

1 A bill to be entitled
 2 An act relating to postsentencing DNA testing; amending s.
 3 925.11, F.S.; deleting time limits for filing petitions
 4 for postsentencing DNA testing when facts on which the
 5 petition is predicated were unknown and could not have
 6 been ascertained by the exercise of due diligence;
 7 revising provisions relating to time periods for
 8 preservation of physical evidence; providing for
 9 retroactive application; providing an effective date.

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

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13 Section 1. Paragraph (b) of subsection (1) and subsection
 14 (4) of section 925.11, Florida Statutes, are reenacted and
 15 amended to read:

16 925.11 Postsentencing DNA testing.--

17 (1) Petition for examination.--

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

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

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

32 (4) Preservation of evidence.--

33 (a) Governmental entities that may be in possession of any
 34 physical evidence in the case, including, but not limited to,
 35 any investigating law enforcement agency, the clerk of the
 36 court, the prosecuting authority, or the Department of Law
 37 Enforcement shall maintain any physical evidence collected at
 38 the time of the crime for which a postsentencing testing of DNA
 39 may be requested.

40 (b) Except for a case in which the death penalty is
 41 imposed, the evidence shall be maintained ~~for~~ at least until the
 42 defendant's sentence has been completed, except as provided in
 43 paragraph (c) the period of time set forth in subparagraph
 44 ~~(1)(b)~~1. In a case in which the death penalty is imposed, the
 45 evidence shall be maintained for 60 days after execution of the
 46 sentence.

47 (c) A governmental entity may dispose of the physical
 48 evidence before the expiration of the period of time set forth
 49 in paragraph ~~(1)(b)~~ if all of the conditions set forth below are
 50 met:--

51 1. The governmental entity notifies all of the following
 52 individuals of its intent to dispose of the evidence: the
 53 sentenced defendant, any counsel of record, the prosecuting
 54 authority, and the Attorney General.

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55 2. The notifying entity does not receive, within 90 days
56 after sending the notification, either a copy of a petition for
57 postsentencing DNA testing filed pursuant to this section or a
58 request that the evidence not be destroyed because the sentenced
59 defendant will be filing the petition before the defendant has
60 completed his or her sentence ~~time for filing it has expired.~~

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

63 Section 2. This act shall take effect upon becoming a law
64 and shall apply retroactively to September 30, 2005.