following:

1. A statement of the facts relied upon in support of the motion, which must include a description of the physical evidence to be tested that contains DNA and, if known, where the evidence is currently located and how it was originally obtained.

2. A statement that the physical evidence described was not previously tested for DNA, or if tested, a statement that the results of any previous DNA testing were inconclusive.

3. A statement that the defendant is innocent and DNA evidence will exonerate the defendant of the crime for which the defendant was convicted.

4. A statement that identification of the defendant was the issue in the case.

5. Any other material facts relevant to the motion.

6. Certification that the appropriate state attorney has been served with a copy of the motion.

The bill further provides that if the trial court finds that the facts are insufficient to support the filing of the motion, the court shall deny the motion on its face. If the trial court finds that the facts are sufficient to support the filing of the motion, the court shall order the state attorney to respond to the allegations contained in the motion within a period fixed by the trial court. After reviewing the state attorney's answer, the trial court shall rule on the motion or order a hearing. In ruling on the motion, the trial court must find whether:

1. The physical evidence that may contain DNA still exists.

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

3. There exists a reasonable probability that the defendant would have been acquitted of the crime charged if DNA results had been admitted at trial and the results excluded the defendant.

The bill provides that if the motion to examine DNA evidence is granted, the court must find whether the defendant is able to pay the cost of DNA testing. An indigent defendant may not be required to pay for the testing.

A motion to examine DNA evidence may not be filed or considered under this section after October 1, 2003 or at any time more than two years after the date on which the judgment and sentence becomes final, whichever occurs later.

An order of the trial court entered on a motion to examine DNA evidence may be appealed to the appropriate appellate court. The defendant may appeal an order denying relief within 30 days

following rendition of the order. A motion for rehearing of an order denying relief must be filed within 15 days following service of the order. An order denying relief must include notice of the time limitations for filing a notice of appeal. The clerk of the court shall promptly serve a copy of any order denying a motion and shall file a certificate of service with the court.

The bill provides that by filing a motion under this section, the defendant waives any objection to the introduction in any future proceeding of DNA test results obtained as a result of the motion.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates section regarding motion to examine DNA evidence.

Section 2: Provides effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

There will be a fiscal impact on the state each time a trial court grants a motion to test DNA evidence. The Florida Department of Law Enforcement had not completed its fiscal analysis of the bill. There will also be an impact on the court system due to the filing of motions to test DNA evidence and appeals from those motions.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with a county or city.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The legislature has the exclusive power to enact substantive laws while Article V, Section 2 of the Florida Constitution gives the Florida Supreme Court the power to "adopt rules for the practice and procedure in all courts, including the time for seeking appellate review." This bill may be challenged on a claim that it violates the separation of powers doctrine. Art. II, Sect. 3, Fla. Const. In January of 2000, the legislature passed the Death Penalty Reform Act (DPRA) of 2000. The bill advanced the start of the postconviction process in capital cases to have it begin while the case was on direct appeal. The bill also imposed other time limitations at key points of the postconviction process. The bill made conforming changes to the laws governing public records in capital cases. The bill also eliminated successive postconviction motions and prohibited amending a postconviction motion after the expiration of the time limitation. The bill repealed the rules of criminal procedure applying to capital postconviction motions.

In Allen v. State, 756 So.2d 52 (Fla. 2000), the Florida Supreme Court held that the Death Penalty Reform Act of 2000 was an "unconstitutional encroachment" on the Court's "exclusive power to 'adopt rules for the practice and procedure in all courts'." Id. at 54. The court rejected the State's argument that the deadlines for filing postconviction motions in the DPRA were comparable to statutes of limitations in civil cases which the court had previously considered substantive. Id. at 61. The court held that rule 3.850 of the Florida Rules of Criminal Procedure is a "procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus" under the Florida Constitution. Id. at 61. According to the court, "[d]ue to the constitutional and quasi-criminal nature of habeas corpus proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions." Id. at 62.

The provisions of this bill may be distinguishable from those of the DPRA due to the fact that this bill creates a new substantive right to DNA testing in limited circumstances while the DPRA restricted postconviction rights that were otherwise available through existing provisions of the state constitution. The legislature may limit substantive rights that it has created. City of Lake Mary v. Seminole County, 419 So. 2d 737 (Fla. 5th DCA 1982)(upholding limited right of appeal in annexation proceedings and stating, "[i]f the Legislature has the power to create a right of appeal in the circuit court where none previously existed, it is incongruous to assert that it cannot limit the scope of that review."); Department of Transp. v. Fortune Federal Sav. and Loan Ass'n, 532 So. 2d 1267, 1270 (Fla. 1988)("It is only by the will of the legislature that business damages may be awarded in certain situations which are properly limited by the legislature. In other words, the legislature has created a right to business damages, so it may also limit that right.") ; Fernandez v. Florida Ins. Guaranty Ass'n, Inc., 383 So. 2d 974, 976 (Fla. 3rd DCA 1980)(holding that because absent the legislative creation of the Florida Insurance Guaranty Association, "there would be no effective remedy to recovery on any claims whatever against insolvent insurers, there can be no constitutional infirmity in the legislature's decision to limit those newly-created rights and, in effect, not to establish an additional one. ").

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Motions for postconviction relief based on newly discovered evidence must be raised within two years of the discovery of such evidence. See Adams v. State, 543 So.2d 1244 (Fla.1989). The Florida Supreme Court has held that the two year time limit for filing a 3.850 motion based on newly discovered evidence begins to run on a defendant's postconviction request for DNA testing when the testing method became available. For example, in Sireci v. State, 773 So.2d 34 (Fla. 2000), the Florida Supreme Court held that the defendant's postconviction claim filed on his 1976 conviction, which was filed in 1993, was time barred because "DNA typing was recognized in this state as a valid test as early as 1988." See also, Ziegler v. State, 654 So.2d 1162 (Fla. 1995). This bill would apparently give defendants who have already had their time for filing a postconviction motion expire a substantive right to file a procedural motion to have DNA evidence tested until October 1, 2003.

The first paragraph of the bill applies the newly created right to a "person who has been tried and found guilty or who has pled guilty". Thus, a person who pled guilty to an offense would later be able to claim a right to have physical evidence tested for DNA. By entering a guilty plea, the defendant admits to committing the crime. The bill requires a sworn statement that the defendant is innocent before relief can be granted. Allowing a motion in the case of a guilty plea would lead to a situation where a defendant admitted to the crime during the plea colloquy, made under oath, but claimed innocence in the motion, also made under oath. The amendment traveling with the bill eliminates the provision that allows a criminal who entered a guilty plea to move for a DNA test. Also, the bill does not appear to restrict the class to people who are still serving their sentence but instead, applies to any defendant who has been tried and found guilty of any offense.

The Criminal Procedure Rules Committee of the Florida Bar has proposed rule 3.853 of the Florida Rules of Criminal Procedure. The text of the proposed rule is similar to that of HB 147.

Section 6(a) of the bill states that an order entered on a motion to examine DNA evidence may be appealed to the appropriate appellate court and states that a defendant may appeal an order within 30 days. While a defendant's right to appeal is guaranteed under the Florida Constitution, the State's right to appeal is a created by statute. See Amendments to the Florida Rules of Appellate Procedure, 696 So. 2d 1103, 1104-1105 (Fla. 1996)(noting that a defendant's right to appeal is protected by the state constitution while the state's right to appeal is governed by statute). It could be argued that the statute does not give the state the right to appeal these orders. Further, the statute does not set a time limit for the state to file a notice of appeal. Typically, the state must file its notice within 15 days. See Fla.R.App.P. 9.140(c)(3).

The bill also states that a motion for rehearing must be filed within 15 days of an order denying relief. This language could be interpreted as requiring a motion for rehearing. Motions for rehearing are typically not required but are sometimes permitted. See Fla.R.Crim.P. 3.850(g)("The movant may file a motion for rehearing within 15 days of the date of service of the order.").

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Crime Prevention, Corrections and Safety adopted an amendment to remove reference to people who have pled guilty from the group of defendants who are entitled to file the motion for DNA testing. Thus, only people who have been gone to trial and been found guilty will be entitled to file such a motion.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
Trina Kramer	David De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:	Staff Director:
L. Michael Billmeier	Lynne Overton