

By Senator Joyner

18-01905B-10

20102522

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

18-01905B-10

20102522

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

38  
39 Be It Enacted by the Legislature of the State of Florida:

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

44 Section 2. Section 925.11, Florida Statutes, is amended to  
45 read:

46 925.11 Postsentencing DNA testing.—

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

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

18-01905B-10

20102522

59 cigarettes, envelopes, or like items.

60 (b) "DNA" means deoxyribonucleic acid.

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

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

71 1. Chapter 782, entitled "Homicide."

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

73 3. Section 784.041, entitled "Felony battery; domestic  
74 battery by strangulation."

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

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

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

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

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

84 9. Section 806.01, entitled "Arson."

85 10. Section 806.031, entitled "Arson resulting in injury to  
86 another; penalty."

87 11. Section 810.02, entitled "Burglary."

18-01905B-10

20102522

88       12. Section 812.13, entitled "Robbery."

89       13. Section 812.131, entitled "Robbery by sudden  
90 snatching."

91       14. Section 812.133, entitled "Carjacking."

92       15. Section 812.135, entitled "Home-invasion robbery."

93       (2)~~(1)~~ PETITION FOR EXAMINATION.—

94       (a)1. A person who has been tried and found guilty of  
95 committing a felony and has been sentenced by a court  
96 established by the laws of this state may petition that court to  
97 order the examination of physical evidence collected at the time  
98 of the investigation of the crime for which he or she has been  
99 sentenced that may contain DNA (deoxyribonucleic acid) and that  
100 would exonerate that person or mitigate the sentence that person  
101 received.

102       2. A person who has entered a plea of guilty or nolo  
103 contendere to a felony prior to July 1, 2006, and has been  
104 sentenced by a court established by the laws of this state may  
105 petition that court to order the examination of physical  
106 evidence collected at the time of the investigation of the crime  
107 for which he or she has been sentenced that may contain DNA  
108 (deoxyribonucleic acid) and that would exonerate that person.

109       (b) A petition for postsentencing DNA testing under  
110 paragraph (a) may be filed or considered at any time following  
111 the date that the judgment and sentence in the case becomes  
112 final.

113       (3)~~(2)~~ METHOD FOR SEEKING POSTSENTENCING DNA TESTING.—

114       (a) The petition for postsentencing DNA testing must be  
115 made under oath by the sentenced defendant and must include the  
116 following:

18-01905B-10

20102522

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

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

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

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

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

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

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

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

144 (d) Upon receiving the response of the prosecuting  
145 authority, the court shall review the response and enter an

18-01905B-10

20102522

146 order on the merits of the petition or set the petition for  
147 hearing.

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

152 (f) The court shall make the following findings when ruling  
153 on the petition:

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

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

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

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

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

173 (i) The results of the DNA testing ordered by the court  
174 shall be provided to the court, the sentenced defendant, and the

18-01905B-10

20102522

175 prosecuting authority.

176 (4)~~(3)~~ RIGHT TO APPEAL; REHEARING.—

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

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

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

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

191 (5)~~(4)~~ PRESERVATION OF EVIDENCE.—

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

196 1. A serious crime for the period of time that the serious  
197 crime remains unsolved; or

198 2. A serious crime for the period of time that an  
199 individual is incarcerated based on a conviction for that  
200 serious crime and is in the custody of an evidence-holding  
201 agency in this state on July 1, 2010 ~~Governmental entities that~~  
202 ~~may be in possession of any physical evidence in the case,~~  
203 ~~including, but not limited to, any investigating law enforcement~~

18-01905B-10

20102522

204 ~~agency, the clerk of the court, the prosecuting authority, or~~  
205 ~~the Department of Law Enforcement shall maintain any physical~~  
206 ~~evidence collected at the time of the crime for which a~~  
207 ~~postsentencing testing of DNA may be requested.~~

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

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

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

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

226 Section 3. Eyewitness Identification Task Force.—

227 (1) As used in this section, the term:

228 (a) "Administrator" means the person conducting a photo or  
229 live lineup.

230 (b) "Blind" means the administrator does not know the  
231 identity of the suspect.

232 (c) "Blinded" means the administrator may know who the



18-01905B-10

20102522

233 suspect is, but does not know which lineup member is being  
234 viewed by the eyewitness.

235 (d) "Eyewitness" means a person who observes another person  
236 at or near the scene of an offense.

237 (e) "Filler" means either a person or a photograph of a  
238 person who is not suspected of an offense and is included in an  
239 identification procedure.

240 (f) "Live lineup" means an identification procedure in  
241 which a group of persons, including the suspected perpetrator of  
242 an offense and persons who are fillers, are displayed to an  
243 eyewitness for the purpose of determining whether the eyewitness  
244 identifies the suspect as the perpetrator.

245 (g) "Photo lineup" means an identification procedure in  
246 which an array of photographs, including a photograph of the  
247 suspected perpetrator of an offense and additional photographs  
248 of persons who are fillers, are displayed to an eyewitness  
249 either in hard copy form or via digital imaging for the purpose  
250 of determining whether the eyewitness identifies the suspect as  
251 the perpetrator.

252 (h) "Showup" means an identification procedure in which an  
253 eyewitness is presented with a single suspect for the purpose of  
254 determining whether the eyewitness identifies this individual as  
255 the perpetrator.

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

259 (a) The Florida Police Chiefs Association shall appoint two  
260 members:

261 1. One of whom must be from a small law enforcement agency;

18-01905B-10

20102522

262 and

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

266 (b) The Florida Sheriffs Association shall appoint one  
267 member.

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

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

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

277 (f) The Chancellor of the State University System shall  
278 appoint two members:

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

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

282 (g) The Florida Public Defender Association shall appoint  
283 one member, who must be a criminal defense lawyer.

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

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

18-01905B-10

20102522

291 in the state that are shown by reliable evidence to enhance the  
292 accuracy of eyewitness identification.

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

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

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

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

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

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

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

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

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

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

319 (d) Using four or more fillers in live lineups and five or

18-01905B-10

20102522

320 more fillers in photo lineups and ensuring that those fillers  
321 generally resemble the eyewitness's description of the  
322 perpetrator.

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

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

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

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

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

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

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

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

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

348 (5) Such guidelines shall also provide the basis for a

18-01905B-10

20102522

349 training program through the Criminal Justice Standards and  
350 Training Commission, which shall devise a curriculum adopting  
351 those recommended policies and procedures for law enforcement  
352 agencies in the this state.

353 (6) The task force shall establish guidelines for  
354 eyewitness identification procedures pursuant to subsections  
355 (1)-(5) by October 1, 2011.

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

360 (8) The task force shall submit a report on the guidelines  
361 developed and recommendations concerning their use by October 1,  
362 2011. Minority reports may also be issued. These reports shall  
363 be posted on the state's official website and presented to the  
364 Governor, the Chief Justice of the Supreme Court, the President  
365 of the Senate, the Speaker of the House of Representatives, and  
366 the standing committees of the Legislature having oversight  
367 jurisdiction of matters relating to criminal law and procedures.  
368 The task force shall terminate on the date that it submits such  
369 report or October 1, 2011, whichever is earlier, and this  
370 section expires on that date.

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