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## JUSTICE SYSTEM

# Inmates' DNA deadline may be dropped

Lawmakers do away with a deadline that limited convicts' right to DNA testing that could exonerate them.

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**TALLAHASSEE** - With 175 wrongfully convicted inmates freed nationwide, the Florida Legislature decided Thursday to wipe out a controversial deadline limiting access to DNA tests, giving more prisoners the chance to prove their innocence and, possibly, help catch the real perpetrators of the crimes for which they were sentenced.

The bill, which Gov. Jeb Bush is considering signing into law, also requires judges in future convictions to inform the defendant of his right to a DNA test.

Of the 175 DNA exonerations around the country, five are from Florida. And Sen. Alex Villalobos, a Miami Republican, figures more people are locked up in state prisons who shouldn't be.

"A lot of people in prison are guilty. But every once in a while, there's a mistake," said Villalobos, a top criminal-justice lawmaker who sponsored the bill.

With Villalobos' support, Florida first passed a post-conviction DNA testing law in 2001 after the high-profile exonerations of Frank Lee Smith and Jerry Frank Townsend, two Broward County men convicted in unrelated murder cases. Under the law, anyone convicted of a crime has two years after a sentence becomes final to ask a judge to review DNA testing of physical evidence.

Those people convicted before the law passed had until Oct. 1, 2003, to file their petitions. The Legislature extended that deadline until last October. Then the Florida Supreme Court and Bush intervened. The deadline was extended until July so that lawmakers could take up the matter.

Despite the high-profile support, the fix to the DNA-test law faced an ideological hurdle in the more conservative Florida House from lawmakers like Rep. Don Brown, a Defuniak Springs Republican who was one of only two legislators to vote last year against compensating a man who spent more than two decades in prison for a crime he didn't commit.

Brown inserted a last-minute amendment into the bill making it more difficult for some convicts to get the tests. The full House then killed one of Brown's provisions, which concerned inmates who want to use DNA to prove that they didn't commit other crimes that were used against them to lengthen their prison sentence.

The House, though, kept another Brown provision. It forbids those sentenced after the effective date of the bill, July 1, from getting tests if they decline the test when they plead no contest or guilty. The exception: if prosecutors lie about the existence of DNA evidence, convicts can get the test once they learn of it.

To ensure defendants understand their rights, the bill establishes a set of questions to be asked by the judge, called a "colloquy," informing defendants of their rights to the test.

The Florida Innocence Initiative, which aids inmates in getting the test, was displeased with the colloquy provision, pointing out that seven exonerated inmates across the nation had pleaded guilty but were innocent. One of them was Townsend, a mentally retarded Broward County man who confessed to six murders and four rapes he didn't commit. He spent 22 years in prison and was freed in 2001 after DNA tests.

"In studying exoneration cases, there is no system on paper that can account for human foibles and errors and failures to follow through," said the Initiative's lead lawyer, Jenny Greenberg. "It's unfortunate. We can live with this, and what may well happen is it will prove to be an injustice and we'll bring it back to the Legislature.

"Otherwise, it's a huge step forward," she said.

Villalobos, aided in the House by Republican Rep. Ellyn Bogdanoff of Fort Lauderdale, said the bill should send everyone a message that access to the tests are long overdue.

"This isn't soft on crime," he said. "This is being tough on crime because real justice is when the guilty person pays for the crime. And

it's an injustice when an innocent person is in prison."

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