

CHAMBER ACTION

1 The State Administration Council 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 testing of DNA evidence; amending
7 s. 925.11, F.S.; revising the circumstances under which a
8 person who has been sentenced for committing a felony may
9 petition the court for postsentencing testing of DNA
10 evidence; abolishing certain time limitations imposed upon
11 such testing; revising requirements regarding submittal
12 and review of a petition; authorizing a governmental
13 entity to dispose of physical evidence if the sentence
14 imposed has expired and another law or rule does not
15 require that the evidence be retained; providing that
16 unavailability or unsuitability of physical evidence for
17 DNA testing does not provide grounds for other relief;
18 creating s. 925.12, F.S.; providing for postsentencing DNA
19 testing under specified circumstances; requiring a court
20 to make specified inquiries of a defendant seeking to
21 enter a plea of guilty or nolo contendere to a felony;
22 providing legislative intent that the Supreme Court adopt
23 certain rules; providing that a postponement for specified

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24 reasons be considered attributable to the defendant for
25 speedy trial purposes; repealing a specified Florida Rule
26 of Criminal Procedure; providing effective dates.

27
28 WHEREAS, the best interests of justice are served when
29 persons sentenced for crimes they in fact did not commit are
30 given the opportunity to definitively establish their actual
31 innocence through the use of DNA testing, and

32 WHEREAS, the best interests of justice are served by
33 discouraging persons accused of crimes they in fact did not
34 commit from entering negotiated pleas in return for the
35 possibility of a lesser sentence when their actual innocence
36 could be definitively established by testing physical evidence
37 containing DNA known to be in the possession of the state or its
38 governmental entities, and

39 WHEREAS, it is essential to the administration of justice
40 to maintain the integrity of the criminal justice system and to
41 preserve finality in criminal cases for the sake of crime
42 victims by curtailing the filing of abusive or nonmeritorious
43 petitions to seek DNA testing in the future, NOW, THEREFORE,

44

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

46

47 Section 1. Section 925.11, Florida Statutes, is amended to
48 read:

49 925.11 Postsentencing DNA testing.--

50 (1) PETITION FOR EXAMINATION.--

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51 (a)1. A person who has been tried and found guilty of
52 committing a felony ~~crime~~ and has been sentenced by a court
53 established by the laws of this state may petition that court to
54 order the examination of physical evidence collected at the time
55 of the investigation of the crime for which he or she has been
56 sentenced that ~~which~~ may contain DNA (deoxyribonucleic acid) and
57 that ~~which~~ would exonerate that person ~~or mitigate the sentence~~
58 ~~that person received.~~

59 2. A person who has entered a plea of guilty or nolo
60 contendere to a felony prior to July 1, 2006, and has been
61 sentenced by a court established by the laws of this state may
62 petition that court to order the examination of physical
63 evidence collected at the time of the investigation of the crime
64 for which he or she has been sentenced that may contain DNA
65 (deoxyribonucleic acid) and that would exonerate that person.

66 (b) A petition for postsentencing DNA testing under
67 paragraph (a) may be filed or considered at any time following
68 the date that the judgment and sentence in the case becomes
69 final. ~~Except as provided in subparagraph 2., a petition for~~
70 ~~postsentencing DNA testing may be filed or considered:~~

71 ~~1. Within 4 years following the date that the judgment and~~
72 ~~sentence in the case becomes final if no direct appeal is taken,~~
73 ~~within 4 years following the date that the conviction is~~
74 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~
75 ~~following the date that collateral counsel is appointed or~~
76 ~~retained subsequent to the conviction being affirmed on direct~~
77 ~~appeal in a capital case, or by October 1, 2005, whichever~~
78 ~~occurs later; or~~

79 | ~~2. At any time if the facts on which the petition is~~
 80 | ~~predicated were unknown to the petitioner or the petitioner's~~
 81 | ~~attorney and could not have been ascertained by the exercise of~~
 82 | ~~due diligence.~~

83 | (2) METHOD FOR SEEKING POSTSENTENCING DNA TESTING.--

84 | (a) The petition for postsentencing DNA testing must be
 85 | made under oath by the sentenced defendant and must include the
 86 | following:

87 | 1. A statement of the facts relied on in support of the
 88 | petition, including a description of the physical evidence
 89 | containing DNA to be tested and, if known, the present location
 90 | or the last known location of the evidence and how it was
 91 | originally obtained;

92 | 2. A statement that the evidence was not previously tested
 93 | for DNA or a statement that the results of any previous DNA
 94 | testing were inconclusive and that subsequent scientific
 95 | developments in DNA testing techniques would likely produce a
 96 | definitive result establishing that the petitioner is not the
 97 | person who committed the crime;

98 | 3. A statement that the sentenced defendant is innocent
 99 | and how the DNA testing requested by the petition will exonerate
 100 | the defendant of the crime for which the defendant was sentenced
 101 | ~~or will mitigate the sentence received by the defendant for that~~
 102 | ~~crime;~~

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

105 | 5. Any other facts relevant to the petition; and

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

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

110 (c) The court shall review the petition and deny it if it
111 is insufficient. If the petition is sufficient, the prosecuting
112 authority shall be ordered to respond to the petition within 30
113 days.

114 (d) Upon receiving the response of the prosecuting
115 authority, the court shall review the response and enter an
116 order on the merits of the petition or set the petition for
117 hearing.

118 (e) Counsel may be appointed to assist the sentenced
119 defendant if the petition proceeds to a hearing and if the court
120 determines that the assistance of counsel is necessary and makes
121 the requisite finding of indigency.

122 (f) The court shall make the following findings when
123 ruling on the petition:

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

126 2. Whether the results of DNA testing of that physical
127 evidence would be admissible at trial and whether there exists
128 reliable proof to establish that the evidence has not been
129 materially altered and would be admissible at a future hearing;
130 and

131 3. Whether there is a reasonable probability that the
132 sentenced defendant would have been acquitted ~~or would have~~

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133 | ~~received a lesser sentence~~ if the DNA evidence had been admitted
134 | at trial.

135 | (g) If the court orders DNA testing of the physical
136 | evidence, the cost of such testing may be assessed against the
137 | sentenced defendant unless he or she is indigent. If the
138 | sentenced defendant is indigent, the state shall bear the cost
139 | of the DNA testing ordered by the court.

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

143 | (i) The results of the DNA testing ordered by the court
144 | shall be provided to the court, the sentenced defendant, and the
145 | prosecuting authority.

146 | (3) RIGHT TO APPEAL; REHEARING.--

147 | (a) An appeal from the court's order on the petition for
148 | postsentencing DNA testing may be taken by any adversely
149 | affected party.

150 | (b) An order denying relief shall include a statement that
151 | the sentenced defendant has the right to appeal within 30 days
152 | after the order denying relief is entered.

153 | (c) The sentenced defendant may file a motion for
154 | rehearing of any order denying relief within 15 days after
155 | service of the order denying relief. The time for filing an
156 | appeal shall be tolled until an order on the motion for
157 | rehearing has been entered.

158 | (d) The clerk of the court shall serve on all parties a
159 | copy of any order rendered with a certificate of service,
160 | including the date of service.

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161 (4) PRESERVATION OF EVIDENCE.--

162 (a) Governmental entities that may be in possession of any
163 physical evidence in the case, including, but not limited to,
164 any investigating law enforcement agency, the clerk of the
165 court, the prosecuting authority, or the Department of Law
166 Enforcement shall maintain any physical evidence collected at
167 the time of the crime for which a postsentencing testing of DNA
168 may be requested.

169 (b) ~~Except for a case in which the death penalty is~~
170 ~~imposed, the evidence shall be maintained for at least the~~
171 ~~period of time set forth in subparagraph (1)(b)1.~~ In a case in
172 which the death penalty is imposed, the evidence shall be
173 maintained for 60 days after execution of the sentence. In all
174 other cases, a governmental entity may dispose of the physical
175 evidence if the term of the sentence imposed in the case has
176 expired and

177 ~~(c) A governmental entity may dispose of the physical~~
178 ~~evidence before the expiration of the period of time set forth~~
179 ~~in paragraph (1)(b) if all of the conditions set forth below are~~
180 ~~met.~~

181 ~~1. The governmental entity notifies all of the following~~
182 ~~individuals of its intent to dispose of the evidence: the~~
183 ~~sentenced defendant, any counsel of record, the prosecuting~~
184 ~~authority, and the Attorney General.~~

185 ~~2. The notifying entity does not receive, within 90 days~~
186 ~~after sending the notification, either a copy of a petition for~~
187 ~~postsentencing DNA testing filed pursuant to this section or a~~
188 ~~request that the evidence not be destroyed because the sentenced~~

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189 ~~defendant will be filing the petition before the time for filing~~
190 ~~it has expired.~~

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

193 (c) The unavailability or unsuitability of physical
194 evidence for DNA testing provided in this section shall not
195 constitute grounds for a new trial, a new sentencing proceeding,
196 withdrawal of a plea, or any other relief.

197 Section 2. Section 925.12, Florida Statutes, is created to
198 read:

199 925.12 DNA testing; defendants entering pleas.--

200 (1) For defendants who have entered a plea of guilty or
201 nolo contendere to a felony on or after July 1, 2006, a
202 defendant may petition for postsentencing DNA testing under s.
203 925.11 under the following circumstances:

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

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

211 (2) For defendants seeking to enter a plea of guilty or
212 nolo contendere to a felony on or after July 1, 2006, the court
213 shall inquire of the defendant and of counsel for the defendant
214 and the state as to physical evidence containing DNA known to
215 exist that could exonerate the defendant prior to accepting a
216 plea of guilty or nolo contendere. If no physical evidence

217 containing DNA that could exonerate the defendant is known to
218 exist, the court may proceed with consideration of accepting the
219 plea. If physical evidence containing DNA that could exonerate
220 the defendant is known to exist, the court may postpone the
221 proceeding on the defendant's behalf and order DNA testing upon
222 motion of counsel specifying the physical evidence to be tested.

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

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

230 (b) Whether the nature of the evidence against the
231 defendant disclosed through discovery has been reviewed with the
232 defendant.

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

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

238 (4) It is the intent of the Legislature that the
239 postponement of the proceedings by the court on the defendant's
240 behalf under subsection (2) constitute an extension attributable
241 to the defendant for purposes of the defendant's right to a
242 speedy trial.

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243 Section 3. Rule 3.853, Florida Rules of Criminal
244 Procedure, is repealed to the extent it is inconsistent with
245 this act.

246 Section 4. This act shall take effect upon becoming a law,
247 but section 3 shall take effect only if this act is passed by
248 the affirmative vote of two-thirds of the membership of each
249 house of the Legislature.