

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 exceptions; 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 defendants 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:

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

48 | (b) "Petitioner" means a defendant who has been convicted
 49 | of and sentenced for a felony.

50 | (2) ~~(1)~~ PETITION FOR EXAMINATION.—

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

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

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

74 ~~(3)-(2)~~ METHOD FOR SEEKING POSTSENTENCING FORENSIC ANALYSIS
75 ~~DNA TESTING.~~-

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

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

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

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

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

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

107 ~~6.5.~~ Any other facts relevant to the petition. ~~7.~~ and

108 ~~7.6.~~ A certificate that a copy of the petition has been
109 served on the prosecuting authority.

110 8. The petitioner's sworn statement attesting to the
111 contents of the petition.

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

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

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

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

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

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

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

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

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

149 (h) Except as provided in paragraph (i), any forensic
150 analysis ~~DNA testing~~ ordered by the court shall be performed

151 ~~carried out~~ by the Department of Law Enforcement or its
152 designee, as provided in s. 943.3251.

153 (i) The court may order forensic analysis to be performed
154 by a private laboratory and may assess the cost of such analysis
155 against the petitioner when:

156 1. The prosecuting authority and the petitioner mutually
157 select a private laboratory to perform the forensic analysis;

158 2. The petitioner makes a sufficient showing that the
159 forensic analysis ordered by the court is of such a nature that
160 it cannot be performed by the Department of Law Enforcement or
161 its designee; or

162 3. The petitioner makes a sufficient showing that the
163 forensic analysis will be significantly delayed because of state
164 laboratory backlog.

165 (j) Before the court may order forensic analysis to be
166 performed by a private laboratory, the petitioner shall certify
167 to the court that the private laboratory is:

168 1. Accredited by an accreditation body that is a signatory
169 to the International Accreditation Cooperation Mutual
170 Recognition Agreement.

171 2. Designated by the Federal Bureau of Investigation as
172 possessing an accreditation that includes DNA testing and the
173 laboratory is compliant with Federal Bureau of Investigation
174 quality assurance standards adopted in accordance with 34 U.S.C.
175 s. 12591, if DNA testing is requested.

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

184 1. The department shall compare any DNA profiles obtained
185 from the testing to:

186 a. DNA profiles of known offenders maintained in the
187 statewide DNA database under s. 943.325.

188 b. DNA profiles from unsolved crimes maintained in the
189 statewide DNA database under s. 943.325.

190 c. Any local DNA databases maintained by a law enforcement
191 agency in the judicial circuit in which the petitioner was
192 convicted.

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

198 (1)(i) The results of the forensic analysis and the
199 results of any search of the combined DNA index system and
200 statewide and local DNA databases ~~DNA testing~~ ordered by the

201 court shall be provided to the court, the petitioner ~~sentenced~~
202 ~~defendant~~, and the prosecuting authority. The petitioner or the
203 state may use the information for any lawful purpose.

204 (4) ~~(3)~~ RIGHT TO APPEAL; REHEARING.—

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

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

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

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

219 (5) ~~(4)~~ PRESERVATION OF EVIDENCE.—

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

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226 | may be requested.

227 | (b) In a case in which the death penalty is imposed, the
228 | evidence shall be maintained for 60 days after execution of the
229 | sentence. In all other cases, a governmental entity may dispose
230 | of the physical evidence if the term of the sentence imposed in
231 | the case has expired and no other provision of law or rule
232 | requires that the physical evidence be preserved or retained.

233 | (c) In a case in which physical evidence requested for
234 | forensic analysis, last known to be in possession of a
235 | governmental entity, is reported to be missing or destroyed in
236 | violation of this section, the court may order the evidence
237 | custodian or other relevant official to conduct a physical
238 | search for the evidence. If a search is ordered, the
239 | governmental entity must produce a report containing the
240 | following information:

241 | 1. The nature of the search conducted.

242 | 2. The date the search was conducted.

243 | 3. The results of the search.

244 | 4. Any records showing the physical evidence was lost or
245 | destroyed.

246 | 5. The signature of the person who supervised the search,
247 | attesting to the accuracy of the contents of the report.

248 |
249 | The report must be provided to the court, the petitioner, and
250 | the prosecuting authority.

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251 Section 2. Section 925.12, Florida Statutes, is amended to
252 read:

253 925.12 Forensic analysis ~~DNA testing~~; defendants entering
254 pleas.—

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

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

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

266 (2) For defendants who have entered a plea of guilty or
267 nolo contendere to a felony on or after July 1, 2020, a
268 defendant may petition for postsentencing forensic analysis
269 under s. 925.11 under the following circumstances:

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

274 (b) The physical evidence for which forensic analysis is
275 sought was not disclosed to the defense by the state before the

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276 | entry of the plea by the petitioner.

277 | ~~(3)(2)~~ For defendants seeking to enter a plea of guilty or
278 | nolo contendere to a felony on or after July 1, 2020 ~~July 1,~~
279 | ~~2006,~~ the court shall inquire of the defendant and of counsel
280 | for the defendant and the state as to physical evidence
281 | ~~containing DNA~~ known to exist that, if subjected to forensic
282 | analysis, could produce evidence that is material to the
283 | identification of the perpetrator of, or accomplice to, the
284 | crime before ~~could exonerate the defendant prior to~~ accepting a
285 | plea of guilty or nolo contendere. If no such physical evidence
286 | ~~containing DNA that could exonerate the defendant~~ is known to
287 | exist, the court may proceed with consideration of accepting the
288 | plea. If such physical evidence ~~containing DNA that could~~
289 | ~~exonerate the defendant~~ is known to exist, the court may
290 | postpone the proceeding on the defendant's behalf and order
291 | forensic analysis ~~DNA testing~~ upon motion of counsel specifying
292 | the physical evidence to be tested.

293 | ~~(4)(3)~~ It is the intent of the Legislature that the
294 | Supreme Court adopt rules of procedure consistent with this
295 | section for a court, before ~~prior to~~ the acceptance of a plea,
296 | to make an inquiry into the following matters:

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

300 | (b) Whether the nature of the evidence against the

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301 defendant disclosed through discovery has been reviewed with the
302 defendant.

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

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

312 (5)~~(4)~~ It is the intent of the Legislature that the
313 postponement of the proceedings by the court on the defendant's
314 behalf under subsection (3) ~~(2)~~ constitute an extension
315 attributable to the defendant for purposes of the defendant's
316 right to a speedy trial.

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

319 943.325 DNA database.—

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

322 (a) Crime scene samples.

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

326 (c) Samples lawfully obtained during the course of a
 327 criminal investigation.

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

330 (e) Samples from unidentified human remains.

331 (f) Samples from persons reported missing.

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

334 (h) Samples obtained from DNA analysis ordered under s.
 335 925.11 or s. 925.12.

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

337 (14) RESULTS.—The results of a DNA analysis and the
 338 comparison of analytic results shall be released only to
 339 criminal justice agencies as defined in s. 943.045 at the
 340 request of the agency or as required by s. 925.11 or s. 925.12.
 341 Otherwise, such information is confidential and exempt from s.
 342 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

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

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351 analysis produced a DNA sample meeting statewide DNA database
352 submission standards, the department shall conduct a DNA
353 database search testing.

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

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

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