

1                   A bill to be entitled  
2           An act relating to postsentencing forensic analysis;  
3           amending s. 925.11, F.S.; providing definitions;  
4           authorizing specified persons to petition a court for  
5           postsentencing forensic analysis that may result in  
6           evidence of the identity of a perpetrator or  
7           accomplice to a crime; providing requirements for such  
8           a petition; requiring a court to make specified  
9           findings before entering an order for forensic  
10          analysis; requiring the forensic analysis to be  
11          performed by the Department of Law Enforcement;  
12          providing an exception; requiring the department to  
13          submit a DNA profile meeting submission standards to  
14          certain DNA databases; requiring the results of the  
15          DNA database search to be provided to specified  
16          parties; authorizing a court to order specified  
17          persons to conduct a search for physical evidence  
18          reported to be missing or destroyed in violation of  
19          law; requiring a report of the results of such a  
20          search; amending s. 925.12, F.S.; authorizing  
21          specified persons to petition for forensic analysis  
22          after entering a plea of guilty or nolo contendere;  
23          requiring a court to inquire of a defendant about  
24          specified information relating to physical evidence  
25          before accepting a plea; amending s. 943.325, F.S.;

26 | authorizing certain samples obtained from  
 27 | postsentencing forensic analysis to be entered into  
 28 | the statewide DNA database; authorizing DNA analysis  
 29 | and results to be released to specified entities;  
 30 | amending s. 943.3251, F.S.; requiring the department  
 31 | to perform forensic analysis and searches of the  
 32 | statewide DNA database; providing an exception;  
 33 | requiring the results of forensic analysis and a DNA  
 34 | database search to be provided to specified entities;  
 35 | providing an effective date.

36 |  
 37 | Be It Enacted by the Legislature of the State of Florida:

38 |  
 39 | Section 1. Section 925.11, Florida Statutes, is amended to  
 40 | read:

41 | 925.11 Postsentencing forensic analysis ~~DNA testing~~.—

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

43 | (a) "CODIS" has the same meaning as provided in s.

44 | 943.325.

45 | (b) "Department" means the Department of Law Enforcement.

46 | (c) "Forensic analysis" means the process by which a  
 47 | forensic or scientific technique is applied to evidence or  
 48 | biological material to identify the perpetrator of, or  
 49 | accomplice to, a crime. The term includes, but is not limited  
 50 | to, deoxyribonucleic acid (DNA) testing.

51 (d) "Petitioner" means a defendant who has been convicted  
52 of and sentenced for a felony.

53 (2)-(1) PETITION FOR EXAMINATION.-

54 (a)~~1.~~ A person who has entered a plea of guilty or nolo  
55 contendere to a felony before July 1, 2020, or who has been  
56 tried and found guilty of committing a felony and has been  
57 sentenced by a court established by the laws of ~~the~~ this state  
58 may petition that court to order the forensic analysis  
59 ~~examination~~ of physical evidence collected at the time of the  
60 investigation of the crime for which he or she has been  
61 sentenced that may result in evidence material to the identity  
62 of the perpetrator of, or accomplice to, the crime that resulted  
63 in the person's conviction ~~may contain DNA (deoxyribonucleic~~  
64 acid) and that would exonerate that person or mitigate the  
65 sentence that person received.

66 ~~2. A person who has entered a plea of guilty or nolo~~  
67 ~~contendere to a felony prior to July 1, 2006, and has been~~  
68 ~~sentenced by a court established by the laws of this state may~~  
69 ~~petition that court to order the examination of physical~~  
70 ~~evidence collected at the time of the investigation of the crime~~  
71 ~~for which he or she has been sentenced that may contain DNA~~  
72 ~~(deoxyribonucleic acid) and that would exonerate that person.~~

73 (b) A petition for postsentencing forensic analysis ~~DNA~~  
74 ~~testing~~ under paragraph (a) may be filed or considered at any  
75 time following the date that the judgment and sentence in the

76 case becomes final.

77 (3)~~(2)~~ METHOD FOR SEEKING POSTSENTENCING FORENSIC ANALYSIS  
78 ~~DNA TESTING.~~—

79 (a) A ~~The~~ petition for postsentencing forensic analysis  
80 ~~DNA testing must be made under oath by the sentenced defendant~~  
81 ~~and~~ must include the following:

82 1. A statement of the facts relied on in support of the  
83 petition, including a description of the physical evidence  
84 ~~containing DNA~~ to be tested and, if known, the present location  
85 or the last known location of the evidence and how it was  
86 originally obtained.‡

87 2. A statement that the evidence was not previously  
88 subjected to forensic analysis ~~tested for DNA~~ or a statement  
89 that the results of any previous forensic analysis ~~DNA testing~~  
90 were inconclusive and that subsequent scientific developments in  
91 forensic analysis ~~DNA testing techniques~~ would likely produce  
92 evidence material to a definitive result establishing that the  
93 identity of the perpetrator of, or accomplice to, petitioner is  
94 ~~not the person who committed the crime.~~‡

95 3. A statement that the petitioner ~~sentenced defendant~~ is  
96 innocent and how the forensic analysis ~~DNA testing~~ requested by  
97 the petitioner may result in evidence that is material to  
98 ~~petition will exonerate the~~ identity of the perpetrator of, or  
99 accomplice to, the defendant of the crime for which the  
100 ~~defendant was sentenced or will mitigate the sentence received~~

101 ~~by the defendant for that crime.~~

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

104 5. A statement that the petitioner will comply with any  
105 court order to provide a biological sample for the purpose of  
106 conducting requested forensic analysis and acknowledging such  
107 analysis could produce exculpatory evidence or evidence  
108 confirming the petitioner's identity as the perpetrator of, or  
109 accomplice to, the crime or a separate crime.

110 ~~6.5.~~ Any other facts relevant to the petition. ~~and~~

111 ~~7.6.~~ A certificate that a copy of the petition has been  
112 served on the prosecuting authority.

113 8. The petitioner's sworn statement attesting to the  
114 contents of the petition.

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

117 (c) The court shall review the petition and deny it if it  
118 is insufficient. If the petition is sufficient, the prosecuting  
119 authority shall be ordered to respond to the petition within 30  
120 days.

121 (d) Upon receiving the response of the prosecuting  
122 authority, the court shall review the response and enter an  
123 order on the merits of the petition or set the petition for  
124 hearing.

125 (e) Counsel may be appointed to assist the petitioner

126 ~~sentenced defendant~~ if the petition proceeds to a hearing and if  
 127 the court determines that the assistance of counsel is necessary  
 128 and makes the requisite finding of indigency.

129 (f) The court shall make the following findings when  
 130 ruling on the petition:

131 1. Whether the petitioner ~~sentenced defendant~~ has shown  
 132 that ~~the~~ physical evidence that may be subjected to forensic  
 133 analysis ~~contain DNA~~ still exists.†

134 2. Whether the results of forensic analysis ~~DNA testing~~ of  
 135 that physical evidence would be admissible at trial and whether  
 136 there exists reliable proof to establish that the evidence has  
 137 not been materially altered and would be admissible at a future  
 138 hearing.†~~and~~

139 3. Whether there is a reasonable probability the forensic  
 140 analysis may result in evidence that is material to the identity  
 141 of the perpetrator of, or accomplice to, the crime ~~there is a~~  
 142 ~~reasonable probability that the sentenced defendant would have~~  
 143 ~~been acquitted or would have received a lesser sentence if the~~  
 144 ~~DNA evidence had been admitted at trial.~~

145 (g) If the court orders forensic analysis ~~DNA testing~~ of  
 146 the physical evidence, the cost of such analysis ~~testing~~ may be  
 147 assessed against the petitioner ~~sentenced defendant~~ unless he or  
 148 she is indigent. If the petitioner ~~sentenced defendant~~ is  
 149 indigent, the state shall bear the cost of the forensic analysis  
 150 ~~DNA testing~~ ordered by the court, unless otherwise specified in

151 paragraph (i).

152 (h) Except as provided in paragraph (i), any forensic  
153 analysis ~~DNA testing~~ ordered by the court shall be performed  
154 ~~carried out~~ by the department of Law Enforcement or its  
155 designee, as provided in s. 943.3251.

156 (i) The court may order forensic analysis to be performed  
157 by a private laboratory when the petitioner is able to pay for  
158 the cost of such analysis.

159 (j) Before the court may order a private laboratory to  
160 perform forensic analysis in the form of DNA testing, the  
161 petitioner must obtain and submit certification to the court of  
162 the following:

163 1. Proof of the private laboratory's accreditation by an  
164 accreditation body that is a signatory to the International  
165 Laboratory Accreditation Cooperation Mutual Recognition  
166 Agreement.

167 2. Proof that the private laboratory is designated by the  
168 Federal Bureau of Investigation as possessing an accreditation  
169 that includes DNA testing and the laboratory is compliant with  
170 Federal Bureau of Investigation quality assurance standards  
171 adopted in accordance with 34 U.S.C. s. 12591.

172 3. Verification by the department that the private  
173 laboratory's operating procedures, testing kits, and  
174 instrumentation meet CODIS requirements and submission standards  
175 for inclusion in the statewide DNA database. The department must

176 comply with a court order to verify private laboratory  
177 eligibility under this section.

178 (k) If the court orders forensic analysis in the form of  
179 DNA testing and the resulting DNA sample meets statewide DNA  
180 database submission standards established by the department, the  
181 department must perform a DNA database search. A private  
182 laboratory ordered to perform forensic analysis under paragraph  
183 (i) must cooperate with the prosecuting authority and the  
184 department for the purpose of carrying out this requirement.

185 1. The department shall compare any DNA profiles obtained  
186 from the testing to DNA profiles of known offenders and DNA  
187 profiles from unsolved crimes maintained in the statewide DNA  
188 database under s. 943.325.

189 2. If the testing complies with Federal Bureau of  
190 Investigation requirements and the data meets national DNA index  
191 system criteria, the department shall request the national DNA  
192 index system to search its database of DNA profiles using any  
193 profiles obtained from the testing.

194 (1)(i) The results of the forensic analysis and the  
195 results of any search of the combined DNA index system and  
196 statewide DNA databases ~~DNA testing~~ ordered by the court shall  
197 be provided to the court, the petitioner ~~sentenced defendant,~~  
198 and the prosecuting authority. The petitioner or the state may  
199 use the information for any lawful purpose.

200 (4)(3) RIGHT TO APPEAL; REHEARING.—

201 (a) An appeal from the court's order on the petition for  
 202 postsentencing forensic analysis ~~DNA testing~~ may be taken by any  
 203 adversely affected party.

204 (b) An order denying relief shall include a statement that  
 205 the petitioner ~~sentenced defendant~~ has the right to appeal  
 206 within 30 days after the order denying relief is entered.

207 (c) The petitioner ~~sentenced defendant~~ may file a motion  
 208 for rehearing of any order denying relief within 15 days after  
 209 service of the order denying relief. The time for filing an  
 210 appeal shall be tolled until an order on the motion for  
 211 rehearing has been entered.

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

215 (5)~~(4)~~ PRESERVATION OF EVIDENCE.—

216 (a) Governmental entities that may be in possession of any  
 217 physical evidence in the case, including, but not limited to,  
 218 any investigating law enforcement agency, the clerk of the  
 219 court, the prosecuting authority, or the department ~~of Law~~  
 220 ~~Enforcement~~ shall maintain any physical evidence collected at  
 221 the time of the crime for which a postsentencing testing of DNA  
 222 may be requested.

223 (b) In a case in which the death penalty is imposed, the  
 224 evidence shall be maintained for 60 days after execution of the  
 225 sentence. In all other cases, a governmental entity may dispose

226 of the physical evidence if the term of the sentence imposed in  
 227 the case has expired and no other provision of law or rule  
 228 requires that the physical evidence be preserved or retained.

229 (c) In a case in which physical evidence requested for  
 230 forensic analysis, last known to be in possession of a  
 231 governmental entity, is reported to be missing or destroyed in  
 232 violation of this section, the court may order the evidence  
 233 custodian to conduct a physical search for the evidence. If a  
 234 search is ordered, the governmental entity must produce a report  
 235 containing the following information:

- 236 1. The nature of the search conducted.
- 237 2. The date the search was conducted.
- 238 3. The results of the search.
- 239 4. Any records showing the physical evidence was lost or  
 240 destroyed.
- 241 5. The signature of the person who supervised the search,  
 242 attesting to the accuracy of the contents of the report.

243  
 244 The report must be provided to the court, the petitioner, and  
 245 the prosecuting authority.

246 Section 2. Section 925.12, Florida Statutes, is amended to  
 247 read:

248 925.12 Forensic analysis ~~DNA testing~~; defendants entering  
 249 pleas.-

250 (1) As used in this section, the terms "forensic analysis"

251 and "petitioner" have the same meanings as provided in s.  
252 925.11.

253 (2) A person ~~For defendants~~ who has ~~have~~ entered a plea  
254 of guilty or nolo contendere to a felony on or after July 1,  
255 2006, but before July 1, 2020, ~~a defendant~~ may petition for  
256 postsentencing DNA testing under s. 925.11 under the following  
257 circumstances:

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

262 (b) The physical evidence for which DNA testing is sought  
263 was not disclosed to the defense by the state before ~~prior to~~  
264 the entry of the plea by the petitioner.

265 (3) A person who has entered a plea of guilty or nolo  
266 contendere to a felony on or after July 1, 2020, may petition  
267 for postsentencing forensic analysis under s. 925.11 under the  
268 following circumstances:

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

273 (b) The physical evidence for which forensic analysis is  
274 sought was not disclosed to the defense by the state before the  
275 entry of the plea by the petitioner.

276        ~~(4)(2)~~ For defendants seeking to enter a plea of guilty or  
277 nolo contendere to a felony on or after July 1, 2020 ~~July 1,~~  
278 ~~2006~~, the court shall inquire of the defendant and of counsel  
279 for the defendant and the state as to physical evidence  
280 ~~containing DNA~~ known to exist that, if subjected to forensic  
281 analysis, could produce evidence that is material to the  
282 identification of the perpetrator of, or accomplice to, the  
283 crime before ~~could exonerate the defendant prior to~~ accepting a  
284 plea of guilty or nolo contendere. If no such physical evidence  
285 ~~containing DNA that could exonerate the defendant~~ is known to  
286 exist, the court may proceed with consideration of accepting the  
287 plea. If such physical evidence ~~containing DNA that could~~  
288 ~~exonerate the defendant~~ is known to exist, the court may  
289 postpone the proceeding on the defendant's behalf and order  
290 forensic analysis ~~DNA testing~~ upon motion of counsel specifying  
291 the physical evidence to be tested.

292        ~~(5)(3)~~ It is the intent of the Legislature that the  
293 Supreme Court adopt rules of procedure consistent with this  
294 section for a court, before ~~prior to~~ the acceptance of a plea,  
295 to make an inquiry into the following matters:

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

299        (b) Whether the nature of the evidence against the  
300 defendant disclosed through discovery has been reviewed with the

301 defendant.

302 (c) Whether the defendant or counsel for the defendant is  
 303 aware of any physical evidence disclosed by the state for which  
 304 forensic analysis could produce a result material to the  
 305 identification of the perpetrator of, or accomplice to, the  
 306 crime ~~DNA testing may exonerate the defendant.~~

307 (d) Whether the state is aware of any physical evidence  
 308 for which forensic analysis could produce a result material to  
 309 the identification of the perpetrator of, or accomplice to, the  
 310 crime ~~DNA testing may exonerate the defendant.~~

311 (6)~~(4)~~ It is the intent of the Legislature that the  
 312 postponement of the proceedings by the court on the defendant's  
 313 behalf under subsection (4) ~~(2)~~ constitute an extension  
 314 attributable to the defendant for purposes of the defendant's  
 315 right to a speedy trial.

316 Section 3. Subsections (6) and (14) of section 943.325,  
 317 Florida Statutes, are amended to read:

318 943.325 DNA database.—

319 (6) SAMPLES.—The statewide DNA database may contain DNA  
 320 data obtained from the following types of biological samples:

321 (a) Crime scene samples.

322 (b) Samples obtained from qualifying offenders required by  
 323 this section to provide a biological sample for DNA analysis and  
 324 inclusion in the statewide DNA database.

325 (c) Samples lawfully obtained during the course of a

326 criminal investigation.

327 (d) Samples from deceased victims or suspects that were  
328 lawfully obtained during the course of a criminal investigation.

329 (e) Samples from unidentified human remains.

330 (f) Samples from persons reported missing.

331 (g) Samples voluntarily contributed by relatives of  
332 missing persons.

333 (h) Samples obtained from DNA analysis ordered under s.  
334 925.11.

335 (i)~~(h)~~ Other samples approved by the department.

336 (14) RESULTS.—The results of a DNA analysis and the  
337 comparison of analytic results shall be released only to  
338 criminal justice agencies as defined in s. 943.045 at the  
339 request of the agency or as required by s. 925.11. Otherwise,  
340 such information is confidential and exempt from s. 119.07(1)  
341 and s. 24(a), Art. I of the State Constitution.

342 Section 4. Section 943.3251, Florida Statutes, is amended  
343 to read:

344 943.3251 Postsentencing forensic analysis and DNA database  
345 searches ~~DNA testing.~~—

346 (1) When a court orders postsentencing forensic analysis  
347 ~~DNA testing~~ of physical evidence, pursuant to s. 925.11, the  
348 ~~Florida~~ Department of Law Enforcement, ~~or~~ or its designee, or a  
349 private laboratory shall carry out the analysis. If the forensic  
350 analysis produced a DNA sample meeting statewide DNA database

351 submission standards, the department shall conduct a DNA  
352 database search testing.

353 (2) The cost of forensic analysis and any database search  
354 ~~such testing~~ may be assessed against the petitioner sentenced  
355 ~~defendant~~, pursuant to s. 925.11, unless he or she is indigent.

356 (3) The results of postsentencing forensic analysis and  
357 any database search ~~DNA testing~~ shall be provided to the court,  
358 the petitioner sentenced ~~defendant~~, and the prosecuting  
359 authority.

360 Section 5. This act shall take effect July 1, 2020.