

Committee Substitute for
Committee Substitute for Senate Bill No. 366

An act relating to DNA evidence; creating s. 925.11, F.S.; providing for the examination of DNA evidence collected at the time a crime is investigated; providing a procedure under which a defendant who has been found guilty may petition the trial court to order an examination of DNA evidence; providing guidelines for seeking postsentencing DNA testing; requiring that the court make certain findings; providing for preservation of evidence for which testing of DNA may be requested; providing for right to appeal; creating s. 943.3251, F.S.; prescribing duties of the Department of Law Enforcement with respect to postsentencing DNA testing; amending s. 943.325, F.S.; requiring the Department of Law Enforcement to add certain felony offenses in a scheduled order to the DNA data bank's enumerated offenses; requiring the Department of Corrections to test certain violent felons in addition to those enumerated in the statute before being released from custody; providing effective dates.

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

Section 1. Section 925.11, Florida Statutes, is created to read:

925.11 Postsentencing DNA testing.—

(1) Petition for examination.—

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

(b) Except as provided in subparagraph 2., a petition for postsentencing DNA testing may be filed or considered:

1. Within 2 years following the date that the judgment and sentence in the case becomes final if no direct appeal is taken, within 2 years following the date that the conviction is affirmed on direct appeal if an appeal is taken, within 2 years following the date that collateral counsel is appointed or retained subsequent to the conviction being affirmed on direct appeal in a capital case, or by October 1, 2003, whichever occurs later; or

2. At any time if the facts on which the petition is predicated were unknown to the petitioner or the petitioner's attorney and could not have been ascertained by the exercise of due diligence.

(2) Method for seeking postsentencing DNA testing.—

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

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

2. A statement that the evidence was not previously tested for DNA or a statement that the results of any previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques would likely produce a definitive result;

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

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

5. Any other facts relevant to the petition; and

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

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

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

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

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

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

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

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

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

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

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

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

(3) Right to appeal; rehearing.—

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

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

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

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

(4) Preservation of evidence.—

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

(b) Except for a case in which the death penalty is imposed, the evidence shall be maintained for at least the period of time set forth in subparagraph (1)(b)1. In a case in which the death penalty is imposed, the evidence shall be maintained for 60 days after execution of the sentence.

(c) A governmental entity may dispose of the physical evidence before the expiration of the period of time set forth in paragraph (1)(b) if all of the conditions set forth below are met.

1. The governmental entity notifies all of the following individuals of its intent to dispose of the evidence: the sentenced defendant, any counsel of record, the prosecuting authority, and the Attorney General.

2. The notifying entity does not receive, within 90 days after sending the notification, either a copy of a petition for postsentencing DNA testing filed pursuant to this section or a request that the evidence not be destroyed

because the sentenced defendant will be filing the petition before the time for filing it has expired.

3. No other provision of law or rule requires that the physical evidence be preserved or retained.

Section 2. Section 943.3251, Florida Statutes, is created to read:

943.3251 Postsentencing DNA testing.—

(1) When a court orders postsentencing DNA testing of physical evidence, pursuant to s. 925.11, the Florida Department of Law Enforcement or its designee shall carry out the testing.

(2) The cost of such testing may be assessed against the sentenced defendant, pursuant to s. 925.11, unless he or she is indigent.

(3) The results of postsentencing DNA testing shall be provided to the court, the sentenced defendant, and the prosecuting authority.

Section 3. Subsection (1) of section 943.325, Florida Statutes, is amended to read:

943.325 Blood specimen testing for DNA analysis.—

(1)(a) Any person who is convicted or was previously convicted in this state for any offense or attempted offense enumerated in paragraph (b) defined in chapter 794, chapter 800, s. 782.04, s. 784.045, s. 810.02, s. 812.133, or s. 812.135 and who is either:

1. Still incarcerated, or

2. No longer incarcerated but is within the confines of the legal state boundaries and is on probation, community control, parole, conditional release, control release, or any other type of court-ordered supervision,

shall be required to submit two specimens of blood to a Department of Law Enforcement designated testing facility as directed by the department.

(b)1. Chapter 794, chapter 800, s. 782.04, s. 784.045, s. 810.02, s. 812.133, or s. 812.135.

2. Effective July 1, 2002, and contingent upon specific appropriation, s. 812.13 or s. 812.131.

3. Effective July 1, 2003, and contingent upon specific appropriation, chapter 787 or s. 782.07.

4. Effective July 1, 2004, and contingent upon specific appropriation, any forcible felony, as described in s. 776.08, aggravated child abuse, as described in s. 827.03(2), aggravated abuse of an elderly person or a disabled adult, as described in s. 825.102(2), or any felony violation of chapter 790 involving the use or possession of a firearm.

5. Effective July 1, 2005, and contingent upon specific appropriation, any felony offense.

(c) As used in For the purpose of this section, the term "any person" includes shall include both juveniles and adults committed to a county jail or committed to or under the supervision of the Department of Corrections or the Department of Juvenile Justice, including persons incarcerated in a private correctional institution operated under contract pursuant to s. 944.105 or s. 957.03 or committed to a county jail.

(d) Effective July 1, 2001, any person who was previously convicted in this state for any offense or attempted offense enumerated in subparagraph (b)1., subparagraph (b)2., or subparagraph (b)3. and who is still incarcerated or in the custody of the Department of Juvenile Justice must submit, not less than 45 days before his or her presumptive date of release from such incarceration or commitment, two specimens of blood as directed by the Department of Law Enforcement to a testing facility designated by the department.

Section 4. This act shall take effect October 1, 2001, except that this section and section 3 of this act shall take effect July 1, 2001.

Approved by the Governor May 31, 2001.

Filed in Office Secretary of State May 31, 2001.