

ENROLLED

HB 61, Engrossed 1

2006 Legislature

1                                   A bill to be entitled  
 2           An act relating to the testing of DNA evidence; amending  
 3           s. 925.11, F.S.; revising the circumstances under which a  
 4           person who has been sentenced for committing a felony may  
 5           petition the court for postsentencing testing of DNA  
 6           evidence; abolishing certain time limitations imposed upon  
 7           such testing; revising requirements regarding submittal  
 8           and review of a petition; authorizing a governmental  
 9           entity to dispose of physical evidence if the sentence  
 10          imposed has expired and another law or rule does not  
 11          require that the evidence be retained; creating s. 925.12,  
 12          F.S.; providing for postsentencing DNA testing under  
 13          specified circumstances; requiring a court to make  
 14          specified inquiries of a defendant seeking to enter a plea  
 15          of guilty or nolo contendere to a felony; providing  
 16          legislative intent that the Supreme Court adopt certain  
 17          rules; providing that a postponement for specified reasons  
 18          be considered attributable to the defendant for speedy  
 19          trial purposes; repealing a specified Florida Rule of  
 20          Criminal Procedure; providing retroactive and certain  
 21          contingent effect; providing effective dates.

22  
 23   Be It Enacted by the Legislature of the State of Florida:

24  
 25           Section 1.   Section 925.11, Florida Statutes, is amended to  
 26   read:  
 27           925.11   Postsentencing DNA testing.--

ENROLLED

HB 61, Engrossed 1

2006 Legislature

28 (1) PETITION FOR EXAMINATION.--

29 (a)1. A person who has been tried and found guilty of  
 30 committing a felony ~~crime~~ and has been sentenced by a court  
 31 established by the laws of this state may petition that court to  
 32 order the examination of physical evidence collected at the time  
 33 of the investigation of the crime for which he or she has been  
 34 sentenced that ~~which~~ may contain DNA (deoxyribonucleic acid) and  
 35 that ~~which~~ would exonerate that person or mitigate the sentence  
 36 that person received.

37 2. A person who has entered a plea of guilty or nolo  
 38 contendere to a felony prior to July 1, 2006, and has been  
 39 sentenced by a court established by the laws of this state may  
 40 petition that court to order the examination of physical  
 41 evidence collected at the time of the investigation of the crime  
 42 for which he or she has been sentenced that may contain DNA  
 43 (deoxyribonucleic acid) and that would exonerate that person.

44 (b) A petition for postsentencing DNA testing under  
 45 paragraph (a) may be filed or considered at any time following  
 46 the date that the judgment and sentence in the case becomes  
 47 final. ~~Except as provided in subparagraph 2., a petition for~~  
 48 ~~postsentencing DNA testing may be filed or considered.~~

49 ~~1. Within 4 years following the date that the judgment and~~  
 50 ~~sentence in the case becomes final if no direct appeal is taken,~~  
 51 ~~within 4 years following the date that the conviction is~~  
 52 ~~affirmed on direct appeal if an appeal is taken, within 4 years~~  
 53 ~~following the date that collateral counsel is appointed or~~  
 54 ~~retained subsequent to the conviction being affirmed on direct~~

## ENROLLED

HB 61, Engrossed 1

2006 Legislature

55 | ~~appeal in a capital case, or by October 1, 2005, whichever~~  
56 | ~~occurs later; or~~

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

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

62 | (a) The petition for postsentencing DNA testing must be  
63 | made under oath by the sentenced defendant and must include the  
64 | following:

65 | 1. A statement of the facts relied on in support of the  
66 | petition, including a description of the physical evidence  
67 | containing DNA to be tested and, if known, the present location  
68 | or the last known location of the evidence and how it was  
69 | originally obtained;

70 | 2. A statement that the evidence was not previously tested  
71 | for DNA or a statement that the results of any previous DNA  
72 | testing were inconclusive and that subsequent scientific  
73 | developments in DNA testing techniques would likely produce a  
74 | definitive result establishing that the petitioner is not the  
75 | person who committed the crime;

76 | 3. A statement that the sentenced defendant is innocent  
77 | and how the DNA testing requested by the petition will exonerate  
78 | the defendant of the crime for which the defendant was sentenced  
79 | or will mitigate the sentence received by the defendant for that  
80 | crime;

## ENROLLED

HB 61, Engrossed 1

2006 Legislature

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

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

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

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

88 (c) The court shall review the petition and deny it if it  
89 is insufficient. If the petition is sufficient, the prosecuting  
90 authority shall be ordered to respond to the petition within 30  
91 days.

92 (d) Upon receiving the response of the prosecuting  
93 authority, the court shall review the response and enter an  
94 order on the merits of the petition or set the petition for  
95 hearing.

96 (e) Counsel may be appointed to assist the sentenced  
97 defendant if the petition proceeds to a hearing and if the court  
98 determines that the assistance of counsel is necessary and makes  
99 the requisite finding of indigency.

100 (f) The court shall make the following findings when  
101 ruling on the petition:

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

104 2. Whether the results of DNA testing of that physical  
105 evidence would be admissible at trial and whether there exists  
106 reliable proof to establish that the evidence has not been

## ENROLLED

HB 61, Engrossed 1

2006 Legislature

107 | materially altered and would be admissible at a future hearing;  
108 | and

109 |         3. Whether there is a reasonable probability that the  
110 | sentenced defendant would have been acquitted or would have  
111 | received a lesser sentence if the DNA evidence had been admitted  
112 | at trial.

113 |         (g) If the court orders DNA testing of the physical  
114 | evidence, the cost of such testing may be assessed against the  
115 | sentenced defendant unless he or she is indigent. If the  
116 | sentenced defendant is indigent, the state shall bear the cost  
117 | of the DNA testing ordered by the court.

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

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

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

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

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

131 |         (c) The sentenced defendant may file a motion for  
132 | rehearing of any order denying relief within 15 days after  
133 | service of the order denying relief. The time for filing an

ENROLLED

HB 61, Engrossed 1

2006 Legislature

134 appeal shall be tolled until an order on the motion for  
 135 rehearing has been entered.

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

139 (4) PRESERVATION OF EVIDENCE.--

140 (a) Governmental entities that may be in possession of any  
 141 physical evidence in the case, including, but not limited to,  
 142 any investigating law enforcement agency, the clerk of the  
 143 court, the prosecuting authority, or the Department of Law  
 144 Enforcement shall maintain any physical evidence collected at  
 145 the time of the crime for which a postsentencing testing of DNA  
 146 may be requested.

147 (b) ~~Except for a case in which the death penalty is~~  
 148 ~~imposed, the evidence shall be maintained for at least the~~  
 149 ~~period of time set forth in subparagraph (1)(b)1.~~ In a case in  
 150 which the death penalty is imposed, the evidence shall be  
 151 maintained for 60 days after execution of the sentence. In all  
 152 other cases, a governmental entity may dispose of the physical  
 153 evidence if the term of the sentence imposed in the case has  
 154 expired and

155 ~~(c) A governmental entity may dispose of the physical~~  
 156 ~~evidence before the expiration of the period of time set forth~~  
 157 ~~in paragraph (1)(b) if all of the conditions set forth below are~~  
 158 ~~met.~~

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

ENROLLED

HB 61, Engrossed 1

2006 Legislature

161 ~~sentenced defendant, any counsel of record, the prosecuting~~  
 162 ~~authority, and the Attorney General.~~

163 ~~2. The notifying entity does not receive, within 90 days~~  
 164 ~~after sending the notification, either a copy of a petition for~~  
 165 ~~postsentencing DNA testing filed pursuant to this section or a~~  
 166 ~~request that the evidence not be destroyed because the sentenced~~  
 167 ~~defendant will be filing the petition before the time for filing~~  
 168 ~~it has expired.~~

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

171 Section 2. Section 925.12, Florida Statutes, is created to  
 172 read:

173 925.12 DNA testing; defendants entering pleas.--

174 (1) For defendants who have entered a plea of guilty or  
 175 nolo contendere to a felony on or after July 1, 2006, a  
 176 defendant may petition for postsentencing DNA testing under s.  
 177 925.11 under the following circumstances:

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

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

185 (2) For defendants seeking to enter a plea of guilty or  
 186 nolo contendere to a felony on or after July 1, 2006, the court  
 187 shall inquire of the defendant and of counsel for the defendant

## ENROLLED

HB 61, Engrossed 1

2006 Legislature

188 and the state as to physical evidence containing DNA known to  
189 exist that could exonerate the defendant prior to accepting a  
190 plea of guilty or nolo contendere. If no physical evidence  
191 containing DNA that could exonerate the defendant is known to  
192 exist, the court may proceed with consideration of accepting the  
193 plea. If physical evidence containing DNA that could exonerate  
194 the defendant is known to exist, the court may postpone the  
195 proceeding on the defendant's behalf and order DNA testing upon  
196 motion of counsel specifying the physical evidence to be tested.

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

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

204 (b) Whether the nature of the evidence against the  
205 defendant disclosed through discovery has been reviewed with the  
206 defendant.

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

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

212 (4) It is the intent of the Legislature that the  
213 postponement of the proceedings by the court on the defendant's  
214 behalf under subsection (2) constitute an extension attributable



## ENROLLED

HB 61, Engrossed 1

2006 Legislature

215 | to the defendant for purposes of the defendant's right to a  
216 | speedy trial.

217 |       Section 3. Rule 3.853, Florida Rules of Criminal  
218 | Procedure, is repealed to the extent it is inconsistent with  
219 | this act.

220 |       Section 4. This act shall take effect upon becoming a law  
221 | and shall apply retroactively to October 1, 2005; but section 3  
222 | shall take effect only if this act is passed by the affirmative  
223 | vote of two-thirds of the membership of each house of the  
224 | Legislature.