

By the Committee on Criminal Justice and Senators Villalobos and Smith

307-1505-01

1 A bill to be entitled
2 An act relating to DNA evidence; creating s.
3 925.11, F.S.; providing for the examination of
4 DNA evidence collected at the time a crime is
5 investigated; providing a procedure under which
6 a defendant who has been found guilty may
7 petition the trial court to order an
8 examination of DNA evidence; providing
9 guidelines for seeking postsentencing DNA
10 testing; requiring that the court make certain
11 findings; providing for right to appeal;
12 providing for preservation of evidence;
13 creating s. 943.3251, F.S.; prescribing duties
14 of the Department of Law Enforcement with
15 respect to postsentencing DNA testing;
16 providing an effective date.

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

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

22 925.11 Postsentencing DNA testing.--

23 (1) Petition for examination.--

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

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1 (b) A petition for postsentencing DNA testing may not
2 be filed or considered more than 2 years after the effective
3 date of this section, or more than 2 years after the judgment
4 and sentence in the case become final, whichever is later.

5 (c) The time limitations provided in Fla. R. Crim. P.
6 3.850-3.851 do not apply to a petition filed under this
7 section if the motion for postconviction relief is based on
8 the results of postsentencing DNA testing.

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

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

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

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

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

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

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

30 6. A certificate that a copy of the motion has been
31 served on the prosecuting authority.

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

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

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

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

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

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

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

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

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

25 (a) Governmental entities that may be in possession of
26 any physical evidence in the case, including the investigating
27 law enforcement agency, the clerk of the court, the
28 prosecuting authority, or the Florida Department of Law
29 Enforcement shall maintain any physical evidence collected at
30 the time of the crime for which a postsentencing testing of
31 DNA may be requested.

1 (b) The evidence shall be maintained for the period of
2 time set forth in paragraph (1)(b).

3 (c) A governmental entity may dispose of the physical
4 evidence before the expiration of the period of time set forth
5 in paragraph (1)(b) if all of the conditions set forth below
6 are met.

7 1. The governmental entity notifies all of the
8 following individuals of its intent to dispose of the
9 evidence: the sentenced defendant, any counsel of record, the
10 prosecuting authority, and the Attorney General.

11 2. The notifying entity does not receive, within 90
12 days after sending the notification, either a copy of a motion
13 for postsentencing DNA testing filed pursuant to this section
14 or a request that the evidence not be destroyed because the
15 sentenced defendant will be filing the motion before the time
16 for filing it has expired.

17 3. No other provision of law or rule requires that the
18 physical evidence be preserved or retained.

19 Section 2. Section 943.3251, Florida Statutes, is
20 created to read:

21 943.3251 Postsentencing DNA testing.--

22 (1) When a court orders postsentencing DNA testing of
23 physical evidence, pursuant to s. 925.11, the Florida
24 Department of Law Enforcement or its designee shall carry out
25 the testing.

26 (2) The cost of such testing may be assessed against
27 the sentenced defendant, pursuant to s. 925.11, unless he or
28 she is indigent.

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

1 Section 3. This act shall take effect October 1, 2001.

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3 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
4 COMMITTEE SUBSTITUTE FOR
5 Senate Bill 366

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- Deletes the provision conveying the right to persons who
7 have pled guilty to petition the court for
8 postconviction DNA testing, thereby limiting the
9 applicability of the bill to those who have been
10 convicted at trial.

11 - Requires the petitioner's motion to allege additional or
12 different facts, i.e., where there has been previous
13 testing, that scientific developments would likely
14 produce a definitive result; how the evidence sought
15 would exonerate the petitioner; and that identification
16 is a genuinely disputed issue in the case.

17 - Provides the assistance of counsel for the indigent
18 petitioner should the motion proceed to a hearing.

19 - Requires the state to respond to the petition within 30
20 days when the court orders a response.

21 - Assesses the costs on testing against a petitioner who
22 is not indigent.

23 - Requires FDLE or its designee to conduct any testing
24 ordered by the court.

25 - Requires the preservation of evidence which may be
26 tested by governmental entities that have the evidence
27 in their custody.

28 - Requires test results be provided to the court, the
29 petitioner, and the prosecuting authority.

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