

**2001 DRAFTING REQUEST**

**Assembly Amendment (AA-AB291)**

Received: 06/11/2001

Received By: rryan

Wanted: 06/12/2001

Identical to LRB:

For: Scott Walker (608) 266-9180

By/Representing: Melissa Gilbert

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - law enforcement  
Criminal Law - miscellaneous

Extra Copies: MGD  
MGD

Submit via email: NO

Requester's email:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Preservation of DNA evidence

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**Instructions:**

See Attached

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**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>      | <u>Reviewed</u>     | <u>Typed</u>          | <u>Proofed</u> | <u>Submitted</u>           | <u>Jacketed</u>            | <u>Required</u> |
|--------------|---------------------|---------------------|-----------------------|----------------|----------------------------|----------------------------|-----------------|
| /1           | rryan<br>06/12/2001 | jdyer<br>06/12/2001 | kfollet<br>06/12/2001 | _____          | lrb_docadmin<br>06/12/2001 | lrb_docadmin<br>06/12/2001 |                 |

FE Sent For:

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1?           | rryan          | 1/12 jld        | 6/12         | 6/12           | 6/12             |                 |                 |

FE Sent For:

<END>

## Ryan, Robin

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**From:** Gilbert, Melissa  
**Sent:** June 11, 2001 3:48 PM  
**To:** Ryan, Robin  
**Subject:** amendment for AB 291

**Importance:** High

Hi Robin,

We need an amendment to specify that the state crime labs are not stuck with storage of evidence under AB 291. This bill is up tomorrow, so I apologize for the short notice. I am forwarding language suggested by DOJ. Please let me know if you have any questions/concerns about the proposed changes.

Thanks!  
Missy  
Office of Rep. Walker

-----Original Message-----

**From:** Richard, JoAnna M.  
**Sent:** Monday, June 11, 2001 3:39 PM  
**To:** Gilbert, Melissa  
**Subject:** AB 291

Missy,

I think these drafting suggestions will help LRB with this amendment. Thanks so much.

Jo



AB 291

amendments.doc

JoAnna Richard  
Legislative Liaison  
Office of the Attorney General  
267-1932

**PROBLEM 1:**

THE FOLLOWING AMENDMENTS WOULD ALLOW THE CRIME LABORATORIES TO RETURN PHYSICAL EVIDENCE AS IS CURRENTLY THE PRACTICE.

**Suggestion 1:** I would create a section 165.81(4). This would apply to all physical evidence, not just evidence containing biological material. It would read as follows:

*Nothing in this section prohibits the laboratories from returning physical evidence to the submitting agency. If the physical evidence contains biological material, the submitting agency shall comply with the procedures in sec. 968.205 for its disposition. If the physical evidence does not contain biological material, the submitting agency shall comply with the procedures in sec. 968.20 for its disposition.*

MISSY  
use  
option

**Suggestion 2:** I would amend Section 7 of AB 291, which creates sec. 165.81(3). This would allow the laboratories to return the evidence to the submitting agency as is currently the practice.

**SECTION 7.** 165.81 (3) of the statutes is created to read:  
165.81 (3) ...

(b) Except as provided in par. (c), if physical evidence that is in the possession of the laboratories includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, a delinquency adjudication, or commitment under s. 971.17 or s. 980.06, the laboratories shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.  
*Nothing in this section prohibits the laboratories from returning physical evidence that includes biological material to the submitting agency. The submitting agency shall comply with the procedures in sec. 968.205 for the disposition of physical evidence with physical evidence.*

**PROBLEM 2:**

Section 36 of AB 291 creates a new subsection, sec. 974.07. Under this proposal, subsection (9) allows a court to order how long physical evidence shall be kept and "by whom." We are concerned that courts, district attorneys, and submitting agencies will designate the laboratories as the recipient of this evidence. I would amend the proposed language in subsec. (9)(b) as follows:

(b) If the conditions in par. (a) are not present, the court shall determine the disposition of the evidence, and, if the evidence is to be preserved, by whom and for how long. The court shall issue appropriate orders concerning the disposition of the evidence based on its determinations. *The court may not issue an order transferring evidence to the crime laboratories as defined under sec. 165.75 for preservation of evidence without the consent of the crime laboratories.*

MISSY:  
use  
option

Alternatively, one could use the following language to prevent custodians from coming in and transferring the physical evidence to other noncustodians like DAs and the Crime Laboratories. On numerous occasions, I have heard law enforcement argue that the

prosecutor should pay the cost of storing and holding evidence (such as cars in homicide by intoxicated use cases).

**“The court may not issue an order transferring evidence to a person other than the current custodian of that evidence without the consent of that other person.”**



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBa0599/1

RLR:.....

By 10:30 AM  
6/12/01

JLD

ASSEMBLY AMENDMENT,  
TO 2001 ASSEMBLY BILL 291

D-Note

the material beginning with "provided" and  
ending with "~~whenever~~" on line 23

1 At the locations indicated, amend the bill as follows:

2 Fix component

1. Page 6, line 21: delete ~~lines 21 and 22~~ and substitute ~~NO #~~

3 NO #

"provided by law, ~~either~~ destroy the same evidence, retain it in the laboratories,

4 return it to the submitting officer or agency, or turn it over to the University of

5 Wisconsin upon the request of the head of any department ~~of the University of~~ <sup>whenever</sup>

6 Wisconsin. If the department returns the evidence to the submitting officer or

7 agency, any action taken by the officer or agency with respect to the evidence shall

8 be in accordance with s. 968.20."

score period

2. Page 8, line 12: delete the material beginning with "authorizes" and ending

10 with "destruction" on line 13 and substitute ~~NO #~~

11 NO #

"orders destruction or transfer".

3. Page 8, line 13: after that line insert:

text:  
treat

1 (f) Unless otherwise provided in a court order issued under s. 974.07 (9) (a) or  
2 (b) or (10) (a) 5., nothing in this subsection prohibits the laboratories from returning  
3 evidence specified under par. (c) to the agency that submitted the evidence to the  
4 laboratories. If the laboratories return evidence specified under par. (c) to a  
5 submitting agency, any action taken by the agency with respect to the evidence shall  
6 be in accordance with s. 968.205.”.

7 4. Page 10, line 2: delete “authorizes destruction” and substitute “orders  
8 destruction or transfer”.

9 5. Page 16, line 25: delete “authorizes destruction” and substitute “orders  
10 destruction or transfer”.

11 6. Page 24, line 23: after “evidence.” insert “The court may not issue an order  
12 under this paragraph requiring that an agency transfer evidence to a crime  
13 laboratory specified under s. 165.75 for the purpose of preservation of the evidence  
14 by the crime laboratory, unless the crime laboratory consents to the transfer.”.

15 7. Page 25, line 2: after “determinations.” insert “The court may not issue an  
16 order under this paragraph requiring that an agency transfer evidence to a crime  
17 laboratory specified under s. 165.75 for the purpose of preservation of the evidence  
18 by the crime laboratory, unless the crime laboratory consents to the transfer.”.

19 8. Page 28, line 19: delete the material beginning with “authorizes” and  
20 ending with “destruction” on line 20 and substitute

no \$

21 “orders destruction or transfer”.

(END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0599/1dn

RLR: ~~...~~

date

Jld

Melissa Gilbert,

The ability of a crime laboratory to return DNA evidence to a submitting agency under s. 165.81 (3) (f), ~~as created~~, as created by this amendment, must be restricted. Otherwise, s. 165.81 (3) (f), ~~as created~~, 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~~, 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~~, as created by this amendment, subject to any court order issued under s. 974.09 (b), ~~as created~~, 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 974.09 (9) (b), ~~as created~~, as affected 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. 974.09 (9) (b), ~~as created~~, as affected by this amendment, should be changed to address evidence already in a laboratory's possession in addition to the transfer of evidence.

7 (9)

I assumed that DOJ wants the amendment to treat s. 974.07 (9) (a), as created by 2001 AB-291, similarly to s. 974.09 (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. 974.09 (9) (a), as created by 2001 AB-291 and as affected by this amendment.

↑

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.state.wi.us



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0599/1dn  
RLR:jld:kjf

June 12, 2001

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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