

By Senator Villalobos

37-164-02

1                                   A bill to be entitled  
2           An act relating to DNA evidence; amending s.  
3           925.11, F.S.; providing for the examination of  
4           DNA evidence collected at the time a crime is  
5           investigated if the defendant pleads guilty or  
6           nolo contendere to the crime and is sentenced  
7           by the court; providing a procedure under which  
8           the defendant may petition the trial court to  
9           order such an examination; providing guidelines  
10          for seeking postsentencing testing of DNA  
11          evidence; requiring that the court make certain  
12          findings; providing for a right to appeal;  
13          providing for preservation of evidence for  
14          which testing of DNA may be requested;  
15          reenacting s. 943.3251, F.S., relating to the  
16          duties of the Department of Law Enforcement  
17          with respect to postsentencing DNA testing, to  
18          incorporate the amendment to s. 925.11, F.S.,  
19          in references thereto; providing an effective  
20          date.

21  
22 Be It Enacted by the Legislature of the State of Florida:  
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24           Section 1. Section 925.11, Florida Statutes, is  
25 amended to read:

26           925.11 Postsentencing DNA testing.--

27           (1) Petition for examination.--

28           (a) A person who has been tried and found guilty of  
29 committing a crime, or who has entered a plea of guilty or  
30 nolo contendere to a crime, and has been sentenced by a court  
31 established by the laws of this state may petition that court

1 to order the examination of physical evidence collected at the  
2 time of the investigation of the crime for which he or she has  
3 been sentenced which may contain DNA (deoxyribonucleic acid)  
4 and which would exonerate that person or mitigate the sentence  
5 that person received.

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

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

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

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

21 (a) The petition for postsentencing DNA testing must  
22 be made under oath by the sentenced defendant and must include  
23 the following:

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

29 2. A statement that the evidence was not previously  
30 tested for DNA or a statement that the results of any previous  
31 DNA testing were inconclusive and that subsequent scientific

1 developments in DNA testing techniques would likely produce a  
2 definitive result;

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

8           4. A statement that identification of the defendant is  
9 a genuinely disputed issue in the case, and why it is an  
10 issue;

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

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

14           (b) Upon receiving the petition, the clerk of the  
15 court shall file it and deliver the court file to the assigned  
16 judge.

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

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

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

29           (f) The court shall make the following findings when  
30 ruling on the petition:

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

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

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

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

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

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

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

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

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

30           (c) The sentenced defendant may file a motion for  
31 rehearing of any order denying relief within 15 days after

1 service of the order denying relief. The time for filing an  
2 appeal shall be tolled until an order on the motion for  
3 rehearing has been entered.

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

7 (4) Preservation of evidence.--

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

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

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

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

28 2. The notifying entity does not receive, within 90  
29 days after sending the notification, either a copy of a  
30 petition for postsentencing DNA testing filed pursuant to this  
31 section or a request that the evidence not be destroyed

1 because the sentenced defendant will be filing the petition  
2 before the time for filing it has expired.

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

5 Section 2. For the purpose of incorporating the  
6 amendment made by this act to section 925.11, Florida  
7 Statutes, in references thereto, section 943.3251, Florida  
8 Statutes, is reenacted 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. This act shall take effect upon becoming a  
21 law.

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24 SENATE SUMMARY

25 Provides for postsentencing testing of DNA evidence  
26 collected at the time a crime is investigated with  
27 respect to a defendant who pleads guilty or nolo  
28 contendere to committing the crime. (See bill for  
29 details.)  
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