

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

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

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

76 (3)-(2) METHOD FOR SEEKING POSTSENTENCING FORENSIC ANALYSIS
 77 DNA TESTING.—

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

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

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

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

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

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

109 ~~6.5.~~ Any other facts relevant to the petition.~~†~~ ~~and~~

110 ~~7.6.~~ A certificate that a copy of the petition has been
111 served on the prosecuting authority.

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

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

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

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

124 (e) Counsel may be appointed to assist the petitioner
125 ~~sentenced defendant~~ if the petition proceeds to a hearing and if

126 the court determines that the assistance of counsel is necessary
127 and makes the requisite finding of indigency.

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

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

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

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

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

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

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

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

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

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

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

176 eligibility under this section.

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

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

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

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

199 (4)(3) RIGHT TO APPEAL; REHEARING.-

200 (a) An appeal from the court's order on the petition for

201 | postsentencing forensic analysis ~~DNA testing~~ may be taken by any
202 | adversely affected party.

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

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

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

214 | (5) ~~(4)~~ PRESERVATION OF EVIDENCE.—

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

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

226 the case has expired and no other provision of law or rule
227 requires that the physical evidence be preserved or retained.

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

235 1. The nature of the search conducted.

236 2. The date the search was conducted.

237 3. The results of the search.

238 4. Any records showing the physical evidence was lost or
239 destroyed.

240 5. The signature of the person who supervised the search,
241 attesting to the accuracy of the contents of the report.

242
243 The report must be provided to the court, the petitioner, and
244 the prosecuting authority.

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

247 925.12 Forensic analysis ~~DNA testing~~; defendants entering
248 pleas.—

249 (1) As used in this section, the terms "forensic analysis"
250 and "petitioner" have the same meanings as provided in s.

251 925.11.

252 (2) A person ~~For defendants~~ who has ~~have~~ entered a plea
253 of guilty or nolo contendere to a felony and has been sentenced
254 by a court established by the laws of the state on or after July
255 1, 2006, a defendant may petition that court for postsentencing
256 forensic analysis ~~DNA testing~~ under s. 925.11 under the
257 following circumstances:

258 (a) If the person entered a plea before July 1, 2006, the
259 person may petition for forensic analysis under s. 925.11.

260 (b) If the person entered a plea on or after July 1, 2006,
261 but before July 1, 2020, the person may petition for:

262 1. Forensic analysis, other than DNA testing, under s.
263 925.11.

264 2. DNA testing, when either of the following applies:

265 a. The facts on which the petition is predicated were
266 unknown to the petitioner or the petitioner's attorney at the
267 time the plea was entered and could not have been ascertained by
268 the exercise of due diligence; or

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

272 (c) If the person entered a plea on or after July 1, 2020,
273 the person may petition for forensic analysis when either of the
274 following applies:

275 1. The facts on which the petition is predicated were

276 unknown to the petitioner or the petitioner's attorney at the
277 time the plea was entered and could not have been ascertained by
278 the exercise of due diligence; or

279 2. The physical evidence for which forensic analysis is
280 sought was not disclosed to the defense by the state before the
281 entry of the plea by the petitioner.

282 (3)(2) For defendants seeking to enter a plea of guilty or
283 nolo contendere to a felony on or after July 1, 2020 ~~July 1,~~
284 ~~2006~~, the court shall inquire of the defendant and of counsel
285 for the defendant and the state as to physical evidence
286 ~~containing DNA~~ known to exist that, if subjected to forensic
287 analysis, could produce evidence that is material to the
288 identification of the perpetrator of, or accomplice to, the
289 crime before ~~could exonerate the defendant prior to~~ accepting a
290 plea of guilty or nolo contendere. If no such physical evidence
291 ~~containing DNA that could exonerate the defendant~~ is known to
292 exist, the court may proceed with consideration of accepting the
293 plea. If such physical evidence ~~containing DNA that could~~
294 ~~exonerate the defendant~~ is known to exist, the court may
295 postpone the proceeding on the defendant's behalf and order
296 forensic analysis ~~DNA testing~~ upon motion of counsel specifying
297 the physical evidence to be tested.

298 (4)(3) It is the intent of the Legislature that the
299 Supreme Court adopt rules of procedure consistent with this
300 section for a court, before ~~prior to~~ the acceptance of a plea,

301 to make an inquiry into the following matters:

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

305 (b) Whether the nature of the evidence against the
 306 defendant disclosed through discovery has been reviewed with the
 307 defendant.

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

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

317 (5)~~(4)~~ It is the intent of the Legislature that the
 318 postponement of the proceedings by the court on the defendant's
 319 behalf under subsection (3) ~~(2)~~ constitute an extension
 320 attributable to the defendant for purposes of the defendant's
 321 right to a speedy trial.

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

324 943.325 DNA database.—

325 (6) SAMPLES.—The statewide DNA database may contain DNA

326 data obtained from the following types of biological samples:

327 (a) Crime scene samples.

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

331 (c) Samples lawfully obtained during the course of a
332 criminal investigation.

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

335 (e) Samples from unidentified human remains.

336 (f) Samples from persons reported missing.

337 (g) Samples voluntarily contributed by relatives of
338 missing persons.

339 (h) Samples obtained from DNA analysis ordered under s.
340 925.11.

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

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

348 Section 4. Section 943.3251, Florida Statutes, is amended
349 to read:

350 943.3251 Postsentencing forensic analysis and DNA database

351 searches ~~DNA testing~~.—

352 (1) When a court orders postsentencing forensic analysis
353 ~~DNA testing~~ of physical evidence, pursuant to s. 925.11, the
354 ~~Florida~~ Department of Law Enforcement, ~~or~~ its designee, or a
355 private laboratory shall carry out the analysis. If the forensic
356 analysis produced a DNA sample meeting statewide DNA database
357 submission standards, the department shall conduct a DNA
358 database search ~~testing~~.

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

362 (3) The results of postsentencing forensic analysis and
363 any database search ~~DNA testing~~ shall be provided to the court,
364 the petitioner sentenced defendant, and the prosecuting
365 authority.

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