

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

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Melissa Gilbert,

The ability of a crime laboratory to return DNA evidence to a submitting agency under s. 165.81 (3) (f), as created by this amendment, must be restricted. Otherwise, s. 165.81 (3) (f), as created by this amendment, permits a laboratory that is under a court order issued with the laboratory's consent under s. 974.07 (9) (b), as created by 2001 AB-291 and as affected by this amendment, to violate the order and returned DNA evidence to a submitting agency. I therefore made s. 165.81 (3) (f), as created by this amendment, subject to any court order issued under s. 974.07 (9) (b), as created by 2001 AB-291 and as affected by this amendment. Does this place too great a restriction on a laboratory's ability to return DNA evidence to a submitting agency? Section 974.07 (9) (b), as created by 2001 AB-291 and as affected by this amendment, requires a laboratory's consent to transfer of evidence to a laboratory. It does not require the consent of a laboratory for a court to order that the laboratory preserve DNA evidence that is already in the possession of the laboratory. If the intent of DOJ is to require courts to obtain a laboratory's consent before ordering that the laboratory preserve evidence that is in the possession of the laboratory, then s. 974.07 (9) (b), as affected by this amendment, should be changed to address evidence already in a laboratory's possession in addition to the transfer of evidence.

I assumed that DOJ wants the amendment to treat s. 974.07 (9) (a), as created by 2001 AB-291, similarly to s. 974.07 (9) (b), as created by 2001 AB-291, because both paragraphs relate to court orders concerning preservation of DNA evidence. Therefore, this amendment requires that a laboratory consent to transfer of DNA evidence to the laboratory for the purpose of preservation as a prerequisite to a court ordering transfer of DNA to a laboratory under s. 974.07 (9) (a), as created by 2001 AB-291 and as affected by this amendment.

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