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**DATE:** July 11, 2001

**\*\*AS PASSED BY THE LEGISLATURE\*\***  
**CHAPTER #:** 2001-97, Laws of Florida

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME PREVENTION, CORRECTIONS & SAFETY  
FINAL ANALYSIS**

**BILL #:** CS/HB 147 (Passed as CS/CS SB 366, 1st Engrossed)  
**RELATING TO:** DNA Evidence  
**SPONSOR(S):** Council on Healthy Communities and Representative Ball and others  
**TIED BILL(S):** None

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) CRIME PREVENTION, CORRECTIONS & SAFETY YEAS 9 NAYS 0
  - (2) JUDICIAL OVERSIGHT YEAS 9 NAYS 0
  - (3) COUNCIL FOR HEALTHY COMMUNITIES YEAS 14 NAYS 0
  - (4)
  - (5)
- 

I. SUMMARY:

This bill permits a person who has been tried and found guilty of committing a crime to petition the trial court to order the examination of physical evidence collected at the time of the investigation of the crime that may contain DNA that would exonerate the defendant or mitigate the defendant's sentence. The bill contains specific pleading requirements, including requiring a description of the evidence that might contain DNA, a statement that the evidence has not been previously tested, a statement that the defendant is innocent and would be exonerated by the DNA test, a statement that identification of the defendant was at issue in the case, and other relevant facts. If the trial court denies the motion, the bill provides for appellate review.

The bill also expands the DNA database maintained by the Florida Department of Law Enforcement. By 2005, contingent upon specific appropriation, the database will include DNA analysis of specimens collected from each person convicted of a felony offense.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Appellate and Collateral Review

A defendant who is convicted of a crime is entitled to appeal his or her conviction or sentence. Art V, s. 4, Fla. Const. An indigent defendant is represented on appeal by appointed counsel, usually the Public Defender. Art. V, s. 18, Fla. Const. Issues raised on direct appeal usually relate to how the trial was conducted. Allegations that the trial court erred in an evidentiary ruling or in a procedural ruling are properly raised on direct appeal. If the appellate court affirms the defendant's conviction, a defendant may begin state postconviction proceedings, which are controlled by Florida Rule of Criminal Procedure 3.850.

Postconviction proceedings, also known as collateral review, usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence, or claims that the prosecution failed to disclose exculpatory evidence. A rule 3.850 motion must be filed in the trial court where the defendant was tried and sentenced. According to rule 3.850, unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and hold an evidentiary hearing. Fla.R.Crim P. 3.850(d). If the trial court denies the motion for postconviction relief with or without holding an evidentiary hearing, the defendant is then entitled to an appeal of this denial to the district court of appeal that has jurisdiction over the circuit court where the motion was filed.<sup>1</sup>

A rule 3.850 motion must be filed within two years of the defendant's judgment and sentence becoming final unless the motion alleges that the facts on which the claims is based were unknown to the defendant and could not have been ascertained by the exercise of due diligence. Fla. R. Crim. P. 3.850(b). In order to grant a new trial based on newly discovered evidence, the trial court must first find that the evidence was unknown and could not have been known at the time of trial through due diligence. Also, the trial court must find that the evidence is of such nature that it would probably produce an acquittal on retrial. Jones v. State, 709 So.2d 512 (Fla. 1998).

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<sup>1</sup> Denials of postconviction motions in death penalty cases are appealed to the Florida Supreme Court, which has exclusive jurisdiction over death penalty appeals.

FDLE DNA Database

Section 943.325, F.S. requires any person who is convicted of sexual battery, a lewd and lascivious act, murder, aggravated battery, burglary, carjacking or home invasion robbery<sup>2</sup> to submit two specimen of blood to a Florida Department of Law Enforcement designated facility as designated by the department. FDLE maintains a database that is capable of classifying, matching, and storing analysis of DNA and is available to all criminal justice agencies. s. 943.325(8), F.S. .

C. EFFECT OF PROPOSED CHANGES:

**Petition for Examination of DNA Evidence**

The bill creates a new section of statute that provides that any person who has been tried and found guilty of a crime may petition the trial court to order the examination of physical evidence collected at the time of the investigation of the crime that may contain DNA evidence that would exonerate the defendant or mitigate the sentence the defendant received.

Deadline for Filing of Motion: According to the bill, a petition for postconviction DNA testing may be filed or considered by the latest of the following dates:

1. within two years of the date that the judgment and sentence in the case becomes final if no direct appeal is taken;
2. within two years of the date that the conviction is affirmed on direct appeal if an appeal is taken;
3. within two 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
4. by October 1, 2003.

Also, a petition may be filed 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.

Contents of Motion: The motion to examine DNA evidence must be made under oath by the defendant and include the following:

1. a statement of the facts relied upon in support of the motion, which must include a description of the physical evidence to be tested that contains DNA and, if known, where the evidence is currently located and how it was originally obtained
2. a statement that the physical evidence described was not previously tested for DNA, or if tested, a statement that the results of any previous DNA testing were inconclusive
3. a statement that the defendant is innocent and DNA evidence will exonerate the defendant of the crime for which the defendant was convicted
4. a statement that identification of the defendant was the issue in the case

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<sup>2</sup> See chapter 794, chapter 800, s. 782.04, s. 784.045, s. 810.02, s. 812.133 and s. 812.135, F.S.

5. any other material facts relevant to the motion
6. certification that the appropriate state attorney has been served with a copy of the motion

Ruling on Motion: The bill further provides that if the trial court finds that the facts are insufficient to support the filing of the motion, the court shall deny the motion on its face. If the trial court finds that the facts are sufficient to support the filing of the motion, the court shall order the state attorney to respond to the allegations contained in the motion within a period fixed by the trial court. After reviewing the state attorney's answer, the trial court shall rule on the motion or order a hearing. In ruling on the motion, the trial court must find whether:

1. the physical evidence that may contain DNA still exists
2. the results of DNA testing of that physical evidence would have been admissible at the 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
3. there exists a reasonable probability that the defendant would have been acquitted of the crime charged or would have received if DNA results had been admitted at trial and the results excluded the defendant

The bill provides that if the motion to examine DNA evidence is granted, the court must find whether the defendant is able to pay the cost of DNA testing. An indigent defendant may not be required to pay for the testing. The bill authorizes a court to appoint counsel to assist the defendant if a hearing is held and the court determines that the assistance is necessary.

An appeal from the court's order on the petition for DNA testing may be taken by any adversely affected party. A motion for rehearing of an order denying relief may be filed within 15 days following service of the order. An order denying relief must include notice of the time limitations for filing a notice of appeal.

Preservation of Evidence: The bill provides that governmental entities must maintain any physical evidence collected at the time of the crime for which a motion for DNA testing may be requested. In capital cases, the evidence must be maintained for 60 days after the execution of sentence. In other criminal cases, the evidence must be maintained for at least the length of time that the defendant has to file a motion for DNA testing. The bill also provides a procedure by which the government can dispose of the evidence before the period of time set forth in the bill. In order to do so, the defendant must be given notice and an opportunity to respond.

The bill requires that any DNA testing ordered by the court be carried out by FDLE.

### **FDLE DNA Database**

The bill amends s. 943.325, F.S. to expand the types of offenders who will be required to submit blood specimens to the FDLE DNA database. The bill provides a schedule of offenders that will be added to the database. Adding the new offenses to the database is contingent upon specific appropriations. Effective July 1, 2005, and contingent upon specific appropriation, all felony offenders will be required to submit blood for the DNA database.

#### **D. SECTION-BY-SECTION ANALYSIS:**

Section 1: Creates s. 925.11; regarding motion to examine DNA evidence.

Section 2: Creates s. 943.3251; requires FDLE to provide DNA testing.

Section 3: Creates s. 943.325; relating to DNA database for felons.

Section 4: Provides effective date.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The fiscal impact of this bill will be less significant than the original bill which would have authorized defendants who had pled guilty to file petitions for DNA testing. Because approximately 3 percent of all criminal cases actually go to trial, this would have created a much larger pool of potential petitioners. Under the bill as passed, there will be a fiscal impact on the state each time a trial court grants a motion to test DNA evidence of a person who has been found guilty at trial. There will also be an impact on the court system due to the filing of motions to test DNA evidence and appeals from those motions.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of any funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the revenue raising authority of any city or county.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the amount of state tax shared with a county or city.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The legislature has the exclusive power to enact substantive laws while Article V, Section 2 of the Florida Constitution gives the Florida Supreme Court the power to "adopt rules for the practice and procedure in all courts, including the time for seeking appellate review." This bill may be challenged on a claim that it violates the separation of powers doctrine. Art. II, Sect. 3, Fla. Const. In January of 2000, the legislature passed the Death Penalty Reform Act (DPRA) of 2000. The bill advanced the start of the postconviction process in capital cases to have it begin while the case was on direct appeal. The bill also imposed other time limitations at key points of the postconviction process. The bill made conforming changes to the laws governing public records in capital cases. The bill also eliminated successive postconviction motions and prohibited amending a postconviction motion after the expiration of the time limitation. The bill repealed the rules of criminal procedure applying to capital postconviction motions.

In Allen v. State, 756 So.2d 52 (Fla. 2000), the Florida Supreme Court held that the Death Penalty Reform Act of 2000 was an "unconstitutional encroachment" on the Court's "exclusive power to 'adopt rules for the practice and procedure in all courts'." Id. at 54. The court rejected the State's argument that the deadlines for filing postconviction motions in the DPRA were comparable to statutes of limitations in civil cases which the court had previously considered substantive. Id. at 61. The court held that rule 3.850 of the Florida Rules of Criminal Procedure is a "procedural vehicle for the collateral remedy otherwise available by writ of habeas corpus" under the Florida Constitution. Id. at 61. According to the court, "[d]ue to the constitutional and quasi-criminal nature of habeas corpus proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions." Id. at 62.

The provisions of this bill may be distinguishable from those of the DPRA due to the fact that this bill creates a new substantive right to DNA testing in limited circumstances while the DPRA restricted postconviction rights that were otherwise available through existing provisions of the state constitution. The legislature may limit substantive rights that it has created. City of Lake Mary v. Seminole County, 419 So. 2d 737 (Fla. 5<sup>th</sup> DCA 1982)(upholding limited right of appeal in annexation proceedings and stating, "[i]f the Legislature has the power to create a right of appeal in the circuit court where none previously existed, it is incongruous to assert that it cannot limit the scope of that review."); Department of Transp. v. Fortune Federal Sav. and Loan Ass'n, 532 So. 2d 1267, 1270 (Fla. 1988)("It is only by the will of the legislature that business damages may be awarded in certain situations which are properly limited by the legislature. In other words, the legislature has created a right to business damages, so it may also limit that right."); Fernandez v. Florida Ins. Guaranty Ass'n, Inc., 383 So. 2d 974, 976 (Fla. 3<sup>rd</sup> DCA 1980)(holding that because absent the legislative creation of the Florida Insurance Guaranty Association, "there would be no effective remedy to recovery on any claims whatever against insolvent insurers, there can be no constitutional infirmity in the legislature's decision to limit those newly-created rights and, in effect, not to establish an additional one. ").

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

Motions for postconviction relief based on newly discovered evidence must be raised within two years of the discovery of such evidence. See Adams v. State, 543 So.2d 1244 (Fla.1989). The Florida Supreme Court has held that the two year time limit for filing a 3.850 motion based on newly discovered evidence begins to run on a defendant's postconviction request for DNA testing when the testing method became available. For example, in Sireci v. State, 773 So.2d 34 (Fla. 2000), the Florida Supreme Court held that the defendant's postconviction claim filed on his 1976 conviction, which was filed in 1993, was time barred because "DNA typing was recognized in this state as a valid test as early as 1988." See also, Ziegler v. State, 654 So.2d 1162 (Fla. 1995).

The Criminal Procedure Rules Committee of the Florida Bar has proposed rule 3.853 of the Florida Rules of Criminal Procedure. The text of the proposed rule is similar to this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee Amendments

*Committee on Crime Prevention, Corrections & Safety:* HB 147 originally permitted motions for DNA testing to be filed by defendants who had pled guilty as well as defendants who had been found guilty at trial.<sup>3</sup> The Committee on Crime Prevention, Corrections and Safety adopted an amendment to remove reference to people who have pled guilty from the group of defendants who are entitled to file the motion for DNA testing.

*Council for Healthy Communities:* The sponsor offered a strike everything amendment in the Council for Healthy Communities which would have made several changes to the original bill. The amendment specified that the judge could appoint counsel to assist the defendant at a hearing on the motion to test DNA evidence if the judge determined that the assistance was necessary and the defendant was indigent. The amendment also specified that if DNA testing was ordered, the Florida Department of Law Enforcement or its designee would have to carry out the testing. The amendment clarified that an appeal from the court's order on the motion for DNA testing could be taken by the adversely affected party – either the state or the defendant. The sponsor's amendment also would have required governmental entities that may be in possession of any physical evidence in a case to maintain the evidence for the two year period in which a motion for DNA testing could be filed.

Representative Heyman offered a substitute amendment for the sponsor's amendment which was adopted by the council. The substitute amendment reverted to the text of the original bill with two exceptions. The amendment removed the two year time limitation contained in the original bill for filing a motion for DNA testing. The amendment also authorized defendant's who had pled guilty or nolo contendere to file a motion for DNA testing. The bill as amended by the substitute amendment was made a council substitute.

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<sup>3</sup> The first paragraph of the original bill authorized filing of the petition by a "person who has been tried and found guilty or who has pled guilty". Thus, a person who pled guilty to an offense would have later been able to claim a right to have physical evidence tested for DNA. By entering a guilty plea, the defendant admits to committing the crime. The bill required a sworn statement that the defendant is innocent before relief could be granted. Allowing a motion in the case of a guilty plea would lead to a situation where a defendant admitted to the crime during the plea colloquy, made under oath, but claimed innocence in the motion, also made under oath.

Floor Action

On May 1, 2001, the Senate passed CS/CS/SB 366 which was similar to CS/HB 147. The Senate bill differed from the House committee substitute in the following ways:

- The Senate bill only applied to defendants who had gone to trial and been found guilty while the House committee substitute applied to defendants who had pled guilty or nolo contendere.
- Unlike the House committee substitute, the Senate bill contained a two year time limitation on the filing of the motion for DNA testing.
- The House committee substitute permitted a DNA motion to be filed if the evidence would “exonerate” the person. The Senate bill also allowed a motion for DNA testing to be filed if the evidence may contain evidence which would “mitigate the sentence” that the person received.
- The Senate bill required FDLE to perform any testing on DNA evidence.
- The Senate bill required that any DNA testing ordered by the court be carried out by FDLE.
- The Senate bill also expanded the DNA database maintained by FDLE. By 2005, contingent upon specific appropriation, the database will include DNA analysis of specimens collected from each person convicted of a felony offense.

CS/CS/SB 366 was substituted for CS/HB 147 and passed the House on May 2, 2001. The bill was approved by the Governor on May 31, 2001.

VII. SIGNATURES:

COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:

Prepared by:

Staff Director:

Trina Kramer

David De La Paz

AS REVISED BY THE COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

L. Michael Billmeier

Lynne Overton

AS FURTHER REVISED BY THE COUNCIL FOR HEALTHY COMMUNITIES:

Prepared by:

Council Director:

Trina Kramer

Mary Pat Moore

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**FINAL ANALYSIS PREPARED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS & SAFETY:**

Prepared by:

Staff Director:

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Trina Kramer

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Trina Kramer