

By Senator Storms

10-00254-10

20102538

1 A bill to be entitled
2 An act relating to prejudice and improper bias in
3 criminal proceedings; creating the "Judicial Fair Play
4 Act"; requiring prosecutors to investigate all
5 evidence relating to defendants and provide
6 exculpatory evidence to the defense; providing that
7 the failure of a prosecutor to provide exculpatory
8 evidence to the defense is evidence of prejudice and
9 improper bias; authorizing investigations of
10 prosecutors and judges for prejudice and improper bias
11 upon the filing of an affidavit by a defendant which
12 satisfies certain criteria; providing for the
13 prosecution of prosecutors and judges for prejudice
14 and improper bias in a circuit designated by rule of
15 the Supreme Court; imposing criminal penalties;
16 amending s. 925.11, F.S.; authorizing postsentencing
17 DNA testing of certain persons convicted of a felony
18 if the results would have created a reasonable
19 probability of acquittal at trial; providing an
20 effective date.

21
22 WHEREAS, all people are entitled to equal justice under the
23 law, and

24 WHEREAS, human nature is flawed by the tendency of people
25 to knowingly or unknowingly succumb to bias, and

26 WHEREAS, it is often difficult to consider alternative
27 explanations of a criminal event once an initial hypothesis has
28 been formed, and

29 WHEREAS, blood evidence that was sufficient for conviction

10-00254-10

20102538

30 may, with new DNA analysis, disprove the theory leading to
31 conviction, but not exonerate the convicted party, and

32 WHEREAS, it is necessary to minimize bias and prejudice in
33 criminal proceedings to ensure justice for all, NOW, THEREFORE,

34
35 Be It Enacted by the Legislature of the State of Florida:

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37 Section 1. This act may be cited as the "Judicial Fair Play
38 Act."

39 Section 2. Ethical responsibilities of prosecutors;
40 investigations of prejudice and improper bias.-

41 (1) It is as much the responsibility of the state attorney
42 to refrain from using improper methods that result in a wrongful
43 conviction as it is to use every legitimate measure to bring
44 about a just conviction. In carrying out these responsibilities,
45 the prosecutor shall investigate without prejudice all evidence
46 for and against a defendant. All exculpatory evidence must be
47 provided to the defense in a timely manner even if the
48 prosecutor believes it is not conclusive. The discovery of
49 exculpatory evidence after a trial which the prosecutor had in
50 his or her possession before the trial but failed to provide to
51 the defense is evidence of prejudice and improper bias.

52 (2) Whenever a defendant in a criminal proceeding makes and
53 files an affidavit stating that he or she did not receive a fair
54 trial because of prejudice or improper bias on the part of the
55 prosecutor or judge against the defendant or in favor of an
56 adverse party, the chief judge shall, upon a finding of probable
57 cause, appoint an investigator from another judicial circuit to
58 investigate the allegations. The affidavit must allege a

10-00254-10

20102538

59 specific, verifiable act indicating the existence of prejudice
60 or improper bias against the defendant by the prosecutor or
61 judge in favor of a person whose interests are adverse to the
62 defendant. Upon a finding by the investigator that the
63 allegations have merit, the chief judge shall appoint a special
64 prosecutor from the same judicial circuit as the investigator to
65 prosecute the case in a court in a judicial circuit selected
66 under rules established by the Supreme Court.

67 (3) Any judicial officer or prosecutor who engages in
68 prejudicial acts, shows improper bias, or withholds exculpatory
69 evidence in a criminal proceeding commits a misdemeanor of the
70 first degree, punishable as provided in s. 775.082 or s.
71 775.083, Florida Statutes.

72 Section 3. Section 925.11, Florida Statutes, is amended to
73 read:

74 925.11 Postsentencing DNA testing.—

75 (1) PETITION FOR EXAMINATION.—

76 (a)1. A person who has been tried and found guilty of
77 committing a felony and has been sentenced by a court
78 established by the laws of this state may petition that court to
79 order the examination of physical evidence collected at the time
80 of the investigation of the crime for which he or she has been
81 sentenced which ~~that~~ may contain DNA (deoxyribonucleic acid) and
82 ~~that~~ would exonerate that person, or ~~or~~ mitigate the sentence that
83 person received, or have created a reasonable probability of
84 acquittal if the results had been admitted at trial.

85 2. A person who has entered a plea of guilty or nolo
86 contendere to a felony prior to July 1, 2006, and has been
87 sentenced by a court established by the laws of this state may

10-00254-10

20102538

88 petition that court to order the examination of physical
89 evidence collected at the time of the investigation of the crime
90 for which he or she has been sentenced that may contain DNA
91 (deoxyribonucleic acid) and that would exonerate that person.

92 (b) A petition for postsentencing DNA testing under
93 paragraph (a) may be filed or considered at any time following
94 the date that the judgment and sentence in the case becomes
95 final.

96 (2) METHOD FOR SEEKING POSTSENTENCING DNA TESTING.—

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

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

105 2. A statement that the evidence was not previously tested
106 for DNA or a statement that the results of any previous DNA
107 testing were inconclusive and that subsequent scientific
108 developments in DNA testing techniques would likely produce a
109 definitive result establishing that the petitioner is not the
110 person who committed the crime;

111 3. A statement that the sentenced defendant is innocent and
112 how the DNA testing requested by the petition will exonerate the
113 defendant of the crime for which the defendant was sentenced, ~~or~~
114 will mitigate the sentence received by the defendant for that
115 crime, or would have created a reasonable probability of
116 acquittal if the results had been admitted at trial;

10-00254-10

20102538

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

119 5. Any other facts relevant to the petition; and

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

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

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

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

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

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

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

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

145 3. Whether there is a reasonable probability that the

10-00254-10

20102538

146 sentenced defendant would have been acquitted or would have
147 received a lesser sentence if the DNA evidence had been admitted
148 at trial.

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

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

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

160 (3) RIGHT TO APPEAL; REHEARING.—

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

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

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

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

10-00254-10

20102538

175 (4) PRESERVATION OF EVIDENCE.—

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

183 (b) In a case in which the death penalty is imposed, the
184 evidence shall be maintained for 60 days after execution of the
185 sentence. In all other cases, a governmental entity may dispose
186 of the physical evidence if the term of the sentence imposed in
187 the case has expired and no other provision of law or rule
188 requires that the physical evidence be preserved or retained.

189 Section 4. This act shall take effect July 1, 2010.