

CHAMBER ACTION

1 The Governmental Operations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the postsentencing testing of DNA
7 evidence; amending s. 925.11, F.S.; revising the
8 circumstances under which a person who has been sentenced
9 for committing a felony may petition the court for
10 postsentencing testing of DNA evidence; abolishing certain
11 time limitations imposed upon such testing; authorizing a
12 governmental entity to dispose of physical evidence if the
13 sentence imposed has expired and another law or rule does
14 not require that the evidence be retained; providing for
15 retroactive application; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 925.11, Florida Statutes, is amended to
20 read:

21 925.11 Postsentencing DNA testing.--

22 (1) PETITION FOR EXAMINATION.--

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23 (a) A person who has been convicted of a felony and
 24 sentenced for committing that offense ~~tried and found guilty of~~
 25 ~~committing a crime and has been sentenced~~ by a court established
 26 by the laws of this state may petition that court to order the
 27 examination of physical evidence collected at the time of the
 28 investigation of the crime for which he or she has been
 29 sentenced which may contain DNA (deoxyribonucleic acid) and
 30 which would exonerate that person or mitigate the sentence that
 31 person received.

32 (b) A petition for postsentencing DNA testing may be filed
 33 or considered at any time following the date that the judgment
 34 and sentence in the case becomes final. ~~Except as provided in~~
 35 ~~subparagraph 2., a petition for postsentencing DNA testing may~~
 36 ~~be filed or considered:~~

37 1. ~~Within 4 years following the date that the judgment and~~
 38 ~~sentence in the case becomes final if no direct appeal is taken,~~
 39 ~~within 4 years following the date that the conviction is~~
 40 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~
 41 ~~following the date that collateral counsel is appointed or~~
 42 ~~retained subsequent to the conviction being affirmed on direct~~
 43 ~~appeal in a capital case, or by October 1, 2005, whichever~~
 44 ~~occurs later; or~~

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

49 (2) METHOD FOR SEEKING POSTSENTENCING DNA TESTING.--

50 (a) The petition for postsentencing DNA testing must be
51 made under oath by the sentenced defendant and must include the
52 following:

53 1. A statement of the facts relied on in support of the
54 petition, including a description of the physical evidence
55 containing DNA to be tested and, if known, the present location
56 or the last known location of the evidence and how it was
57 originally obtained;

58 2. A statement that the evidence was not previously tested
59 for DNA or a statement that the results of any previous DNA
60 testing were inconclusive and that subsequent scientific
61 developments in DNA testing techniques would likely produce a
62 definitive result;

63 3. A statement that the sentenced defendant is innocent
64 and how the DNA testing requested by the petition will exonerate
65 the defendant of the crime for which the defendant was sentenced
66 or will mitigate the sentence received by the defendant for that
67 crime;

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

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

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

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

75 (c) The court shall review the petition and deny it if it
76 is insufficient. If the petition is sufficient, the prosecuting

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77 authority shall be ordered to respond to the petition within 30
78 days.

79 (d) Upon receiving the response of the prosecuting
80 authority, the court shall review the response and enter an
81 order on the merits of the petition or set the petition for
82 hearing.

83 (e) Counsel may be appointed to assist the sentenced
84 defendant if the petition proceeds to a hearing and if the court
85 determines that the assistance of counsel is necessary and makes
86 the requisite finding of indigency.

87 (f) The court shall make the following findings when
88 ruling on the petition:

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

91 2. Whether the results of DNA testing of that physical
92 evidence would be admissible at trial and whether there exists
93 reliable proof to establish that the evidence has not been
94 materially altered and would be admissible at a future hearing;
95 and

96 3. Whether there is a reasonable probability that the
97 sentenced defendant would have been acquitted or would have
98 received a lesser sentence if the DNA evidence had been admitted
99 at trial.

100 (g) If the court orders DNA testing of the physical
101 evidence, the cost of such testing may be assessed against the
102 sentenced defendant unless he or she is indigent. If the
103 sentenced defendant is indigent, the state shall bear the cost
104 of the DNA testing ordered by the court.

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

108 (i) The results of the DNA testing ordered by the court
109 shall be provided to the court, the sentenced defendant, and the
110 prosecuting authority.

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

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

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

118 (c) The sentenced defendant may file a motion for
119 rehearing of any order denying relief within 15 days after
120 service of the order denying relief. The time for filing an
121 appeal shall be tolled until an order on the motion for
122 rehearing has been entered.

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

126 (4) PRESERVATION OF EVIDENCE.--

127 (a) Governmental entities that may be in possession of any
128 physical evidence in the case, including, but not limited to,
129 any investigating law enforcement agency, the clerk of the
130 court, the prosecuting authority, or the Department of Law
131 Enforcement shall maintain any physical evidence collected at

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132 the time of the crime for which a postsentencing testing of DNA
133 may be requested.

134 ~~(b) Except for a case in which the death penalty is~~
135 ~~imposed, the evidence shall be maintained for at least the~~
136 ~~period of time set forth in subparagraph (1)(b)1. In a case in~~
137 ~~which the death penalty is imposed, the evidence shall be~~
138 ~~maintained for 60 days after execution of the sentence. In all~~
139 ~~other cases, a governmental entity may dispose of the physical~~
140 ~~evidence if the term of the sentence imposed in the case has~~
141 ~~expired and~~

142 ~~(c) A governmental entity may dispose of the physical~~
143 ~~evidence before the expiration of the period of time set forth~~
144 ~~in paragraph (1)(b) if all of the conditions set forth below are~~
145 ~~met.~~

146 ~~1. The governmental entity notifies all of the following~~
147 ~~individuals of its intent to dispose of the evidence: the~~
148 ~~sentenced defendant, any counsel of record, the prosecuting~~
149 ~~authority, and the Attorney General.~~

150 ~~2. The notifying entity does not receive, within 90 days~~
151 ~~after sending the notification, either a copy of a petition for~~
152 ~~postsentencing DNA testing filed pursuant to this section or a~~
153 ~~request that the evidence not be destroyed because the sentenced~~
154 ~~defendant will be filing the petition before the time for filing~~
155 ~~it has expired.~~

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

158 Section 2. This act shall take effect upon becoming a law
159 and shall apply retroactively to October 1, 2005.