

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Joyner offered the following:

2

3 **Amendment (with title amendment)**

4 Between lines 593 and 594 insert:

5 Section 10. Section 925.11, Florida Statutes, is amended
6 to read:

7 925.11 Postsentencing DNA testing.--

8 (1) Petition for examination.--

9 ~~(a) A person who is under a sentence of imprisonment or~~
10 ~~death has been tried and found guilty of committing a crime and~~
11 ~~has been sentenced by a court established by the laws of this~~
12 ~~state may petition the that~~ court to order the examination of
13 physical evidence collected at the time of the investigation of
14 the crime for which he or she has been sentenced that ~~which~~ may

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15 contain DNA (deoxyribonucleic acid) and ~~which~~ would exonerate
16 that person or mitigate the sentence that person received.

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

19 ~~1. Within 4 years following the date that the judgment and~~
20 ~~sentence in the case becomes final if no direct appeal is taken,~~
21 ~~within 4 years following the date that the conviction is~~
22 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~
23 ~~following the date that collateral counsel is appointed or~~
24 ~~retained subsequent to the conviction being affirmed on direct~~
25 ~~appeal in a capital case, or by October 1, 2005, whichever~~
26 ~~occurs later; or~~

27 ~~2. At any time if the facts on which the petition is~~
28 ~~predicated were unknown to the petitioner or the petitioner's~~
29 ~~attorney and could not have been ascertained by the exercise of~~
30 ~~due diligence.~~

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

32 (a) The petition for postsentencing DNA testing must be
33 made under oath by the sentenced defendant and must include the
34 following:

35 1. A statement of the facts relied on in support of the
36 petition, including a description of the physical evidence
37 containing DNA to be tested and, if known, the present location
38 or the last known location of the evidence and how it was
39 originally obtained.†

40 2. A statement that the evidence was not previously tested
41 for DNA or a statement that the sentenced defendant is

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42 requesting DNA testing using a new method or technology that is
43 substantially more probative than the prior DNA testing. ~~the~~
44 ~~results of any previous DNA testing were inconclusive and that~~
45 ~~subsequent scientific developments in DNA testing techniques~~
46 ~~would likely produce a definitive result;~~

47 3. A statement that the sentenced defendant is innocent
48 and how the DNA testing requested by the petition will exonerate
49 the defendant of the crime for which the defendant was sentenced
50 or will mitigate the sentence received by the defendant for that
51 crime.;

52 4. If a trial was conducted, a statement that
53 identification of the defendant was ~~is~~ a genuinely disputed
54 issue in the trial. ~~ease, and why it is an issue;~~

55 5. Any other facts relevant to the petition.;

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

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

60 (c) The court shall review the petition and deny it if it
61 is insufficient. If the petition is sufficient, the prosecuting
62 authority shall be ordered to respond to the petition within 30
63 days. The court shall direct the prosecuting authority to take
64 measures and notify all relevant entities to preserve the
65 specific evidence relating to a petition under subsection (1).

66 (d) Upon receiving the response of the prosecuting
67 authority, the court shall review the response and enter an

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68 | order on the merits of the petition or set the petition for
69 | hearing.

70 | (e) Counsel may be appointed to assist the sentenced
71 | defendant if the petition proceeds to a hearing and if the court
72 | determines that the assistance of counsel is necessary and makes
73 | the requisite finding of indigency.

74 | (f) The court shall make the following findings when
75 | ruling on the petition:

76 | 1. Whether the sentenced defendant has shown that the
77 | physical evidence that may contain DNA still exists.~~+~~

78 | 2. Whether the results of DNA testing of that physical
79 | evidence would be admissible at trial and whether there exists
80 | reliable proof to establish that the evidence has not been
81 | materially altered and would be admissible at a future hearing.~~+~~
82 | ~~and~~

83 | 3. Whether there is a reasonable probability that the
84 | sentenced defendant would have been acquitted or would have
85 | received a lesser sentence if the DNA evidence had been admitted
86 | at trial.

87 | (g) If the court orders DNA testing of the physical
88 | evidence, the cost of such testing may be assessed against the
89 | sentenced defendant unless he or she is indigent. If the
90 | sentenced defendant is indigent, the state shall bear the cost
91 | of the DNA testing ordered by the court.

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

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95 (i) The results of the DNA testing ordered by the court
96 shall be provided to the court, the sentenced defendant, and the
97 prosecuting authority. The prosecuting authority shall enter any
98 DNA profile found into the National DNA Index System. If the DNA
99 test results exclude the petitioner, then the petitioner's DNA
100 reference sample must be destroyed.

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

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

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

108 (c) The sentenced defendant may file a motion for
109 rehearing of any order denying relief within 15 days after
110 service of the order denying relief. The time for filing an
111 appeal shall be tolled until an order on the motion for
112 rehearing has been entered.

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

116 (4) Preservation of evidence.--

117 (a) Governmental entities that may be in possession of any
118 physical evidence in the case, including, but not limited to,
119 any investigating law enforcement agency, the clerk of the
120 court, the prosecuting authority, or the Department of Law
121 Enforcement shall maintain any physical evidence collected at

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122 the time of the crime for which a postsentencing testing of DNA
123 may be requested.

124 (b) Except for a case in which the death penalty is
125 imposed, the evidence shall be maintained for at least the
126 period of time a person is incarcerated for the crime in
127 connection with which the evidence was collected ~~set forth in~~
128 ~~subparagraph (1)(b)~~1. In a case in which the death penalty is
129 imposed, the evidence shall be maintained for 60 days after
130 execution of the sentence.

131 (c) A governmental entity may dispose of the physical
132 evidence before the expiration of the period of time set forth
133 in paragraph ~~(1)~~(b) if all of the conditions set forth below are
134 met:

135 1. The evidence must be returned to its rightful owner or
136 is of such a size, bulk, or physical character as to render
137 retention impracticable.

138 2. The governmental entity takes reasonable measures to
139 remove and preserve portions of the material evidence sufficient
140 to permit future DNA testing.

141 ~~3.1-~~ The governmental entity notifies all of the following
142 individuals of its intent to dispose of the evidence: the
143 sentenced defendant, any counsel of record, the prosecuting
144 authority, and the Attorney General.

145 ~~4.2-~~ The notifying entity does not receive, within 180 ~~90~~
146 days after sending the notification, ~~either~~ a copy of a petition
147 for postsentencing DNA testing filed pursuant to this section ~~or~~
148 ~~a request that the evidence not be destroyed because the~~

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149 ~~sentenced defendant will be filing the petition before the time~~
150 ~~for filing it has expired.~~

151 5.3- No other provision of law or rule requires that the
152 physical evidence be preserved or retained.

153 (5) DNA identification of missing persons.--Each
154 governmental entity in possession of any physical evidence in
155 the case of a missing person or unidentified human remains shall
156 be required to submit the DNA profiles obtained from the
157 evidence to the National Missing Persons DNA Database of the
158 Federal Bureau of Investigation.

159 (6) System for reporting petitions.--

160 (a) The Attorney General shall establish a system for
161 reporting and tracking petitions filed in accordance with this
162 section.

163 (b) In operating the system established under paragraph
164 (a), the state courts shall provide to the Attorney General any
165 requested assistance in operating such a system and in ensuring
166 the accuracy and completeness of information included in that
167 system.

168 (c) Not later than 2 years after the date of enactment of
169 this act, the Attorney General shall submit a report to the
170 Legislature that lists each petition filed under this section
171 and the following information about each petition:

172 1. Whether DNA testing was ordered.

173 2. Whether the applicant obtained relief on the basis of
174 DNA test results.

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175 3. Whether further proceedings occurred following a
176 granting of relief and the outcome of such proceedings.

177 Section 11. Section 925.12, Florida Statutes, is created
178 to read:

179 925.12 Florida Commission on Innocence.—

180 (1) As used in this section, the term "exoneration"
181 includes any case in which:

182 (a) The courts of this state or the Board of Executive
183 Clemency have made a postconviction determination of actual
184 innocence;

185 (b) Postconviction DNA testing has led to a conviction
186 being vacated, an indictment being dismissed, or an acquittal
187 upon retrial;

188 (c) A conviction has been reversed and vacated, an
189 indictment dismissed, or a defendant was subsequently acquitted
190 based on new evidence of innocence or other constitutional
191 violation that calls into question the integrity of the judicial
192 process; or

193 (d) Any other postconviction vacation of conviction or
194 dismissal of indictment that the Florida Commission on Innocence
195 feels is appropriate to investigate.

196 (2)(a) The Florida Commission on Innocence is hereby
197 created.

198 (b) The commission shall be composed of 12 members. The
199 Chief Justice of the Supreme Court shall appoint one member, who
200 will be the commission's presiding officer. The presiding
201 officer shall appoint two members of the general public who do

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202 not have any legal, law enforcement, criminal justice, or
203 forensic science background from a pool of applications
204 submitted by members of the general public. The presiding
205 officer shall also appoint two members of the academic
206 community, one specializing in criminal justice and one
207 specializing in forensic science. One member shall be appointed
208 by the Florida Public Defenders Association. One member shall be
209 appointed by the Florida Prosecuting Attorneys Association. The
210 Criminal Courts Steering Committee shall appoint one member, who
211 shall have experience in the judiciary or be a certified court
212 mediator or arbitrator. One member shall be appointed by The
213 Florida Bar. One member shall be appointed by the Governor. One
214 member shall be appointed by the chair of the Democratic Caucus
215 of the House of Representatives. One member shall be appointed
216 by the chair of the Republican Caucus of the House of
217 Representatives.

218 (c) Each member shall serve a 2-year term.

219 (3)(a) The commission shall thoroughly investigate:

220 1. All postconviction exonerations, including convictions
221 vacated based on a plea to time served, to:

222 a. Ascertain what errors or defects, if any, occurred in
223 the investigation, prosecution, defense, or judicial
224 administration of the case that led to the wrongful conviction.

225 b. Identify errors and defects in the criminal justice
226 process in the state generally.

227 c. Develop solutions to correct the identified errors and
228 defects.

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229 d. Identify procedures and programs to prevent future
230 wrongful convictions.

231 2. Any colorable allegations that an innocent person has
232 been executed.

233 (b) The commission shall determine meeting frequency,
234 place, and protocol, except that the commission shall not meet
235 less than once per quarter.

236 (c) The commission may enter contracts for research
237 services it considers necessary to complete the investigation of
238 a particular case, including forensic testing and autopsies.

239 (d) The commission may administer oaths and issue
240 subpoenas signed by the presiding officer to compel the
241 production of documents and attendance of witnesses considered
242 necessary to an investigation. A commission subpoena shall be
243 served as provided in s. 48.031. On application of the
244 commission, a circuit court shall compel compliance with a
245 subpoena in the same manner as for circuit court subpoenas.

246 (4)(a) The commission shall compile a detained annual
247 report of its findings and recommendations, including any
248 proposed legislation to implement procedures and programs to
249 prevent future wrongful convictions, and present the report to
250 the Chief Justice of the Supreme Court, the chair of the
251 Democratic Caucus of the House of Representatives, and the chair
252 of the Republican Caucus of the House of Representatives.

253 (b) The report shall be available to the public upon
254 request.

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255 (c) The findings and recommendations contained in the
256 report may not be used as evidence in any subsequent civil or
257 criminal proceeding.

258 (d) Not later than the 60th day after the date of receipt
259 of the report required by this subsection, the Chief Justice of
260 the Supreme Court, the chair of the Democratic Caucus of the
261 House of Representatives, and the chair of the Republican Caucus
262 of the House of Representatives, singly or jointly, shall
263 respond to the commission in writing concerning the findings and
264 recommendations in the report.

265 (e) The report and the responses may be used by the
266 commission to request appropriate legislation or court rule as
267 required.

268 (5)(a) The commission shall receive an annual
269 appropriation to cover copying, mailing, and meeting expenses;
270 expert travel expenses and consulting fees; and contractor
271 services for administrative or research needs.

272 (b) Commission members shall donate their time, energy,
273 and expertise. Expenses for per diem and travel by commission
274 members may be reimbursed as provided in s. 112.061.

275 (6) The initial appointments to the commission shall be
276 made no later than 60 days after the effective date of this act.

277
278 ===== T I T L E A M E N D M E N T =====

279 Remove line 24 and insert:
280 revising a threshold date to conform; amending s. 925.11,
281 F.S.; revising requirements for petitions for examination

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HOUSE AMENDMENT

Bill No. HB 1005 CS

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282 of evidence and postconviction DNA testing; requiring
283 entry of DNA profile information into a national DNA index
284 system; revising requirements for retention of DNA
285 evidence; providing additional requirements for disposal
286 of physical evidence; providing for DNA identification of
287 missing persons; requiring a system for reporting and
288 tracking specified motions; requiring a report; creating
289 s. 925.12, F.S.; creating the Florida Commission on
290 Innocence; defining the term "exoneration"; providing
291 membership; providing terms of office; providing powers
292 and duties; providing for a report and responses;
293 providing for an annual appropriation to cover expenses;
294 providing a deadline for initial appointments; reenacting
295 s.

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