

## House Bill No. 61

An act relating to the testing of DNA evidence; amending s. 925.11, F.S.; revising the circumstances under which a person who has been sentenced for committing a felony may petition the court for postsentencing testing of DNA evidence; abolishing certain time limitations imposed upon such testing; revising requirements regarding submittal and review of a petition; authorizing a governmental entity to dispose of physical evidence if the sentence imposed has expired and another law or rule does not require that the evidence be retained; creating s. 925.12, F.S.; providing for postsentencing DNA testing under specified circumstances; requiring a court to make specified inquiries of a defendant seeking to enter a plea of guilty or nolo contendere to a felony; providing legislative intent that the Supreme Court adopt certain rules; providing that a postponement for specified reasons be considered attributable to the defendant for speedy trial purposes; repealing a specified Florida Rule of Criminal Procedure; providing retroactive and certain contingent effect; providing effective dates.

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

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

925.11 Postsentencing DNA testing.—

(1) PETITION FOR EXAMINATION.—

(a) 1. A person who has been tried and found guilty of committing a felony 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 that which may contain DNA (deoxyribonucleic acid) and that which would exonerate that person or mitigate the sentence that person received.

2. A person who has entered a plea of guilty or nolo contendere to a felony prior to July 1, 2006, 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 that may contain DNA (deoxyribonucleic acid) and that would exonerate that person.

(b) A petition for postsentencing DNA testing under paragraph (a) may be filed or considered at any time following the date that the judgment and sentence in the case becomes final. Except as provided in subparagraph 2., a petition for postsentencing DNA testing may be filed or considered:

1.—Within 4 years following the date that the judgment and sentence in the case becomes final if no direct appeal is taken, within 4 years following the date that the conviction is affirmed on direct appeal if an appeal is taken,

~~within 4 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, 2005, 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 establishing that the petitioner is not the person who committed the crime;

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. In all other cases,

a governmental entity may dispose of the physical evidence if the term of the sentence imposed in the case has expired and

~~(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 925.12, Florida Statutes, is created to read:

925.12 DNA testing; defendants entering pleas.—

(1) For defendants who have entered a plea of guilty or nolo contendere to a felony on or after July 1, 2006, a defendant may petition for postsentencing DNA testing under s. 925.11 under the following circumstances:

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

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

(2) For defendants seeking to enter a plea of guilty or nolo contendere to a felony on or after July 1, 2006, the court shall inquire of the defendant and of counsel for the defendant and the state as to physical evidence containing DNA known to exist that could exonerate the defendant prior to accepting a plea of guilty or nolo contendere. If no physical evidence containing DNA that could exonerate the defendant is known to exist, the court may proceed with consideration of accepting the plea. If physical evidence containing DNA that could exonerate the defendant is known to exist, the court may postpone the proceeding on the defendant's behalf and order DNA testing upon motion of counsel specifying the physical evidence to be tested.

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

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

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

(c) Whether the defendant or counsel for the defendant is aware of any physical evidence disclosed by the state for which DNA testing may exonerate the defendant.

(d) Whether the state is aware of any physical evidence for which DNA testing may exonerate the defendant.

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

Section 3. Rule 3.853, Florida Rules of Criminal Procedure, is repealed to the extent it is inconsistent with this act.

Section 4. This act shall take effect upon becoming a law and shall apply retroactively to October 1, 2005; but section 3 shall take effect only if this act is passed by the affirmative vote of two-thirds of the membership of each house of the Legislature.

Approved by the Governor June 23, 2006.

Filed in Office Secretary of State June 23, 2006.