

By the Council for Healthy Communities and Representatives
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1 A bill to be entitled
2 An act relating to DNA evidence; providing for
3 the examination of DNA evidence collected at
4 the time a crime is investigated; providing a
5 procedure under which a defendant who has been
6 found guilty or who has pled guilty or nolo
7 contendere may petition the trial court to
8 order an examination of DNA evidence;
9 specifying requirements for a motion to examine
10 DNA evidence; requiring that the court make
11 certain findings; providing that a defendant
12 waives any objection to the introduction of DNA
13 test results in any future proceeding;
14 providing for the defendant to appeal an order
15 denying a motion to examine DNA evidence;
16 providing certain time limitations; providing
17 an effective date.

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19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Motion to examine DNA evidence.--

22 (1) A person who has been tried and found guilty or
23 who has entered a plea of guilty or nolo contendere to a crime
24 may petition the trial court to order the examination of
25 physical evidence collected at the time of the investigation
26 of the crime which may contain DNA (deoxyribonucleic acid)
27 that would exonerate the defendant.

28 (2) A motion to examine DNA evidence must be made
29 under oath by the defendant and must include:

30 (a) A statement of the facts relied upon in support of
31 the motion, which must include a description of the physical

1 evidence to be tested which contains DNA and, if known, where
2 the evidence is presently located and how it was originally
3 obtained;

4 (b) A statement that the physical evidence described
5 was not previously tested for DNA, or, if tested, a statement
6 that the results of any previous DNA testing were
7 inconclusive;

8 (c) A statement that the defendant is innocent and DNA
9 evidence will exonerate the defendant of the crime for which
10 the defendant was convicted;

11 (d) A statement that identification of the defendant
12 was the issue in the case;

13 (e) Any other material facts that are relevant to the
14 motion; and

15 (f) Certification that the appropriate state attorney
16 has been served with a copy of the motion to examine DNA
17 evidence.

18 (3)(a) If, after reviewing the motion, the trial court
19 finds that the facts are insufficient to support the filing of
20 the motion, the court shall deny the motion on its face. If
21 the trial court finds that the facts are sufficient to support
22 the filing of the motion, the court shall order the state
23 attorney to respond to the allegations contained in the motion
24 within a period fixed by the trial court.

25 (b) After reviewing the state attorney's answer, the
26 trial court shall rule on the motion or order a hearing.

27 (c) In ruling on the motion, the trial court must find
28 whether:

29 1. The physical evidence that may contain DNA still
30 exists;

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

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

10 (d) If the motion to examine DNA evidence is granted,
11 the court must find whether the defendant is able to pay the
12 cost of DNA testing. An indigent defendant may not be required
13 to pay for the testing.

14 (4) By filing a motion under this section, the
15 defendant waives any objection to the introduction in any
16 future proceeding of DNA test results obtained as a result of
17 the motion.

18 (5)(a) An order of the trial court entered on a motion
19 to examine DNA evidence may be appealed to the appropriate
20 appellate court. The defendant may appeal an order denying
21 relief within 30 days following rendition of the order. A
22 motion for a rehearing of an order denying relief must be
23 filed within 15 days following service of the order.

24 (b) The order denying relief must include notice of
25 the time limitations provided in this subsection. The clerk of
26 the court shall promptly serve a copy of any order denying a
27 motion and shall file a certificate of service with the court.

28 Section 2. This act shall take effect October 1, 2001.

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