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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 preservation of
12 evidence for which testing of DNA may be
13 requested; providing for right to appeal;
14 creating s. 943.3251, F.S.; prescribing duties
15 of the Department of Law Enforcement with
16 respect to postsentencing DNA testing; amending
17 s. 943.325, F.S.; requiring the Department of
18 Law Enforcement to add certain felony offenses
19 in a scheduled order to the DNA data bank's
20 enumerated offenses; requiring the Department
21 of Corrections to test certain violent felons
22 in addition to those enumerated in the statute
23 before being released from custody; providing
24 effective dates.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Section 925.11, Florida Statutes, is
29 created to read:

30 925.11 Postsentencing DNA testing.--

31 (1) Petition for examination.--

1 (a) A person who has been tried and found guilty of
2 committing a crime and has been sentenced by a court
3 established by the laws of this state may petition that court
4 to order the examination of physical evidence collected at the
5 time of the investigation of the crime for which he or she has
6 been sentenced which may contain DNA (deoxyribonucleic acid)
7 and which would exonerate that person or mitigate the sentence
8 that person received.

9 (b) Except as provided in subparagraph 2., a petition
10 for postsentencing DNA testing may be filed or considered:

11 1. Within 2 years following the date that the judgment
12 and sentence in the case becomes final if no direct appeal is
13 taken, within 2 years following the date that the conviction
14 is affirmed on direct appeal if an appeal is taken, within 2
15 years following the date that collateral counsel is appointed
16 or retained subsequent to the conviction being affirmed on
17 direct appeal in a capital case, or by October 1, 2003,
18 whichever occurs later; or

19 2. At any time if the facts on which the petition is
20 predicated were unknown to the petitioner or the petitioner's
21 attorney and could not have been ascertained by the exercise
22 of due diligence.

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

24 (a) The petition for postsentencing DNA testing must
25 be made under oath by the sentenced defendant and must include
26 the following:

27 1. A statement of the facts relied on in support of
28 the petition, including a description of the physical evidence
29 containing DNA to be tested and, if known, the present
30 location or the last known location of the evidence and how it
31 was originally obtained;

1 2. A statement that the evidence was not previously
2 tested for DNA or a statement that the results of any previous
3 DNA testing were inconclusive and that subsequent scientific
4 developments in DNA testing techniques would likely produce a
5 definitive result;

6 3. A statement that the sentenced defendant is
7 innocent and how the DNA testing requested by the petition
8 will exonerate the defendant of the crime for which the
9 defendant was sentenced or will mitigate the sentence received
10 by the defendant for that crime;

11 4. A statement that identification of the defendant is
12 a genuinely disputed issue in the case, and why it is an
13 issue;

14 5. Any other facts relevant to the petition; and

15 6. A certificate that a copy of the petition has been
16 served on the prosecuting authority.

17 (b) Upon receiving the petition, the clerk of the
18 court shall file it and deliver the court file to the assigned
19 judge.

20 (c) The court shall review the petition and deny it if
21 it is insufficient. If the petition is sufficient, the
22 prosecuting authority shall be ordered to respond to the
23 petition within 30 days.

24 (d) Upon receiving the response of the prosecuting
25 authority, the court shall review the response and enter an
26 order on the merits of the petition or set the petition for
27 hearing.

28 (e) Counsel may be appointed to assist the sentenced
29 defendant if the petition proceeds to a hearing and if the
30 court determines that the assistance of counsel is necessary
31 and makes the requisite finding of indigency.

1 (f) The court shall make the following findings when
2 ruling on the petition:

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

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

10 3. Whether there is a reasonable probability that the
11 sentenced defendant would have been acquitted or would have
12 received a lesser sentence if the DNA evidence had been
13 admitted at trial.

14 (g) If the court orders DNA testing of the physical
15 evidence, the cost of such testing may be assessed against the
16 sentenced defendant unless he or she is indigent. If the
17 sentenced defendant is indigent, the state shall bear the cost
18 of the DNA testing ordered by the court.

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

22 (i) The results of the DNA testing ordered by the
23 court shall be provided to the court, the sentenced defendant,
24 and the prosecuting authority.

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

26 (a) An appeal from the court's order on the petition
27 for postsentencing DNA testing may be taken by any adversely
28 affected party.

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

1 (c) The sentenced defendant may file a motion for
2 rehearing of any order denying relief within 15 days after
3 service of the order denying relief. The time for filing an
4 appeal shall be tolled until an order on the motion for
5 rehearing has been entered.

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

9 (4) Preservation of evidence.--

10 (a) Governmental entities that may be in possession of
11 any physical evidence in the case, including, but not limited
12 to, any investigating law enforcement agency, the clerk of the
13 court, the prosecuting authority, or the Department of Law
14 Enforcement shall maintain any physical evidence collected at
15 the time of the crime for which a postsentencing testing of
16 DNA may be requested.

17 (b) Except for a case in which the death penalty is
18 imposed, the evidence shall be maintained for at least the
19 period of time set forth in subparagraph (1)(b)1. In a case in
20 which the death penalty is imposed, the evidence shall be
21 maintained for 60 days after execution of the sentence.

22 (c) A governmental entity may dispose of the physical
23 evidence before the expiration of the period of time set forth
24 in paragraph (1)(b) if all of the conditions set forth below
25 are met.

26 1. The governmental entity notifies all of the
27 following individuals of its intent to dispose of the
28 evidence: the sentenced defendant, any counsel of record, the
29 prosecuting authority, and the Attorney General.

30 2. The notifying entity does not receive, within 90
31 days after sending the notification, either a copy of a

1 petition for postsentencing DNA testing filed pursuant to this
2 section or a request that the evidence not be destroyed
3 because the sentenced defendant will be filing the petition
4 before the time for filing it has expired.

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

7 Section 2. Section 943.3251, Florida Statutes, is
8 created to read:

9 943.3251 Postsentencing DNA testing.--

10 (1) When a court orders postsentencing DNA testing of
11 physical evidence, pursuant to s. 925.11, the Florida
12 Department of Law Enforcement or its designee shall carry out
13 the testing.

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

17 (3) The results of postsentencing DNA testing shall be
18 provided to the court, the sentenced defendant, and the
19 prosecuting authority.

20 Section 3. Subsection (1) of section 943.325, Florida
21 Statutes, is amended to read:

22 943.325 Blood specimen testing for DNA analysis.--

23 (1)(a) Any person who is convicted or was previously
24 convicted in this state for any offense or attempted offense
25 enumerated in paragraph (b) ~~defined in chapter 794, chapter~~
26 ~~800, s. 782.04, s. 784.045, s. 810.02, s. 812.133, or s.~~
27 ~~812.135~~ and who is either:

- 28 1. Still incarcerated, or
- 29 2. No longer incarcerated but is within the confines
30 of the legal state boundaries and is on probation, community
31

1 control, parole, conditional release, control release, or any
2 other type of court-ordered supervision,

3
4 shall be required to submit two specimens of blood to a
5 Department of Law Enforcement designated testing facility as
6 directed by the department.

7 (b)1. Chapter 794, chapter 800, s. 782.04, s. 784.045,
8 s. 810.02, s. 812.133, or s. 812.135.

9 2. Effective July 1, 2002, and contingent upon
10 specific appropriation, s. 812.13 or s. 812.131.

11 3. Effective July 1, 2003, and contingent upon
12 specific appropriation, chapter 787 or s. 782.07.

13 4. Effective July 1, 2004, and contingent upon
14 specific appropriation, any forcible felony, as described in
15 s. 776.08, aggravated child abuse, as described in s.
16 827.03(2), aggravated abuse of an elderly person or a disabled
17 adult, as described in s. 825.102(2), or any felony violation
18 of chapter 790 involving the use or possession of a firearm.

19 5. Effective July 1, 2005, and contingent upon
20 specific appropriation, any felony offense.

21 (c) As used in ~~For the purpose of~~ this section, the
22 term "any person" includes ~~shall include~~ both juveniles and
23 adults committed to a county jail or committed to or under the
24 supervision of the Department of Corrections or the Department
25 of Juvenile Justice, including persons incarcerated in a
26 private correctional institution operated under contract
27 pursuant to s. 944.105 or s. 957.03 ~~or committed to a county~~
28 ~~jail.~~

29 (d) Effective July 1, 2001, any person who was
30 previously convicted in this state for any offense or
31 attempted offense enumerated in subparagraph (b)1.,

1 subparagraph (b)2., or subparagraph (b)3. and who is still
2 incarcerated or in the custody of the Department of Juvenile
3 Justice must submit, not less than 45 days before his or her
4 presumptive date of release from such incarceration or
5 commitment, two specimens of blood as directed by the
6 Department of Law Enforcement to a testing facility designated
7 by the department.

8 Section 4. This act shall take effect October 1, 2001,
9 except that this section and section 3 of this act shall take
10 effect July 1, 2001.

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