

1 A bill to be entitled
 2 An act relating to evidence; amending s. 925.11, F.S.;
 3 revising requirements for petitions for examination of
 4 evidence and postsentencing DNA testing; requiring entry
 5 of DNA profile information into a national DNA index
 6 system; revising requirements for retention of DNA
 7 evidence; providing additional requirements for disposal
 8 of physical evidence; requiring a system for reporting and
 9 tracking specified motions; providing for retroactive
 10 application; requiring a report; providing for DNA
 11 identification of missing persons; creating s. 925.12,
 12 F.S.; creating the Florida Commission on Innocence;
 13 defining the term "exoneration"; providing membership;
 14 providing terms of office; providing powers and duties;
 15 providing for a report and responses; providing for an
 16 annual appropriation to cover expenses; providing a
 17 deadline for initial appointments; providing effective
 18 dates.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Effective upon this act becoming a law and
 23 applicable retroactive to September 30, 2005, section 925.11,
 24 Florida Statutes, is amended to read:

25 925.11 Postsentencing DNA testing.--

26 (1) PETITION FOR EXAMINATION.--

27 (a) A person who is under a sentence of imprisonment or
 28 death ~~has been tried and found guilty of committing a crime and~~

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

35 ~~(b) Except as provided in subparagraph 2., a petition for~~
 36 ~~postsentencing DNA testing may 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 sentenced defendant is
 60 requesting DNA testing using a new method or technology that is
 61 substantially more probative than the prior DNA testing. results
 62 ~~of any previous DNA testing were inconclusive and that~~
 63 ~~subsequent scientific developments in DNA testing techniques~~
 64 ~~would likely produce a definitive result;~~

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

70 4. If a trial was conducted, a statement that
 71 identification of the defendant was ~~is~~ a genuinely disputed
 72 issue in the trial. case, ~~and why it is an issue;~~

73 5. Any other facts relevant to the petition.† ~~and~~

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

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

78 (c) The court shall review the petition and deny it if it
 79 is insufficient. If the petition is sufficient, the prosecuting
 80 authority shall be ordered to respond to the petition within 30
 81 days. The court shall direct the prosecuting authority to take
 82 measures and notify all relevant entities to preserve the
 83 specific evidence relating to a petition under subsection (1).

84 (d) Upon receiving the response of the prosecuting
85 authority, the court shall review the response and enter an
86 order on the merits of the petition or set the petition for
87 hearing.

88 (e) Counsel may be appointed to assist the sentenced
89 defendant if the petition proceeds to a hearing and if the court
90 determines that the assistance of counsel is necessary and makes
91 the requisite finding of indigency.

92 (f) The court shall make the following findings when
93 ruling on the petition:

94 1. Whether the sentenced defendant has shown that the
95 physical evidence that may contain DNA still exists~~.~~+

96 2. Whether the results of DNA testing of that physical
97 evidence would be admissible at trial and whether there exists
98 reliable proof to establish that the evidence has not been
99 materially altered and would be admissible at a future hearing~~.~~+
100 ~~and~~

101 3. Whether there is a reasonable probability that the
102 sentenced defendant would have been acquitted or would have
103 received a lesser sentence if the DNA evidence had been admitted
104 at trial.

105 (g) If the court orders DNA testing of the physical
106 evidence, the cost of such testing may be assessed against the
107 sentenced defendant unless he or she is indigent. If the
108 sentenced defendant is indigent, the state shall bear the cost
109 of the DNA testing ordered by the court.

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

113 (i) The results of the DNA testing ordered by the court
114 shall be provided to the court, the sentenced defendant, and the
115 prosecuting authority. The prosecuting authority shall enter any
116 DNA profile found into the National DNA Index System. If the DNA
117 test results exclude the petitioner, then the petitioner's DNA
118 reference sample must be destroyed.

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

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

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

126 (c) The sentenced defendant may file a motion for
127 rehearing of any order denying relief within 15 days after
128 service of the order denying relief. The time for filing an
129 appeal shall be tolled until an order on the motion for
130 rehearing has been entered.

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

134 (4) PRESERVATION OF EVIDENCE.--

135 (a) Governmental entities that may be in possession of any
136 physical evidence in the case, including, but not limited to,
137 any investigating law enforcement agency, the clerk of the

138 court, the prosecuting authority, or the Department of Law
 139 Enforcement shall maintain any physical evidence collected at
 140 the time of the crime for which a postsentencing testing of DNA
 141 may be requested.

142 (b) Except for a case in which the death penalty is
 143 imposed, the evidence shall be maintained for at least the
 144 period of time the sentenced defendant is incarcerated for the
 145 crime in connection with which the evidence was collected ~~set~~
 146 ~~forth in subparagraph (1)(b)1.~~ In a case in which the death
 147 penalty is imposed, the evidence shall be maintained for 60 days
 148 after execution of the sentence.

149 (c) A governmental entity may dispose of the physical
 150 evidence before the expiration of the period of time set forth
 151 in paragraph ~~(1)~~(b) if all of the conditions set forth below are
 152 met:-

153 1. The evidence will be returned to its rightful owner
 154 unless it is of such a size, bulk, or physical character as to
 155 render retention impracticable.

156 2. The governmental entity takes reasonable measures to
 157 remove and preserve portions of the material evidence sufficient
 158 to permit future DNA testing.

159 ~~3.1-~~ The governmental entity notifies all of the following
 160 individuals of its intent to dispose of the evidence: the
 161 sentenced defendant, any counsel of record, the prosecuting
 162 authority, and the Attorney General.

163 ~~4.2-~~ The notifying entity does not receive, within 180 ~~90~~
 164 days after sending the notification, ~~either~~ a copy of a petition
 165 for postsentencing DNA testing filed pursuant to this section ~~or~~

166 ~~a request that the evidence not be destroyed because the~~
 167 ~~sentenced defendant will be filing the petition before the time~~
 168 ~~for filing it has expired.~~

169 ~~5.3-~~ No other provision of law or rule requires that the
 170 physical evidence be preserved or retained.

171 (5) SYSTEM FOR REPORTING MOTIONS.--

172 (a) The Attorney General shall establish a system for
 173 reporting and tracking motions filed in accordance with this
 174 section.

175 (b) In operating the system established under paragraph
 176 (a), the state courts shall provide to the Attorney General any
 177 requested assistance in operating such a system and in ensuring
 178 the accuracy and completeness of information included in that
 179 system.

180 Section 2. Not later than 2 years after the date of
 181 enactment of this act, the Attorney General shall submit a
 182 report to the Legislature that lists each petition filed under
 183 s. 925.11, Florida Statutes, and the following information about
 184 each petition:

185 (1) Whether DNA testing was ordered pursuant to such
 186 petition.

187 (2) Whether the applicant obtained relief on the basis of
 188 DNA test results.

189 (3) Whether further proceedings occurred following a
 190 granting of relief and the outcome of such proceedings.

191 Section 3. DNA profiles of missing persons.--Each
 192 governmental entity possessing a DNA profile of a missing person
 193 or of unidentified human remains shall submit the DNA profile to

194 the National Missing Persons DNA Database of the Federal Bureau
 195 of Investigation.

196 Section 4. Section 925.12, Florida Statutes, is created to
 197 read:

198 925.12 Florida Commission on Innocence.--

199 (1) As used in this section, the term "exoneration"
 200 includes any case in which:

201 (a) The courts of this state or the Board of Executive
 202 Clemency have made a postconviction determination of actual
 203 innocence;

204 (b) DNA testing has led to a conviction being vacated, an
 205 indictment being dismissed, or an acquittal upon retrial;

206 (c) A conviction has been reversed and vacated, an
 207 indictment dismissed, or a defendant was subsequently acquitted
 208 based on new evidence of innocence or other constitutional
 209 violation that calls into question the integrity of the judicial
 210 process; or

211 (d) Any other vacation of conviction or dismissal of
 212 indictment that the Florida Commission on Innocence feels is
 213 appropriate to investigate.

214 (2)(a) The Florida Commission on Innocence is hereby
 215 created.

216 (b) The commission shall be composed of 12 members. The
 217 Chief Justice of the Supreme Court shall appoint one member, who
 218 shall serve as the commission's presiding officer. The presiding
 219 officer shall appoint two members of the general public who do
 220 not have any legal, law enforcement, criminal justice, or
 221 forensic science background from a pool of applications

222 submitted by members of the general public. The presiding
223 officer shall also appoint two members of the academic
224 community, one specializing in criminal justice and one
225 specializing in forensic science. One member shall be appointed
226 by the Florida Public Defenders Association. One member shall be
227 appointed by the Florida Prosecuting Attorneys Association. The
228 Criminal Courts Steering Committee shall appoint one member, who
229 shall have experience in the judiciary or be a certified court
230 mediator or arbitrator. One member shall be appointed by The
231 Florida Bar. One member shall be appointed by the Governor. One
232 member shall be appointed by the chair of the Democratic Caucus
233 of the House of Representatives. One member shall be appointed
234 by the chair of the Republican Caucus of the House of
235 Representatives.

236 (c) Each member shall serve a 2-year term.

237 (3)(a) The commission shall thoroughly investigate:

238 1. All postconviction exonerations, including convictions
239 vacated based on a plea to time served, to:

240 a. Ascertain what errors or defects, if any, occurred in
241 the investigation, prosecution, defense, or judicial
242 administration of the case that led to the wrongful conviction.

243 b. Identify errors and defects in the criminal justice
244 process in the state generally.

245 c. Develop solutions to correct the identified errors and
246 defects.

247 d. Identify procedures and programs to prevent future
248 wrongful convictions.

249 2. Any colorable allegations that an innocent person has

250 been executed.

251 (b) The commission shall determine meeting frequency,
252 place, and protocol, except that the commission shall not meet
253 less than once per calendar quarter.

254 (c) The commission may enter contracts for research
255 services it considers necessary to complete the investigation of
256 a particular case, including forensic testing and autopsies.

257 (d) The commission may administer oaths and issue
258 subpoenas signed by the presiding officer to compel the
259 production of documents and attendance of witnesses considered
260 necessary to an investigation. A commission subpoena shall be
261 served as provided in s. 48.031. On application of the
262 commission, a circuit court shall compel compliance with a
263 subpoena in the same manner as for circuit court subpoenas.

264 (4)(a) The commission shall compile a detailed annual
265 report of its findings and recommendations, including any
266 proposed legislation to implement procedures and programs to
267 prevent future wrongful convictions, and present the report to
268 the Chief Justice of the Supreme Court, the chair of the
269 Democratic Caucus of the House of Representatives, and the chair
270 of the Republican Caucus of the House of Representatives.

271 (b) The report shall be available to the public upon
272 request.

273 (c) The findings and recommendations contained in the
274 report may not be used as evidence in any subsequent civil or
275 criminal proceeding.

276 (d) Not later than the 60th day after the date of receipt
277 of the report required by this subsection, the Chief Justice of

278 the Supreme Court, the chair of the Democratic Caucus of the
279 House of Representatives, and the chair of the Republican Caucus
280 of the House of Representatives, singly or jointly, shall
281 respond to the commission in writing concerning the findings and
282 recommendations in the report.

283 (e) The report and the responses may be used by the
284 commission to request appropriate legislation or court rule as
285 required.

286 (5)(a) The commission shall receive an annual
287 appropriation to cover copying, mailing, and meeting expenses;
288 expert travel expenses and consulting fees; and contractor
289 services for administrative or research needs.

290 (b) Commission members shall donate their time, energy,
291 and expertise. Expenses for per diem and travel by commission
292 members may be reimbursed as provided in s. 112.061.

293 (6) The initial appointments to the commission shall be
294 made no later than 60 days after the effective date of this
295 section.

296 Section 5. Except as otherwise expressly provided in this
297 act, this act shall take effect July 1, 2006.