

1 A bill to be entitled
2 An act relating to evidence of crimes; providing a short
3 title; amending s. 925.11, F.S.; providing definitions;
4 providing that governmental entities are only required to
5 maintain physical evidence for potential DNA testing for
6 serious crimes; providing for the preservation of evidence
7 in custody of governmental entities on the effective date
8 of the act; providing that only the portion of a piece of
9 evidence that is likely to contain biological evidence
10 must be retained and other portions of that piece of
11 evidence may be disposed of when the physical evidence is
12 of such a size, bulk, or physical character as to render
13 retention impracticable; providing that upon written
14 request by the defendant in a case of serious crime, a
15 governmental entity shall prepare an inventory of
16 biological evidence that has been preserved; providing for
17 creation of an Eyewitness Identification Task Force;
18 providing definitions; providing for membership; requiring
19 the task force to develop recommended guidelines for
20 policies, procedures, and training with respect to the
21 collection and handling of eyewitness evidence in criminal
22 investigations; requiring the task force to consider
23 specified policies and procedures; providing that the
24 guidelines developed by the task force shall serve as the
25 basis for a training program through the Criminal Justice
26 Standards and Training Commission; requiring the
27 Department of Law Enforcement to formulate a training
28 curriculum for new and existing law enforcement officers

29 using recommended guidelines by a specified date;
 30 requiring a report by a specified date; providing for
 31 minority reports; requiring that the report be posted on
 32 the Internet and distributed to specified parties;
 33 providing for termination of the task force and expiration
 34 of its authorizing provisions; providing an effective
 35 date.

36

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

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39 Section 1. This act may be entitled "The Enhancing Crime-
 40 Solving Potential and Reliability of the Criminal Justice System
 41 Act."

42 Section 2. Section 925.11, Florida Statutes, is amended to
 43 read:

44 925.11 Postsentencing DNA testing.—

45 (1) DEFINITIONS.—As used in this section, the term:

46 (a) "Biological evidence" means the contents of a sexual
 47 assault examination kit and any item that contains blood, semen,
 48 hair, saliva, skin tissue, fingernail scrapings, bone, bodily
 49 fluids, or other identifiable biological material that was
 50 collected as part of an investigation of a serious crime or that
 51 may reasonably be used to incriminate or exculpate any person
 52 for a serious crime. This includes all such material regardless
 53 of whether that material is catalogued separately, such as on a
 54 slide or swab or in a test tube, or is present on other
 55 evidence, including, but not limited to, clothing, ligatures,
 56 bedding, or other household material such as drinking cups,

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57 cigarettes, envelopes, or like items.

58 (b) "DNA" means deoxyribonucleic acid.

59 (c) "Governmental entity" refers to any governmental or
60 public entity within the state, including any private entity
61 that performs functions described in this paragraph, and any
62 official or employee of such an entity, including, but not
63 limited to, any law enforcement agency, prosecutor's office,
64 court, crime laboratory, or other entity or individual charged
65 with the collection, storage, or retrieval of biological
66 evidence.

67 (d) "Serious crime" means any felony violation contained
68 in any of the following provisions:

69 1. Chapter 782, entitled "Homicide."

70 2. Section 784.021, entitled "Aggravated Assault."

71 3. Section 784.041, entitled "Felony battery; domestic
72 battery by strangulation."

73 4. Section 784.045, entitled "Aggravated Battery."

74 5. Section 787.01, entitled "Kidnapping; kidnapping of
75 child under age 13, aggravating circumstances."

76 6. Section 787.02, entitled "False imprisonment; false
77 imprisonment of child under age 13, aggravating circumstances."

78 7. Section 794.011, entitled "Sexual battery."

79 8. Section 800.04, entitled "Lewd or lascivious offenses
80 committed upon or in the presence of persons less than 16 years
81 of age."

82 9. Section 806.01, entitled "Arson."

83 10. Section 806.031, entitled "Arson resulting in injury
84 to another; penalty."

- 85 | 11. Section 810.02, entitled "Burglary."
- 86 | 12. Section 812.13, entitled "Robbery."
- 87 | 13. Section 812.131, entitled "Robbery by sudden
- 88 | snatching."
- 89 | 14. Section 812.133, entitled "Carjacking."
- 90 | 15. Section 812.135, entitled "Home-invasion robbery."

91 | (2)~~(1)~~ PETITION FOR EXAMINATION.—

92 | (a)1. A person who has been tried and found guilty of

93 | committing a felony and has been sentenced by a court

94 | established by the laws of this state may petition that court to

95 | order the examination of physical evidence collected at the time

96 | of the investigation of the crime for which he or she has been

97 | sentenced that may contain DNA (deoxyribonucleic acid) and that

98 | would exonerate that person or mitigate the sentence that person

99 | received.

100 | 2. A person who has entered a plea of guilty or nolo

101 | contendere to a felony prior to July 1, 2006, and has been

102 | sentenced by a court established by the laws of this state may

103 | petition that court to order the examination of physical

104 | evidence collected at the time of the investigation of the crime

105 | for which he or she has been sentenced that may contain DNA

106 | (deoxyribonucleic acid) and that would exonerate that person.

107 | (b) A petition for postsentencing DNA testing under

108 | paragraph (a) may be filed or considered at any time following

109 | the date that the judgment and sentence in the case becomes

110 | final.

111 | (3)~~(2)~~ METHOD FOR SEEKING POSTSENTENCING DNA TESTING.—

112 | (a) The petition for postsentencing DNA testing must be

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113 made under oath by the sentenced defendant and must include the
114 following:

115 1. A statement of the facts relied on in support of the
116 petition, including a description of the physical evidence
117 containing DNA to be tested and, if known, the present location
118 or the last known location of the evidence and how it was
119 originally obtained;

120 2. A statement that the evidence was not previously tested
121 for DNA or a statement that the results of any previous DNA
122 testing were inconclusive and that subsequent scientific
123 developments in DNA testing techniques would likely produce a
124 definitive result establishing that the petitioner is not the
125 person who committed the crime;

126 3. A statement that the sentenced defendant is innocent
127 and how the DNA testing requested by the petition will exonerate
128 the defendant of the crime for which the defendant was sentenced
129 or will mitigate the sentence received by the defendant for that
130 crime;

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

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

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

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

138 (c) The court shall review the petition and deny it if it
139 is insufficient. If the petition is sufficient, the prosecuting
140 authority shall be ordered to respond to the petition within 30

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141 days.

142 (d) Upon receiving the response of the prosecuting
143 authority, the court shall review the response and enter an
144 order on the merits of the petition or set the petition for
145 hearing.

146 (e) Counsel may be appointed to assist the sentenced
147 defendant if the petition proceeds to a hearing and if the court
148 determines that the assistance of counsel is necessary and makes
149 the requisite finding of indigency.

150 (f) The court shall make the following findings when
151 ruling on the petition:

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

154 2. Whether the results of DNA testing of that physical
155 evidence would be admissible at trial and whether there exists
156 reliable proof to establish that the evidence has not been
157 materially altered and would be admissible at a future hearing;
158 and

159 3. Whether there is a reasonable probability that the
160 sentenced defendant would have been acquitted or would have
161 received a lesser sentence if the DNA evidence had been admitted
162 at trial.

163 (g) If the court orders DNA testing of the physical
164 evidence, the cost of such testing may be assessed against the
165 sentenced defendant unless he or she is indigent. If the
166 sentenced defendant is indigent, the state shall bear the cost
167 of the DNA testing ordered by the court.

168 (h) Any DNA testing ordered by the court shall be carried

169 out by the Department of Law Enforcement or its designee, as
 170 provided in s. 943.3251.

171 (i) The results of the DNA testing ordered by the court
 172 shall be provided to the court, the sentenced defendant, and the
 173 prosecuting authority.

174 ~~(4)-(3)~~ RIGHT TO APPEAL; REHEARING.—

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

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

181 (c) The sentenced defendant may file a motion for
 182 rehearing of any order denying relief within 15 days after
 183 service of the order denying relief. The time for filing an
 184 appeal shall be tolled until an order on the motion for
 185 rehearing has been entered.

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

189 ~~(5)-(4)~~ PRESERVATION OF EVIDENCE.—

190 (a) Governmental entities shall preserve physical evidence
 191 potentially containing biological evidence on which a
 192 postsentencing testing of DNA may be requested if that evidence
 193 is secured in relation to an investigation or prosecution of:

- 194 1. A serious crime for the period of time that the serious
 195 crime remains unsolved; or
 196 2. A serious crime for the period of time that an

197 individual is incarcerated based on a conviction for that
 198 serious crime and is in the custody of an evidence-holding
 199 agency in this state on July 1, 2010 ~~Governmental entities that~~
 200 ~~may be in possession of any physical evidence in the case,~~
 201 ~~including, but not limited to, any investigating law enforcement~~
 202 ~~agency, the clerk of the court, the prosecuting authority, or~~
 203 ~~the Department of Law Enforcement shall maintain any physical~~
 204 ~~evidence collected at the time of the crime for which a~~
 205 ~~postsentencing testing of DNA may be requested.~~

206 (b) In a case in which the death penalty is imposed, the
 207 evidence shall be maintained for 60 days after execution of the
 208 sentence. In all other cases, a governmental entity may dispose
 209 of the physical evidence if:

210 1. The term of the sentence imposed in the case has
 211 expired and no other provision of law or rule requires that the
 212 physical evidence be preserved or retained; or

213 2. The physical evidence is of such a size, bulk, or
 214 physical character as to render retention impracticable. When
 215 such retention is impracticable, the governmental entity shall
 216 remove and preserve portions of the material evidence likely to
 217 contain biological evidence related to the serious crime in a
 218 quantity sufficient to permit future DNA testing before
 219 returning or disposing of the physical evidence.

220 (c) Upon written request by the defendant in a case of
 221 serious crime, a governmental entity shall prepare an inventory
 222 of biological evidence that has been preserved in connection
 223 with that case.

224 Section 3. Eyewitness Identification Task Force.—

- 225 (1) As used in this section, the term:
- 226 (a) "Administrator" means the person conducting a photo or
 227 live lineup.
- 228 (b) "Blind" means the administrator does not know the
 229 identity of the suspect.
- 230 (c) "Blinded" means the administrator may know who the
 231 suspect is, but does not know which lineup member is being
 232 viewed by the eyewitness.
- 233 (d) "Eyewitness" means a person who observes another
 234 person at or near the scene of an offense.
- 235 (e) "Filler" means either a person or a photograph of a
 236 person who is not suspected of an offense and is included in an
 237 identification procedure.
- 238 (f) "Live lineup" means an identification procedure in
 239 which a group of persons, including the suspected perpetrator of
 240 an offense and persons who are fillers, are displayed to an
 241 eyewitness for the purpose of determining whether the eyewitness
 242 identifies the suspect as the perpetrator.
- 243 (g) "Photo lineup" means an identification procedure in
 244 which an array of photographs, including a photograph of the
 245 suspected perpetrator of an offense and additional photographs
 246 of persons who are fillers, are displayed to an eyewitness
 247 either in hard copy form or via digital imaging for the purpose
 248 of determining whether the eyewitness identifies the suspect as
 249 the perpetrator.
- 250 (h) "Showup" means an identification procedure in which an
 251 eyewitness is presented with a single suspect for the purpose of
 252 determining whether the eyewitness identifies this individual as

253 the perpetrator.

254 (2) An Eyewitness Identification Task Force shall be
 255 convened by the executive director of the Department of Law
 256 Enforcement and is composed of 10 members as follows:

257 (a) The Florida Police Chiefs Association shall appoint
 258 two members:

259 1. One of whom must be from a small law enforcement
 260 agency; and

261 2. One of whom must be from a large law enforcement agency
 262 accredited by the Commission on Accreditation for Law
 263 Enforcement Agencies.

264 (b) The Florida Sheriffs Association shall appoint one
 265 member.

266 (c) The Attorney General shall appoint one member, who
 267 must be an attorney who represents the state in the prosecution
 268 of felonies and is a member of the Florida Prosecuting Attorneys
 269 Association.

270 (d) The executive director of the Department of Law
 271 Enforcement shall appoint one member who is actively involved in
 272 the development of the department's curricula.

273 (e) The Chief Justice of the Supreme Court shall appoint
 274 one member, who must be a member of the judiciary.

275 (f) The Chancellor of the State University System shall
 276 appoint two members:

277 1. One of whom must be a law professor; and

278 2. One of whom must be a professor of psychology with
 279 experience in research related to memory.

280 (g) The Florida Public Defender Association shall appoint

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281 one member, who must be a criminal defense lawyer.

282 (h) The executive director of the Innocence Project of
283 Florida or his or her designee shall be a member.

284 (3) The task force members, in consultation with
285 eyewitness identification practitioners and experts, shall
286 develop recommended guidelines for policies, procedures, and
287 training with respect to the collection and handling of
288 eyewitness evidence in criminal investigations by law
289 enforcement agencies in the state that are shown by reliable
290 evidence to enhance the accuracy of eyewitness identification.

291 (4) The task force shall consider the following policies
292 and practices to enhance the accuracy and reliability of
293 eyewitness evidence, including, without limitation:

294 (a) Employing a blind or blinded administrator in the
295 administration of live and photo lineups.

296 (b) Issuing specific instructions to the eyewitness before
297 and during the live or photo lineup or showup, which may
298 include:

299 1. That the perpetrator may or may not be among the
300 persons in the identification procedure or, in the case of a
301 showup, may or may not be the person that is presented to the
302 eyewitness.

303 2. That the administrator does not know who the
304 perpetrator is.

305 3. That the eyewitness should not feel compelled to make
306 an identification.

307 4. That the investigation will continue whether or not an
308 identification is made.

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309 5. That the procedure requires the administrator to ask
310 the eyewitness to state, in his or her own words, how certain he
311 or she is of any identification.

312 6. That the eyewitness not discuss the identification
313 procedure or its results with other eyewitnesses involved in the
314 case or contact the media.

315 (c) In a photo lineup, ensuring that the photograph of the
316 suspect is contemporary and resembles the suspect's appearance
317 at the time of the offense.

318 (d) Using four or more fillers in live lineups and five or
319 more fillers in photo lineups and ensuring that those fillers
320 generally resemble the eyewitness's description of the
321 perpetrator.

322 (e) Using only one suspect in any live or photo lineup and
323 ensuring that the suspect does not unduly stand out from the
324 fillers.

325 (f) Using different fillers in successive lineups
326 administered for the same eyewitness when new suspects are
327 introduced.

328 (g) Presenting separate photo and live lineups when there
329 are multiple eyewitnesses, while ensuring the same suspect is
330 placed in a different position for each identification
331 procedure.

332 (h) Taking measures to avoid communication about the
333 identity of the suspect to the eyewitness and ensuring that
334 communication among multiple eyewitnesses is prevented.

335 (i) Presenting members of photo and live lineups one at a
336 time.

337 (j) Assessing the circumstances under which a showup is
338 warranted and the attendant measures that should be undertaken
339 to prevent or reduce suggestibility.

340 (k) Determining when the administrator should record the
341 eyewitness's statement of confidence in his or her selection in
342 the live or photo lineup or showup procedure.

343 (l) Refraining from providing any confirmatory information
344 to the eyewitness.

345 (m) Producing a video or audio recording of the photo or
346 live lineup, showup, or other procedure.

347 (5) Such guidelines shall also provide the basis for a
348 training program through the Criminal Justice Standards and
349 Training Commission, which shall devise a curriculum adopting
350 those recommended policies and procedures for law enforcement
351 agencies in the this state.

352 (6) The task force shall establish guidelines for
353 eyewitness identification procedures pursuant to subsections
354 (1)-(5) by October 1, 2011.

355 (7) The Department of Law Enforcement shall formulate a
356 training curriculum for new and existing law enforcement
357 officers that comprises the recommended guidelines established
358 pursuant to subsections (1)-(5) by June 30, 2012.

359 (8) The task force shall submit a report on the guidelines
360 developed and recommendations concerning their use by October 1,
361 2011. Minority reports may also be issued. These reports shall
362 be posted on the state's official website and presented to the
363 Governor, the Chief Justice of the Supreme Court, the President
364 of the Senate, the Speaker of the House of Representatives, and

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365 | the standing committees of the Legislature having oversight
366 | jurisdiction of matters relating to criminal law and procedures.
367 | The task force shall terminate on the date that it submits such
368 | report or October 1, 2011, whichever is earlier, and this
369 | section expires on that date.

370 | Section 4. This act shall take effect July 1, 2010.