

**SENATE SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 497**

March 28, 2000 – Offered by COMMITTEE ON JUDICIARY AND CONSUMER AFFAIRS.

1 **AN ACT** *to renumber and amend* 757.54; *to amend* 165.81 (1), 301.45 (3) (a) 3r.,
2 801.02 (7) (a) 2. c., 805.15 (3) (intro.), 808.075 (4) (h), 809.30 (1) (a), 809.30 (2)
3 (L), 938.46, 939.74 (1), 939.74 (2) (c), 950.04 (1v) (s), 950.04 (1v) (xm), 968.20 (1)
4 (intro.), 968.20 (2), 968.20 (4), 971.04 (3), 974.02 (1), 974.05 (1) (b), 977.07 (1)
5 (b), 977.07 (1) (c) and 980.11 (2) (intro.); and **to create** 20.410 (1) (be), 165.77
6 (2m), 165.81 (3), 757.54 (2), 805.16 (5), 939.74 (2d), 950.04 (1v) (yd), 968.205,
7 974.07, 978.08 and 980.101 of the statutes; **relating to:** preservation and
8 maintenance of certain evidence, time limits for prosecution of certain crimes
9 of sexual assault, postconviction motions for testing of certain evidence and
10 certain postcommitment motions in sexually violent person commitment
11 proceedings.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 deoxyribonucleic acid analysis of material received under this paragraph in the data
2 bank under sub. (3).

3 (c) Paragraph (b) does not apply to specimens received under s. 51.20 (13) (cr),
4 165.76, 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063.

5 **SECTION 4.** 165.81 (1) of the statutes is amended to read:

6 165.81 (1) Whenever the department is informed by the submitting officer or
7 agency that physical evidence in the possession of the laboratories is no longer
8 needed the department may, except as provided in sub. (3) or unless otherwise
9 provided by law, either destroy the same, retain it in the laboratories or turn it over
10 to the University of Wisconsin upon the request of the head of any department.
11 ~~Whenever~~ Except as provided in sub. (3), whenever the department receives
12 information from which it appears probable that the evidence is no longer needed,
13 the department may give written notice to the submitting agency and the
14 appropriate district attorney, by registered mail, of the intention to dispose of the
15 evidence. If no objection is received within 20 days after the notice was mailed, it may
16 dispose of the evidence.

17 **SECTION 5.** 165.81 (3) of the statutes is created to read:

18 165.81 (3) (a) In this subsection:

- 19 1. “Custody” has the meaning given in s. 968.205 (1) (a).
20 2. “Discharge date” has the meaning given in s. 968.205 (1) (b).

21 (b) Except as provided in par. (c), if physical evidence that is in the possession
22 of the laboratories includes any biological material that was collected in connection
23 with a criminal action or with a delinquency proceeding under ch. 938, the physical
24 evidence shall be preserved until every person in custody as a result of the criminal
25 action or delinquency proceeding has reached his or her discharge date.

1 (c) Subject to par. (e), the department may destroy biological material before
2 the expiration of the time period specified in par. (b) if all of the following apply:

3 1. The department sends a notice of its intent to destroy the biological material
4 to all persons who remain in custody as a result of the criminal action or delinquency
5 proceeding and to either the attorney of record for each person in custody or the state
6 public defender.

7 2. No person who is notified under subd. 1. does either of the following within
8 90 days after the date on which the person received the notice:

9 a. Files a motion for testing of the biological material under s. 974.07.

10 b. Submits a written request to preserve the evidence to the department.

11 3. No other provision of federal or state law requires the department to preserve
12 the biological material.

13 (d) A notice provided under par. (c) 1. shall clearly inform the recipient that the
14 biological material will be destroyed unless, within 90 days after the date on which
15 the person receives the notice, either a motion for testing of the material is filed
16 under s. 974.07 or a written request to preserve the evidence is submitted to the
17 department.

18 (e) If, after providing notice under par. (c) 1. of its intent to destroy biological
19 material, the department receives a written request to preserve the evidence, the
20 department shall preserve the evidence until the discharge date of the person who
21 made the request or on whose behalf the request was made, subject to a court order
22 issued under s. 974.07 (6m), (7) or (8).

23 **SECTION 6.** 301.45 (3) (a) 3r. of the statutes, as affected by 1999 Wisconsin Act
24 9, is amended to read:

1 301.45 (3) (a) 3r. If the person has been committed under ch. 980, he or she is
2 subject to this subsection upon being placed on supervised release under s. 980.06
3 (2), 1997 stats., or s. 980.08 or, if he or she was not placed on supervised release,
4 before being discharged under s. 980.09 ~~or~~ 980.10 or 980.101 (2) (a).

5 **SECTION 7.** 757.54 of the statutes is renumbered 757.54 (1) and amended to
6 read:

7 757.54 (1) The Except as provided in sub. (2), the retention and disposal of all
8 court records and exhibits in any civil or criminal action or proceeding or probate
9 proceeding of any nature in a court of record shall be determined by the supreme
10 court by rule.

11 **SECTION 8.** 757.54 (2) of the statutes is created to read:

12 757.54 (2) (a) In this subsection:

13 1. “Custody” has the meaning given in s. 968.205 (1) (a).

14 2. “Discharge date” has the meaning given in s. 968.205 (1) (b).

15 (b) Except as provided in par. (c), if an exhibit in a criminal action or a
16 delinquency proceeding under ch. 938 includes any biological material that was
17 collected in connection with the action or proceeding, the exhibit shall be preserved
18 until every person in custody as a result of the criminal action or delinquency
19 proceeding has reached his or her discharge date.

20 (c) Subject to par. (e), the court may destroy biological material before the
21 expiration of the time period specified in par. (b) if all of the following apply:

22 1. The court sends a notice of its intent to destroy the biological material to all
23 persons who remain in custody as a result of the criminal action or delinquency
24 proceeding and to either the attorney of record for each person in custody or the state
25 public defender.

1 2. No person who is notified under subd. 1. does either of the following within
2 90 days after the date on which the person received the notice:

3 a. Files a motion for testing of the biological material under s. 974.07.

4 b. Submits a written request to preserve the evidence to the court.

5 3. No other provision of federal or state law requires the court to preserve the
6 biological material.

7 (d) A notice provided under par. (c) 1. shall clearly inform the recipient that the
8 biological material will be destroyed unless, within 90 days after the date on which
9 the person receives the notice, either a motion for testing of the material is filed
10 under s. 974.07 or a written request to preserve the evidence is submitted to the
11 court.

12 (e) If, after providing notice under par. (c) 1. of its intent to destroy biological
13 material, a court receives a written request to preserve the evidence, the court shall
14 preserve the evidence until the discharge date of the person who made the request
15 or on whose behalf the request was made, subject to a court order issued under s.
16 974.07 (6m), (7) or (8).

17 **SECTION 9.** 801.02 (7) (a) 2. c. of the statutes is amended to read:

18 801.02 (7) (a) 2. c. A person bringing an action seeking relief from a judgment
19 of conviction or a sentence of a court, including an action for an extraordinary writ
20 or a supervisory writ seeking relief from a judgment of conviction or a sentence of a
21 court or an action under s. 809.30, 809.40, 973.19 ~~or~~ 974.06 or 974.07.

22 **SECTION 10.** 805.15 (3) (intro.) of the statutes is amended to read:

23 805.15 (3) (intro.) ~~A~~ Except as provided in ss. 974.07 (8) (c) and 980.101 (2)
24 (b), a new trial shall be ordered on the grounds of newly-discovered evidence if the
25 court finds that:

1 **SECTION 11.** 805.16 (5) of the statutes is created to read:

2 805.16 (5) The time limits in this section for filing motions do not apply to
3 motions made under s. 974.07 or 980.101.

4 **SECTION 12.** 808.075 (4) (h) of the statutes is amended to read:

5 808.075 (4) (h) Commitment, supervised release, recommitment and discharge
6 and postcommitment relief under ss. 980.06, 980.08, 980.09 and, 980.10 and 980.101
7 of a person found to be a sexually violent person under ch. 980.

8 **SECTION 13.** 809.30 (1) (a) of the statutes is amended to read:

9 809.30 (1) (a) “Postconviction relief” means, in a felony or misdemeanor case,
10 an appeal or a motion for postconviction relief other than a motion under s. 973.19
11 or, 974.06 or 974.07. In a ch. 48, 51, 55 or 938 case, other than a termination of
12 parental rights case under s. 48.43, it means an appeal or a motion for
13 reconsideration by the trial court of its final judgment or order; in such cases a notice
14 of intent to pursue such relief or a motion for such relief need not be styled as seeking
15 “postconviction” relief.

16 **SECTION 14.** 809.30 (2) (L) of the statutes is amended to read:

17 809.30 (2) (L) An appeal under s. 974.06 or 974.07 is governed by the
18 procedures for civil appeals.

19 **SECTION 15.** 938.46 of the statutes is amended to read:

20 **938.46 New evidence.** A juvenile whose status is adjudicated by the court
21 under this chapter, or the juvenile’s parent, guardian or legal custodian, may at any
22 time within one year after the entering of the court’s order petition the court for a
23 rehearing on the ground that new evidence has been discovered affecting the
24 advisability of the court’s original adjudication. Upon a showing that such evidence

1 does exist, the court shall order a new hearing. This section does not apply to motions
2 made under s. 974.07.

3 **SECTION 16.** 939.74 (1) of the statutes is amended to read:

4 939.74 (1) Except as provided in ~~sub.~~ subs. (2), and (2d) and s. 946.88 (1),
5 prosecution for a felony must be commenced within 6 years and prosecution for a
6 misdemeanor or for adultery within 3 years after the commission thereof. Within the
7 meaning of this section, a prosecution has commenced when a warrant or summons
8 is issued, an indictment is found, or an information is filed.

9 **SECTION 17.** 939.74 (2) (c) of the statutes is amended to read:

10 939.74 (2) (c) A prosecution for violation of s. 948.02, 948.025, 948.03 (2) (a),
11 948.05, 948.06, 948.07 (1), (2), (3) or (4), 948.08 or 948.095 shall be commenced before
12 the victim reaches the age of 31 years or be barred, except as provided in sub. (2d)
13 (d).

14 **SECTION 18.** 939.74 (2d) of the statutes is created to read:

15 939.74 (2d) (a) In this subsection, “deoxyribonucleic acid profile” means any
16 analysis of deoxyribonucleic acid that results in the identification of an individual’s
17 patterned chemical structure of genetic information.

18 (b) In a case in which the state has evidence of a deoxyribonucleic acid profile
19 of a person and the state believes the evidence may identify a person who committed
20 a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025 but comparisons of the
21 evidence to deoxyribonucleic acid profiles of known persons have not resulted in a
22 probable identification of the person, the state may, before the expiration of the time
23 limit under sub. (1) or (2) (c), whichever is applicable, request the circuit court in the
24 county in which the violation is believed to have been committed to determine
25 whether there is probable cause to believe that the evidence of the deoxyribonucleic

1 acid profile is evidence of the identification of a person who committed the violation.
2 A request under this paragraph shall be made and heard ex parte. The court shall
3 make a written record of the proceeding that shall remain secret unless a prosecution
4 for the violation is commenced, in which case the record shall be made available to
5 both the state and any defendant in that prosecution.

6 (c) Notwithstanding that the time limitation under sub. (1) has expired, if the
7 state has evidence of a deoxyribonucleic acid profile of a person and a court found
8 under par. (b) that there is probable cause to believe that the evidence of the
9 deoxyribonucleic acid profile is evidence of the identification of a person who
10 committed a violation of s. 940.225 (1) or (2), a prosecution for the violation may be
11 commenced within one year after a comparison of the deoxyribonucleic acid profile
12 evidence relating to the violation results in a probable identification of the person.

13 (d) Notwithstanding that the time limitation under sub. (2) (c) has expired, if
14 the state has evidence of a deoxyribonucleic acid profile of a person and a court found
15 under par. (b) that there is probable cause to believe that the evidence of the
16 deoxyribonucleic acid profile is evidence of the identification of a person who
17 committed a violation of s. 948.02 (1) or (2) or 948.025, a prosecution for the violation
18 may be commenced within one year after a comparison of the deoxyribonucleic acid
19 profile evidence relating to the violation results in a probable identification of the
20 person.

21 **SECTION 19.** 950.04 (1v) (s) of the statutes is amended to read:

22 950.04 (1v) (s) To have any stolen or other personal property expeditiously
23 returned by law enforcement agencies when no longer needed as evidence, subject
24 to s. 968.205. If feasible, all such property, except weapons, currency, contraband,
25 property subject to evidentiary analysis, property subject to preservation under s.

1 968.205 and property the ownership of which is disputed, shall be returned to the
2 person within 10 days of being taken.

3 **SECTION 20.** 950.04 (1v) (xm) of the statutes, as affected by 1999 Wisconsin Act
4 9, is amended to read:

5 950.04 (1v) (xm) To have the department of health and family services make
6 a reasonable attempt to notify the victim under s. 980.11 regarding supervised
7 release under s. 980.08 and discharge under s. 980.09 ~~or~~ 980.10 or 980.101 (2) (a).

8 **SECTION 21.** 950.04 (1v) (yd) of the statutes is created to read:

9 950.04 (1v) (yd) To have the appropriate clerk of court make a reasonable
10 attempt to send the victim a copy of a motion made under s. 974.07 for postconviction
11 deoxyribonucleic acid testing of certain evidence and notification of any hearing on
12 that motion, as provided under s. 974.07 (4).

13 **SECTION 22.** 968.20 (1) (intro.) of the statutes, as affected by 1997 Wisconsin
14 Act 192, is amended to read:

15 968.20 (1) (intro.) Any person claiming the right to possession of property
16 seized pursuant to a search warrant or seized without a search warrant may apply
17 for its return to the circuit court for the county in which the property was seized or
18 where the search warrant was returned. The court shall order such notice as it
19 deems adequate to be given the district attorney and all persons who have or may
20 have an interest in the property and shall hold a hearing to hear all claims to its true
21 ownership. If the right to possession is proved to the court's satisfaction, it shall
22 order the property, other than contraband or property covered under sub. (1m) or (1r)
23 or s. 173.12 ~~or~~ 173.21 (4) (b) or 968.205, returned if:

24 **SECTION 23.** 968.20 (2) of the statutes, as affected by 1997 Wisconsin Act 192,
25 is amended to read:

1 968.20 (2) Property not required for evidence or use in further investigation,
2 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205,
3 may be returned by the officer to the person from whom it was seized without the
4 requirement of a hearing.

5 **SECTION 24.** 968.20 (4) of the statutes is amended to read:

6 968.20 (4) Any property seized, other than property covered under s. 968.205,
7 which poses a danger to life or other property in storage, transportation or use and
8 which is not required for evidence or further investigation shall be safely disposed
9 of upon command of the person in whose custody they are committed. The city,
10 village, town or county shall by ordinance or resolution establish disposal
11 procedures. Procedures may include provisions authorizing an attempt to return to
12 the rightful owner substances which have a commercial value in normal business
13 usage and do not pose an immediate threat to life or property. If enacted, any such
14 provision shall include a presumption that if the substance appears to be or is
15 reported stolen an attempt will be made to return the substance to the rightful owner.

16 **SECTION 25.** 968.205 of the statutes is created to read:

17 **968.205 Preservation of certain evidence. (1)** In this section:

18 (a) “Custody” means actual custody of a person under a sentence of
19 imprisonment, custody of a probationer, parolee or person on extended supervision
20 by the department of corrections, actual or constructive custody of a person pursuant
21 to a dispositional order under ch. 938, supervision of a person, whether in
22 institutional care or on conditional release, pursuant to a commitment order under
23 s. 971.17 and supervision of a person under ch. 980, whether in detention before trial
24 or while in institutional care or on supervised release pursuant to a commitment
25 order.

1 (b) “Discharge date” means the date on which a person is released or discharged
2 from custody that resulted from a criminal action, a delinquency proceeding under
3 ch. 938 or a commitment proceeding under s. 971.17 or ch. 980 or, if the person is
4 serving consecutive sentences of imprisonment, the date on which the person is
5 released or discharged from custody under all of the sentences.

6 **(2)** Except as provided in sub. (3), if physical evidence that is in the possession
7 of a law enforcement agency includes any biological material that was collected in
8 connection with a criminal action or with a delinquency proceeding under ch. 938,
9 the physical evidence shall be preserved until every person in custody as a result of
10 the criminal action or delinquency proceeding has reached his or her discharge date.

11 **(3)** Subject to sub. (5), a law enforcement agency may destroy biological
12 material before the expiration of the time period specified in sub. (2) if all of the
13 following apply:

14 (a) The law enforcement agency sends a notice of its intent to destroy the
15 biological material to all persons who remain in custody as a result of the criminal
16 action or delinquency proceeding and to either the attorney of record for each person
17 in custody or the state public defender.

18 (b) No person who is notified under par. (a) does either of the following within
19 90 days after the date on which the person received the notice:

20 1. Files a motion for testing of the biological material under s. 974.07.

21 2. Submits a written request to preserve the evidence to the law enforcement
22 agency or district attorney.

23 (c) No other provision of federal or state law requires the law enforcement
24 agency to preserve the biological material.

1 **(4)** A notice provided under sub. (3) (a) shall clearly inform the recipient that
2 the biological material will be destroyed unless, within 90 days after the date on
3 which the person receives the notice, either a motion for testing of the material is
4 filed under s. 974.07 or a written request to preserve the evidence is submitted to the
5 law enforcement agency.

6 **(5)** If, after providing notice under sub. (3) (a) of its intent to destroy biological
7 material, a law enforcement agency receives a written request to preserve the
8 evidence, the law enforcement agency shall preserve the evidence until the discharge
9 date of the person who made the request or on whose behalf the request was made,
10 subject to a court order issued under s. 974.07 (6m), (7) or (8).

11 **SECTION 26.** 971.04 (3) of the statutes is amended to read:

12 971.04 **(3)** If the defendant is present at the beginning of the trial and
13 thereafter, during the progress of the trial or before the verdict of the jury has been
14 returned into court, voluntarily absents himself or herself from the presence of the
15 court without leave of the court, the trial or return of verdict of the jury in the case
16 shall not thereby be postponed or delayed, but the trial or submission of said case to
17 the jury for verdict and the return of verdict thereon, if required, shall proceed in all
18 respects as though the defendant were present in court at all times. A defendant
19 need not be present at the pronouncement or entry of an order granting or denying
20 relief under s. 974.02 ~~or~~, 974.06 or 974.07. If the defendant is not present, the time
21 for appeal from any order under ss. 974.02 ~~and~~, 974.06 and 974.07 shall commence
22 after a copy has been served upon the attorney representing the defendant, or upon
23 the defendant if he or she appeared without counsel. Service of such an order shall
24 be complete upon mailing. A defendant appearing without counsel shall supply the
25 court with his or her current mailing address. If the defendant fails to supply the

1 court with a current and accurate mailing address, failure to receive a copy of the
2 order granting or denying relief shall not be a ground for tolling the time in which
3 an appeal must be taken.

4 **SECTION 27.** 974.02 (1) of the statutes is amended to read:

5 974.02 (1) A motion for postconviction relief other than under s. 974.06 or
6 974.07 by the defendant in a criminal case shall be made in the time and manner
7 provided in ss. 809.30 and 809.40. An appeal by the defendant in a criminal case from
8 a judgment of conviction or from an order denying a postconviction motion or from
9 both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and
10 809.40. An appeal of an order or judgment on habeas corpus remanding to custody
11 a prisoner committed for trial under s. 970.03 shall be taken under ss. 808.03 (2) and
12 809.50, with notice to the attorney general and the district attorney and opportunity
13 for them to be heard.

14 **SECTION 28.** 974.05 (1) (b) of the statutes is amended to read:

15 974.05 (1) (b) Order granting postconviction relief under s. 974.02 ~~or~~ 974.06
16 or 974.07.

17 **SECTION 29.** 974.07 of the statutes is created to read:

18 **974.07 Motion for postconviction deoxyribonucleic acid testing of**
19 **certain evidence. (1)** In this section, “government agency” means any department
20 or agency of the federal government, of this state or of a city, village, town or county
21 in this state.

22 **(2)** At any time after being convicted of a crime, adjudicated delinquent or
23 found not guilty by reason of mental disease or defect, a person may make a motion
24 in the court in which he or she was convicted, adjudicated delinquent or found not

1 guilty by reason of mental disease or defect for an order requiring forensic
2 deoxyribonucleic acid testing of evidence to which all of the following apply:

3 (a) The evidence is relevant to the investigation or prosecution that resulted
4 in the conviction, adjudication or finding of not guilty by reason of mental disease or
5 defect.

6 (b) The evidence is in the actual or constructive possession of a government
7 agency.

8 (c) The evidence has not previously been subjected to forensic deoxyribonucleic
9 acid testing or, if the evidence has previously been tested, it may now be subjected
10 to another test using a scientific technique that was not available at the time of the
11 previous testing and that provides a reasonable likelihood of more accurate and
12 probative results.

13 **(3)** A person who makes a motion under this section or, if applicable, his or her
14 attorney shall serve a copy of the motion on the district attorney's office that
15 prosecuted the case that resulted in the conviction, adjudication or finding of not
16 guilty by reason of mental disease or defect. The court in which the motion is made
17 shall also notify the appropriate district attorney's office that a motion has been
18 made under this section and shall give the district attorney an opportunity to
19 respond to the motion. Failure by a person making a motion under this section to
20 serve a copy of the motion on the appropriate district attorney's office does not
21 deprive the court of jurisdiction and is not grounds for dismissal of the motion.

22 **(4)** (a) The clerk of the circuit court in which a motion made under this section
23 shall send a copy of the motion and, if a hearing is scheduled, a notice of the hearing
24 on the motion to the victim of the crime or delinquent act committed by the person
25 who made the motion, if the clerk is able to determine an address for the victim. The

1 clerk of the circuit court shall make a reasonable attempt to send the copy of the
2 motion to the address of the victim within 7 days of the date on which the motion is
3 filed and shall make a reasonable attempt to send a notice of hearing, if a hearing
4 is scheduled, to the address of the victim, postmarked at least 10 days before the date
5 of the hearing.

6 (b) Notwithstanding the limitation on the disclosure of mailing addresses from
7 completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046
8 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.115 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2),
9 971.17 (6m) (d) and 980.11 (4), the department of corrections, the parole commission
10 and the department of health and family services shall, upon request, assist clerks
11 of court in obtaining information regarding the mailing address of victims for the
12 purpose of sending copies of motions and notices of hearings under par. (a).

13 (5) Upon receiving under sub. (3) a copy of a motion made under this section
14 or notice from a court that a motion has been made, whichever occurs first, the
15 district attorney shall take all actions necessary to ensure that all biological material
16 that was collected in connection with the investigation or prosecution of the case and
17 that remains in the actual or constructive custody of a government agency is
18 preserved pending completion of the proceedings under this section.

19 (6) A court in which a motion under this section is filed shall order forensic
20 deoxyribonucleic acid testing if all of the following apply:

21 (a) The person making the motion claims that he or she is actually innocent of
22 the offense for which he or she was convicted, found not guilty by reason of mental
23 disease or defect or adjudicated delinquent.

24 (b) The court determines either that the chain of custody of the evidence to be
25 tested establishes that the evidence has not been tampered with, replaced or altered

1 in any material respect or, if the chain of custody cannot establish the integrity of the
2 evidence, that the testing itself can establish the integrity of the evidence.

3 (c) The court determines that the testing may produce noncumulative evidence
4 that is relevant to the person's assertion of actual innocence.

5 **(6m)** If a court in which a motion under this section is filed does not order
6 forensic deoxyribonucleic acid testing, the court shall determine the disposition of
7 the evidence that the motion seeks to have tested and, if the evidence is to be
8 preserved, by whom and for how long. The court shall issue appropriate orders
9 concerning the disposition of the evidence based on its determinations.

10 **(7)** The court may impose reasonable conditions on any testing ordered under
11 this section in order to protect the integrity of the evidence and the testing process.
12 If appropriate and if stipulated to by the person who made the motion under this
13 section and the district attorney, the court may order the state crime laboratories to
14 perform the testing as provided under s. 165.77 (2m).

15 **(8) (a)** If the results of forensic deoxyribonucleic acid testing ordered under this
16 section are unfavorable to the person who made the motion for testing, the court shall
17 determine the disposition of any evidence that remains after the completion of the
18 testing and, if the evidence is to be preserved, by whom and for how long. The court
19 shall issue appropriate orders concerning the disposition of the evidence based on its
20 determinations.

21 **(b)** If the results of forensic deoxyribonucleic acid testing ordered under this
22 section are favorable to the person who made the motion for testing, the court shall
23 schedule a hearing to determine the appropriate relief to be granted to the person.
24 After the hearing, and based on the results of the testing and any evidence or other

1 matter presented at the hearing, the court shall enter any order that serves the
2 interests of justice, including any of the following:

3 1. An order setting aside or vacating the person's judgment of conviction,
4 judgment of not guilty by reason of mental disease or defect or adjudication of
5 delinquency.

6 2. An order granting the person a new trial or fact-finding hearing.

7 3. An order granting the person a new sentencing hearing, commitment
8 hearing or dispositional hearing.

9 4. An order discharging the person from custody, as defined in s. 968.205 (1) (a),
10 if the person is in custody.

11 5. An order specifying the disposition of any evidence that remains after the
12 completion of the testing and, if the evidence is to be preserved, by whom and for how
13 long.

14 (c) A court may order a new trial under par. (b) without making the findings
15 specified in s. 805.15 (3) (a) and (b).

16 **(9)** A court considering a motion made under this section by a person who is
17 not represented by counsel shall, if the person claims or appears to be indigent, refer
18 the person to the state public defender for determination of indigency and
19 appointment of counsel under s. 977.05 (4) (j).

20 **(10)** (a) The court may order a person who makes a motion under this section
21 to pay the costs of any testing ordered by the court under this section if the court
22 determines that the person is not indigent. If the court determines that the person
23 is indigent, the court shall order the costs of the testing to be paid for from the
24 appropriation account under s. 20.410 (1) (be).

25 (b) A person is indigent for purposes of par. (a) if any of the following apply:

1 1. The person was referred to the state public defender under sub. (9) for a
2 determination of indigency and was found to be indigent.

3 2. The person was referred to the state public defender under sub. (9) for a
4 determination of indigency but was found not to be indigent, and the court
5 determines that the person does not possess the financial resources to pay the costs
6 of testing.

7 3. The person was not referred to the state public defender under sub. (9) for
8 a determination of indigency and the court determines that the person does not
9 possess the financial resources to pay the costs of testing.

10 **(11)** An appeal may be taken from an order entered under this section as from
11 a final judgment.

12 **SECTION 30.** 977.07 (1) (b) of the statutes is amended to read:

13 977.07 **(1)** (b) For referrals not made under ss. 809.30 ~~and~~, 974.06 and 974.07,
14 a representative of the state public defender is responsible for making indigency
15 determinations unless the county became responsible under s. 977.07 (1) (b) 2. or 3.,
16 1983 stats., for these determinations. Subject to the provisions of par. (bn), those
17 counties may continue to be responsible for making indigency determinations. Any
18 such county may change the agencies or persons who are designated to make
19 indigency determinations only upon the approval of the state public defender.

20 **SECTION 31.** 977.07 (1) (c) of the statutes is amended to read:

21 977.07 **(1)** (c) For all referrals made under ss. 809.30 ~~and~~, 974.06 (3) (b) and
22 974.07 (9), except a referral of a child who is entitled to be represented by counsel
23 under s. 48.23 or 938.23, a representative of the state public defender shall
24 determine indigency, ~~and~~. For referrals made under ss. 809.30 and 974.06 (3) (b),
25 except a referral of a child who is entitled to be represented by counsel under s. 48.23

1 or 938.23, the representative of the state public defender may, unless a request for
2 redetermination has been filed under s. 809.30 (2) (d) or the defendant's request for
3 representation states that his or her financial circumstances have materially
4 improved, rely upon a determination of indigency made for purposes of trial
5 representation under this section.

6 **SECTION 32.** 978.08 of the statutes is created to read:

7 **978.08 Preservation of certain evidence. (1)** In this section:

8 (a) "Custody" has the meaning given in s. 968.205 (1) (a).

9 (b) "Discharge date" has the meaning given in s. 968.205 (1) (b).

10 **(2)** Except as provided in sub. (3), if physical evidence that is in the possession
11 of a district attorney includes any biological material that was collected in connection
12 with a criminal action or with a delinquency proceeding under ch. 938, the physical
13 evidence shall be preserved until every person in custody as a result of the criminal
14 action or delinquency proceeding has reached his or her discharge date.

15 **(3)** Subject to sub. (5), a district attorney may destroy biological material before
16 the expiration of the time period specified in sub. (2) if all of the following apply:

17 (a) The district attorney sends a notice of its intent to destroy the biological
18 material to all persons who remain in custody as a result of the criminal action or
19 delinquency proceeding and to either the attorney of record for each person in
20 custody or the state public defender.

21 (b) No person who is notified under par. (a) does either of the following within
22 90 days after the date on which the person received the notice:

23 1. Files a motion for testing of the biological material under s. 974.07.

24 2. Submits a written request to preserve the evidence to the district attorney.

1 (c) No other provision of federal or state law requires the district attorney to
2 preserve the biological material.

3 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that
4 the biological material will be destroyed unless, within 90 days after the date on
5 which the person receives the notice, either a motion for testing of the material is
6 filed under s. 974.07 or a written request to preserve the evidence is submitted to the
7 district attorney.

8 (5) If, after providing notice under sub. (3) (a) of its intent to destroy biological
9 material, a district attorney receives a written request to preserve the evidence, the
10 district attorney shall preserve the evidence until the discharge date of the person
11 who made the request or on whose behalf the request was made, subject to a court
12 order issued under s. 974.07 (6m), (7) or (8).

13 **SECTION 33.** 980.101 of the statutes is created to read:

14 **980.101 Reversal, vacation or setting aside of judgment relating to a**
15 **sexually violent offense; effect.** (1) In this section, “judgment relating to a
16 sexually violent offense” means a judgment of conviction for a sexually violent
17 offense, an adjudication of delinquency on the basis of a sexually violent offense or
18 a judgment of not guilty of a sexually violent offense by reason of mental disease or
19 defect.

20 (2) If, at any time after a person is committed under s. 980.06, a judgment
21 relating to a sexually violent offense committed by the person is reversed, set aside
22 or vacated and that sexually violent offense was a basis for the allegation made in
23 the petition under s. 980.02 (2) (a), the person may bring a motion for
24 postcommitment relief in the court the committed the person. The court shall
25 proceed as follows on the motion for postcommitment relief:

1 (a) If the sexually violent offense was the sole basis for the allegation under s.
2 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense
3 committed by the person, the court shall vacate the commitment order and discharge
4 the person from the custody or supervision of the department.

5 (b) If the sexually violent offense was the sole basis for the allegation under s.
6 980.02 (2) (a) but there are other judgments relating to a sexually violent offense
7 committed by the person that have not been reversed, set aside or vacated, or if the
8 sexually violent offense was not the sole basis for the allegation under s. 980.02 (2)
9 (a), the court shall determine whether to grant the person a new trial under s. 980.05
10 because the reversal, setting aside or vacating of the judgement for the sexually
11 violent offense would probably change the result of the trial.

12 (3) An appeal may be taken from an an order entered under sub. (2) as from
13 a final judgment.

14 **SECTION 34.** 980.11 (2) (intro.) of the statutes, as affected by 1999 Wisconsin
15 Act 9, is amended to read:

16 980.11 (2) (intro.) If the court places a person on supervised release under s.
17 980.08 or discharges a person under s. 980.09 or, 980.10 or 980.101 (2) (a), the
18 department shall do all of the following:

19 **SECTION 35. Initial applicability.**

20 (1) The treatment of section 939.74 (1), (2) (c) and (2d) of the statutes first
21 applies to offenses not barred from prosecution on the effective date of this
22 subsection.

23 (END)