

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

1 Representatives Quinones and Bogdanoff offered the following:

2
3 **Amendment (with title amendment)**

4 Remove lines 57-249 and insert:

5 that ~~which~~ would exonerate that person or mitigate the sentence
6 that person received.

7 2. A person who has entered a plea of guilty or nolo
8 contendere to a felony prior to July 1, 2006, and has been
9 sentenced by a court established by the laws of this state may
10 petition that court to order the examination of physical
11 evidence collected at the time of the investigation of the crime
12 for which he or she has been sentenced that may contain DNA
13 (deoxyribonucleic acid) and that would exonerate that person.

14 (b) A petition for postsentencing DNA testing under
15 paragraph (a) may be filed or considered at any time following
16 the date that the judgment and sentence in the case becomes

382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

17 ~~final. 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 results of any previous DNA
42 testing were inconclusive and that subsequent scientific
43 developments in DNA testing techniques would likely produce a
44 definitive result establishing that the petitioner is not the
45 person who committed the crime;

382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

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

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

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

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

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

58 (c) The court shall review the petition and deny it if it
59 is insufficient. If the petition is sufficient, the prosecuting
60 authority shall be ordered to respond to the petition within 30
61 days.

62 (d) Upon receiving the response of the prosecuting
63 authority, the court shall review the response and enter an
64 order on the merits of the petition or set the petition for
65 hearing.

66 (e) Counsel may be appointed to assist the sentenced
67 defendant if the petition proceeds to a hearing and if the court
68 determines that the assistance of counsel is necessary and makes
69 the requisite finding of indigency.

70 (f) The court shall make the following findings when
71 ruling on the petition:

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

382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

74 2. Whether the results of DNA testing of that physical
75 evidence would be admissible at trial and whether there exists
76 reliable proof to establish that the evidence has not been
77 materially altered and would be admissible at a future hearing;
78 and

79 3. Whether there is a reasonable probability that the
80 sentenced defendant would have been acquitted or would have
81 received a lesser sentence if the DNA evidence had been admitted
82 at trial.

83 (g) If the court orders DNA testing of the physical
84 evidence, the cost of such testing may be assessed against the
85 sentenced defendant unless he or she is indigent. If the
86 sentenced defendant is indigent, the state shall bear the cost
87 of the DNA testing ordered by the court.

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

91 (i) The results of the DNA testing ordered by the court
92 shall be provided to the court, the sentenced defendant, and the
93 prosecuting authority.

94 (3) RIGHT TO APPEAL; REHEARING.--

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

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

101 (c) The sentenced defendant may file a motion for
102 rehearing of any order denying relief within 15 days after
382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

103 service of the order denying relief. The time for filing an
104 appeal shall be tolled until an order on the motion for
105 rehearing has been entered.

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

109 (4) PRESERVATION OF EVIDENCE.--

110 (a) Governmental entities that may be in possession of any
111 physical evidence in the case, including, but not limited to,
112 any investigating law enforcement agency, the clerk of the
113 court, the prosecuting authority, or the Department of Law
114 Enforcement shall maintain any physical evidence collected at
115 the time of the crime for which a postsentencing testing of DNA
116 may be requested.

117 ~~(b) Except for a case in which the death penalty is~~
118 ~~imposed, the evidence shall be maintained for at least the~~
119 ~~period of time set forth in subparagraph (1)(b)1.~~ In a case in
120 which the death penalty is imposed, the evidence shall be
121 maintained for 60 days after execution of the sentence. In all
122 other cases, a governmental entity may dispose of the physical
123 evidence if the term of the sentence imposed in the case has
124 expired and

125 ~~(c) A governmental entity may dispose of the physical~~
126 ~~evidence before the expiration of the period of time set forth~~
127 ~~in paragraph (1)(b) if all of the conditions set forth below are~~
128 ~~met.~~

129 ~~1. The governmental entity notifies all of the following~~
130 ~~individuals of its intent to dispose of the evidence: the~~

382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

131 ~~sentenced defendant, any counsel of record, the prosecuting~~
132 ~~authority, and the Attorney General.~~

133 ~~2. The notifying entity does not receive, within 90 days~~
134 ~~after sending the notification, either a copy of a petition for~~
135 ~~postsentencing DNA testing filed pursuant to this section or a~~
136 ~~request that the evidence not be destroyed because the sentenced~~
137 ~~defendant will be filing the petition before the time for filing~~
138 ~~it has expired.~~

139 ~~3. no other provision of law or rule requires that the~~
140 ~~physical evidence be preserved or retained.~~

141 Section 2. Section 925.12, Florida Statutes, is created to
142 read:

143 925.12 DNA testing; defendants entering pleas.--

144 (1) For defendants who have entered a plea of guilty or
145 nolo contendere to a felony on or after July 1, 2006, a
146 defendant may petition for postsentencing DNA testing under s.
147 925.11 under the following circumstances:

148 (a) The facts on which the petition is predicated were
149 unknown to the petitioner or the petitioner's attorney at the
150 time the plea was entered and could not have been ascertained by
151 the exercise of due diligence; or

152 (b) The physical evidence for which DNA testing is sought
153 was not disclosed to the defense by the state prior to the entry
154 of the plea by the petitioner.

155 (2) For defendants seeking to enter a plea of guilty or
156 nolo contendere to a felony on or after July 1, 2006, the court
157 shall inquire of the defendant and of counsel for the defendant
158 and the state as to physical evidence containing DNA known to
159 exist that could exonerate the defendant prior to accepting a

382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

160 plea of guilty or nolo contendere. If no physical evidence
161 containing DNA that could exonerate the defendant is known to
162 exist, the court may proceed with consideration of accepting the
163 plea. If physical evidence containing DNA that could exonerate
164 the defendant is known to exist, the court may postpone the
165 proceeding on the defendant's behalf and order DNA testing upon
166 motion of counsel specifying the physical evidence to be tested.

167 (3) It is the intent of the Legislature that the Supreme
168 Court adopt rules of procedure consistent with this section for
169 a court, prior to the acceptance of a plea, to make an inquiry
170 into the following matters:

171 (a) Whether counsel for the defense has reviewed the
172 discovery disclosed by the state and whether such discovery
173 included a listing or description of physical items of evidence.

174 (b) Whether the nature of the evidence against the
175 defendant disclosed through discovery has been reviewed with the
176 defendant.

177 (c) Whether the defendant or counsel for the defendant is
178 aware of any physical evidence disclosed by the state for which
179 DNA testing may exonerate the defendant.

180 (d) Whether the state is aware of any physical evidence
181 for which DNA testing may exonerate the defendant.

182 (4) It is the intent of the Legislature that the
183 postponement of the proceedings by the court on the defendant's
184 behalf under subsection (2) constitute an extension attributable
185 to the defendant for purposes of the defendant's right to a
186 speedy trial.

382057

4/17/2006 12:52:38 PM

Amendment No. (for drafter's use only)

187 Section 3. Rule 3.853, Florida Rules of Criminal
188 Procedure, is repealed to the extent it is inconsistent with
189 this act.

190 Section 4. This act shall take effect upon becoming a law
191 and shall apply retroactively to October 1, 2005; but section 3
192 shall take effect only if this act is passed by the affirmative
193 vote of two-thirds of the membership of each house of the
194 Legislature.

195

196 ===== T I T L E A M E N D M E N T =====

197 Remove lines 15-43 and insert:
198 require that the evidence be retained; creating s. 925.12,
199 F.S.; providing for postsentencing DNA testing under
200 specified circumstances; requiring a court to make
201 specified inquiries of a defendant seeking to enter a plea
202 of guilty or nolo contendere to a felony; providing
203 legislative intent that the Supreme Court adopt certain
204 rules; providing that a postponement for specified reasons
205 be considered attributable to the defendant for speedy
206 trial purposes; repealing a specified Florida Rule of
207 Criminal Procedure; providing retroactive and certain
208 contingent effect; providing effective dates.