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# **The Florida Bar**

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## **Measure would end time limits on DNA testing**

By Mark D. Killian

*Managing Editor*

A House bill to remove the deadline for convicted inmates to request DNA testing in an effort to prove their innocence has cleared its first hurdle.

HB 61, sponsored by Rep. John Quiñones, R-Kissimmee, unanimously passed the Governmental Operations Committee October 19, during one of the legislature's interim committee weeks. The House bill was amended to make it identical to SB 168, filed by Sen. Alex Villalobos, R-Miami, which also contains provisions allowing those who have entered into plea agreements to seek DNA testing.

Exonerating the innocent and finding the true criminals was the impetus for Villalobos and Quiñones to file their bills removing the deadline for DNA testing, an issue that has come before the legislature for extensions since Villalobos sponsored the first DNA testing bill in 2001. Originally set to expire on October 1, Gov. Jeb Bush signed Executive Order 05-160 in late September to preserve physical evidence for post-conviction DNA testing, saying, "the destruction of this evidence could potentially enable the innocent to be wrongly convicted and the guilty to go free."

"There is no expiration on innocence," Quiñones said. "We all realize that and this bill will provide that that is the case."

Quiñones also said the bill will assist victims because it will help assure that those who are behind bars actually committed the crimes.

"This is an issue of justice," said Villalobos, the Senate's president-elect designate. "That is all this is."

Villalobos said he does not expect the number of prisoners seeking DNA testing to skyrocket if the bill passes because this measure is for cases "that have already been in the pipeline before the technology was available to make a determination on the DNA samples."

DNA testing is now done on the front end of criminal investigations, he said.

Bar President-elect Hank Coxe told the committee the Board of Governors took the unanimous position that the Bar "supports making DNA testing a permanent and meaningful component of Florida's criminal justice system — to help ensure that the real perpetrators of crimes are punished, that the freedom of innocent people is protected, and that the public's trust and confidence in the judicial process are not diminished."

Coxe said it is the Bar's position that an innocent person in a Florida prison "is an intolerable concept" and a "threat to every citizen in this state."

"The reason it is a threat is because every citizen in this state is entitled to the confidence that the judicial system does what the United States Constitution and the Florida Constitution says it does, which is provide a fair system that seeks justice."

Coxe said the system "has an obligation to correct these errors and there is no qualification to that obligation." The bill, he said, does just that.

Jenny Greenberg, director of the Florida Innocence Initiative, noted there are more than 1,000 cases waiting for evaluations for DNA testing on claims of innocence, and her organization is the only one in the state working on those cases now that the innocence project at Nova Southeastern University has shut down.

"People in Florida's prisons other than on death row have no right to counsel so that filing a motion for post-conviction DNA testing is extremely difficult for someone behind bars and, as a practical matter, the motion we are required to file is fairly rigorous," Greenberg said.

Greenberg said nationwide there have been 162 DNA exonerations to date and six of those were for people who accepted guilty

pleas. In Florida, she said, there have been four DNA exonerations. The two latest were Wilton Dedge, who served 22 years for a rape he did not commit, and Luis Diaz who was exonerated as the "Bird Road Rapist" after 26 years in prison.

"The goal is to find and free all we can and work then to identify the actual perpetrators of those crimes," Greenberg said.

"I think it is an extremely worthy cause," said Cape Coral Republican Rep. Jeff Kottkamp, chair of the Governmental Operations Committee.

Meanwhile, the Florida Supreme Court has temporarily extended the DNA testing deadline for convicted inmates to July 1, 2006, so it has sufficient time to consider a report from The Florida Bar Criminal Procedure Rules Committee recommending that the court adopt an emergency amendment removing the testing time limit from Florida Rule of Criminal Procedure 3.853, Motion for Postconviction DNA Testing.

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