

By Senator Villalobos

37-333-01

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 may
7 petition the trial court to order an
8 examination of DNA evidence; specifying
9 requirements for a motion to examine DNA
10 evidence; requiring that the court make certain
11 findings; limiting the period within which a
12 defendant may file a motion to examine DNA
13 evidence; providing that a defendant waives any
14 objection to the introduction of DNA test
15 results in any future proceeding; providing for
16 the defendant to appeal an order denying a
17 motion to examine DNA evidence; providing
18 certain time limitations; providing an
19 effective date.

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

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

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

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

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1 (a) A statement of the facts relied upon in support of
2 the motion, which must include a description of the physical
3 evidence to be tested which contains DNA and, if known, where
4 the evidence is presently located and how it was originally
5 obtained;

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

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

13 (d) A statement that identification of the defendant
14 was the issue in the case;

15 (e) Any other material facts that are relevant to the
16 motion; and

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

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

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

29 (c) In ruling on the motion, the trial court must find
30 whether:

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

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

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

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

16 (4) A motion to examine DNA evidence may not be filed
17 or considered under this section after October 1, 2003, or at
18 any time more than 2 years after the date on which the
19 judgment and sentence in the case becomes final, whichever
20 occurs later.

21 (5) By filing a motion under this section, the
22 defendant waives any objection to the introduction in any
23 future proceeding of DNA test results obtained as a result of
24 the motion.

25 (6)(a) An order of the trial court entered on a motion
26 to examine DNA evidence may be appealed to the appropriate
27 appellate court. The defendant may appeal an order denying
28 relief within 30 days following rendition of the order. A
29 motion for a rehearing of an order denying relief must be
30 filed within 15 days following service of the order.

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

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

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8 SENATE SUMMARY

9 Provides a procedure under which a defendant who has been
10 found guilty or who has pled guilty may petition the
11 trial court to order the examination of DNA evidence
12 collected at the time of the investigation of the crime.
13 Requires that a defendant file such a motion by October
14 1, 2003, or within 2 years after the date on which the
15 judgment and sentence in a case becomes final, whichever
16 occurs later. Provides for the defendant to appeal an
17 order denying a motion to examine DNA evidence. (See bill
18 for details.)