

By the Committees on Appropriations, Criminal Justice and
Senators Villalobos and Smith

309-1818-01

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 creating s. 943.3251, F.S.; prescribing duties
13 of the Department of Law Enforcement with
14 respect to postsentencing DNA testing;
15 providing an effective date.

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

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

- 21 925.11 Postsentencing DNA testing.--
22 (1) Petition for examination.--
23 (a) A person who has been tried and found guilty of
24 committing a crime and has been sentenced by a court
25 established by the laws of this state may petition that court
26 to order the examination of physical evidence collected at the
27 time of the investigation of the crime for which he or she has
28 been sentenced which may contain DNA (deoxyribonucleic acid)
29 and which would exonerate that person.
30 (b) A petition for postsentencing DNA testing may not
31 be filed or considered after:

1 1. Two years following the date that the judgment and
2 sentence in the case becomes final if no direct appeal is
3 taken, 2 years following the date that the conviction is
4 affirmed on direct appeal if an appeal is taken, 2 years
5 following the date that collateral counsel is appointed or
6 retained subsequent to the conviction being affirmed on direct
7 appeal in a capital case, or October 1, 2003, whichever occurs
8 later; or

9 2. Two years following the date that a new,
10 scientifically reliable method of DNA testing is approved for
11 use in the courts of this state.

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

13 (a) The motion for postsentencing DNA testing must be
14 made under oath by the sentenced defendant and must include
15 the following:

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

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

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

29 4. A statement that identification of the defendant is
30 a genuinely disputed issue in the case, and why it is an
31 issue;

1 5. Any other facts relevant to the motion; and
2 6. A certificate that a copy of the motion has been
3 served on the prosecuting authority.

4 (b) Upon receiving the motion, the clerk of the court
5 shall file it and deliver the court file to the assigned
6 judge.

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

11 (d) Upon receiving the response of the prosecuting
12 authority, the court shall review the response and enter an
13 order on the merits of the motion or set the motion for
14 hearing.

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

19 (f) The court shall make the following findings when
20 ruling on the motion:

21 1. Whether the sentenced defendant has shown that the
22 physical evidence that may contain DNA still exists;

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

28 3. Whether there is a reasonable probability that the
29 sentenced defendant would have been acquitted if the DNA
30 evidence had been admitted at trial.

31

1 (g) If the court orders DNA testing of the physical
2 evidence, the cost of such testing may be assessed against the
3 sentenced defendant unless he or she is indigent. If the
4 sentenced defendant is indigent, the state shall bear the cost
5 of the DNA testing ordered by the court.

6 (h) Any DNA testing ordered by the court shall be
7 carried out by the Florida Department of Law Enforcement or
8 its designee, as provided in s. 943.3251.

9 (i) The results of the DNA testing ordered by the
10 court shall be provided to the court, the sentenced defendant,
11 and the prosecuting authority.

12 (3) Right to appeal; rehearing.--

13 (a) An appeal from the court's order on the motion for
14 postsentencing DNA testing may be taken by any adversely
15 affected party.

16 (b) An order denying relief shall include a statement
17 that the sentenced defendant has the right to appeal within 30
18 days after the order denying relief is entered.

19 (c) The sentenced defendant may file a motion for
20 rehearing of any order denying relief within 15 days after
21 service of the order denying relief. The time for filing an
22 appeal shall be tolled until an order on the motion for
23 rehearing has been entered.

24 (d) The clerk of the court shall serve on all parties
25 a copy of any order rendered with a certificate of service,
26 including the date of service.

27 Section 2. Section 943.3251, Florida Statutes, is
28 created to read:

29 943.3251 Postsentencing DNA testing.--

30 (1) When a court orders postsentencing DNA testing of
31 physical evidence, pursuant to s. 925.11, the Florida

1 Department of Law Enforcement or its designee shall carry out
2 the testing.

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

6 (3) The results of postsentencing DNA testing shall be
7 provided to the court, the sentenced defendant, and the
8 prosecuting authority.

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

10

11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 CS/SB 366

13

14 Clarifies the time periods by which petitions for
15 postsentencing DNA testing must be filed.

16 Deletes requirements concerning the preservation of evidence
17 which may be subject to postsentencing DNAtesting.

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31