

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 06/15/2001

Received By: rryan

Wanted: Soon

Identical to LRB:

For: Senate Democratic Caucus

By/Representing: Keckhaver

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - miscellaneous
Criminal Law - procedure

Extra Copies: MGD

Submit via email: NO

Requester's email:

Pre Topic:

SDC:.....Keckhaver - CN6515,

Topic:

DNA evidence and postconviction relief

Instructions:

See Attached

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 06/18/2001	jdyer 06/18/2001	jfrantze 06/18/2001	_____	lrb_docadmin 06/18/2001		

FE Sent For:

<END>

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: **06/15/2001**

Received By: **rryan**

Wanted: **Soon**

Identical to LRB:

For: **Senate Democratic Caucus**

By/Representing: **Keckhaver**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous
Criminal Law - procedure**

Extra Copies: **MGD**

Submit via email: **NO**

Requester's email:

Pre Topic:

SDC:.....Keckhaver - CN6515,

Topic:

DNA evidence and postconviction relief

Instructions:

See Attached

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	11/6/18 jcd	206/18	cut PH			

FE Sent For:

<END>

RPN

DNA Legislation

Agency: DOJ and Courts

Description: Incorporates the provisions of 2001 AB 291 as modified by the attached memo.

CN6515

AB 291 (as introduced and not amended in Assembly Corrections and the Courts)

1. AB291 allows prosecutors to eliminate the statute of limitation for first and second-degree sexual assault. Although the Criminal Law Section has concerns about the current drafting language, science has clearly outpaced the law in this regard. We applaud efforts to use reliable scientific techniques to not only hold individuals responsible for these serious sex crimes, but also to exclude those suspects who are not culpable.
2. AB291 provides a statutory procedure for convicted individuals to prove their actual innocence using DNA evidence. There have already been over 80 cases of overturned wrongful convictions in the last ten years utilizing DNA evidence. The Section believes that no individual should ever be punished for a crime that he or she did not commit.
3. AB291 also requires the preservation of DNA evidence after conviction. As DNA evidence and databases become more commonplace, the Criminal Law Section believes that maintaining this evidence is essential to assure fairness in the criminal justice system.
4. AB291 allows for the indigent to request DNA postconviction testing. It is essential that this mechanism to prove actual innocence be extended to all of our citizens, regardless of income.

Drafting Instructions to amend AB291

1. PROBABLE CAUSE

First is the language used in extending the statute of limitations. If we are to take the extraordinary step of eliminating the statute of limitation, a step that until now our society has reserved solely for murder cases, we must make sure that the language ensures that citizens will not be subject to unreasonable prosecution for a crime that allegedly happened many years or decades ago.

The use of DNA evidence in and of itself is not enough. If we are to eliminate the statute of limitation when DNA evidence is present, it must be clear and convincing that the

perpetrator of the crime left the DNA evidence. A hair found across the room at the crime scene may not meet that standard, especially if the suspect had legitimate access to the room. As DNA testing methods become more advanced and genetic profiles can be obtained from items as minute as dandruff, skin cells, sweat, and saliva, the potential for error and abuse exists.

In addition, a probable cause standard for the use of DNA evidence must be met before the statute of limitation can be circumvented.

2. JUDICIAL DISCRETION

Section 36 of the bill creates §947.07(7) of the statutes that defines when postconviction testing *shall* occur and when it *may* occur. While the Criminal Law Section of the State Bar supports the language as to when a testing *shall* occur, we believe that more flexibility should be given to the judge when determining when a postconviction DNA test *may* occur. This does not leave the door open for an abuse of testing, but it does allow a judge some flexibility to review the specific circumstances of a case and reach the conclusion that a test is warranted in the interests of justice.

3. NEW EVIDENCE

The catalyst behind the move for postconviction DNA testing is the development of a scientific tool that proves that the criminal justice system made a mistake in a particular case. The Criminal Law Section believes that to limit the establishment of actual innocence solely to DNA evidence would be a mistake. No person should be incarcerated for a crime he or she did not commit. We suggest amending §12, 805.16(5) to read:

Time limits in this section do not apply to motions made under 974.06, 974.07, 980.101, or to other motions seeking new trials based on newly discovered evidence in criminal or juvenile delinquency cases.

Ryan, Robin

From: Ryan, Robin
Sent: June 16, 2001 11:20 AM
To: Keckhaver, John
Subject: Caucus request number 6515

This request is for addition of AB 291 to the budget. AB 291 extends the statute of limitations for prosecuting certain crimes if DNA evidence is found and later matched to a person, and it provides for a process for postconviction relief if DNA evidence may exonerate a person who is already convicted.

The request asks for AB 291 as unamended in the Assembly and with 3 additional changes. I have a January 2001 letter from the state bar criminal law section to Rep. Walker that includes comments on the draft that became AB 291. It looks to me like the three additional requests are items that the criminal law section asked for in the letter. However, even with the letter I am not clear on two of the items.

1. Addition of requirement that state show probable cause before the statute of limitations is extended: Should this require that the state show probable cause that the DNA evidence was left by the defendant at the time the crime was committed?

2. Adding discretion for judge to order DNA testing on a motion for postconviction relief: The request states that the conditions under which a court **must** order testing are fine, but that the conditions under which a court may order testing do not allow a judge sufficient discretion. However, the request does not provide me any information on how the conditions for discretionary testing should be changed. Should I just add a clause to the discretionary testing provision that states: 'the court may order DNA testing if all of the following conditions are met, or if the judge finds that testing is warranted in the interests of justice' (I would add the underlined portion). This certainly gives judges broad discretion. Is this too much discretion?

thanks

06/16/2001

Ryan, Robin

From: Keckhaver, John
Sent: June 17, 2001 9:54 AM
To: Ryan, Robin
Subject: RE: caucus request number 6515 follow-up
0\$, no funding.

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

From: Ryan, Robin
Sent: Saturday, June 16, 2001 11:28 AM
To: Keckhaver, John
Subject: caucus request number 6515 follow-up

AB 291 creates an appropriation to cover the costs of testing DNA evidence for indigent persons. The appropriation language refers to the amounts in the schedule, but the schedule includes zero dollars. Do you want to add funding? If so, how much.

06/17/2001

2001

Date (time) needed _____

LRB b. 1056, 1

AMDT TO BUDGET SUB AMDT

RLR: jld: _____

See form AMENDMENTS — COMPONENTS & ITEMS.

Note

SENATE AMENDMENT
~~TO SENATE AMENDMENT~~
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 2001 SENATE BILL 55

At the locations indicated, amend the substitute amendment ~~amendment~~ *amendment* as follows:

#. Page 195, line 8[✓]: after that line insert:

~~#. Page, line:~~
~~#. Page, line:~~
~~#. Page, line:~~
~~#. Page, line:~~
~~#. Page, line:~~

ASSEMBLY BILL 291

testing techniques such as polymerase chain reaction and mitochondrial DNA testing are not covered by the current rules.

The discovery rules for DNA evidence specify what test results a party that intends to use DNA evidence must provide to the opposing party. The specified results are only created when the RFLP testing technique is used. The DNA evidence discovery rules also set specific time frames for providing notice of intent to use DNA evidence at trial and for producing test results.

The bill modifies the definition for DNA evidence so that it covers all methods of analysis that result in identification of an individual's patterned chemical structure of genetic information. The bill eliminates the list of specific forms of test results that a party who intends to introduce DNA evidence must provide to the opposing party, and instead relies on general discovery rules for production of scientific test results. The bill does, however, retain the time frames for providing notice of intent to use DNA evidence at trial and for providing test results to the opposing party.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 20.005 (3) (schedule) of the statutes: at the appropriate place, insert the following amounts for the purposes indicated:

	2001-02	2002-03
20.410 Corrections, department of		
(1) ADULT CORRECTIONAL SERVICES		

" (be) Postconviction evidence testing

costs

GPR A

-0-

-0- "

#, Page 350, line 16: after that line insert:

" SECTION 20.410 (1) (be) of the statutes is created to read:

20.410 (1) (be) *Postconviction evidence testing costs.* The amounts in the schedule for the costs of performing forensic deoxyribonucleic acid testing for indigent persons under s. 974.07, pursuant to a court order issued under s. 974.07

(12). "

ASSEMBLY BILL, 291 ✓

#. Page 960, line 10: after that line insert:

1 "SECTION ~~3~~^{2852C} 165.77 (2) (a) 2. of the statutes is amended to read:

2 165.77 (2) (a) 2. The laboratories may compare the data obtained from the
3 specimen with data obtained from other specimens. The laboratories may make data
4 obtained from any analysis and comparison available to law enforcement agencies
5 in connection with criminal or delinquency investigations and, upon request, to any
6 prosecutor, defense attorney or subject of the data. The data may be used in criminal
7 and delinquency actions and proceedings. ~~In this state, the use is subject to s. 972.11~~
8 (5). The laboratories shall not include data obtained from deoxyribonucleic acid
9 analysis of those specimens received under this paragraph in the data bank under
10 sub. (3). The laboratories shall destroy specimens obtained under this paragraph
11 after analysis has been completed and the applicable court proceedings have
12 concluded.

13 SECTION ~~4~~^{2852C} 165.77 (2m) of the statutes is created to read:

14 165.77 (2m) (a) If the laboratories receive biological material under a court
15 order issued under s. 974.07 (8),[✓] the laboratories shall analyze the deoxyribonucleic
16 acid in the material and submit the results of the analysis to the court that ordered
17 the analysis.

18 (b) The laboratories may compare the data obtained from material received
19 under par. (a) with data obtained from other specimens. The laboratories may make
20 data obtained from any analysis and comparison available to law enforcement
21 agencies in connection with criminal or delinquency investigations and, upon
22 request, to any prosecutor, defense attorney, or subject of the data. The data may be
23 used in criminal and delinquency actions and proceedings. The laboratories shall not
24 include data obtained from deoxyribonucleic acid analysis of material received under
25 par. (a) in the data bank under sub. (3).

ASSEMBLY BILL 291

SECTION 4

1 (c) Paragraph (b) does not apply to specimens received under s. 51.20 (13) (cr),
2 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063. ✓

3 SECTION ^{2858g} 165.77 (3) of the statutes is amended to read:

4 165.77 (3) If the laboratories receive a human biological specimen under s.
5 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063, the
6 laboratories shall analyze the deoxyribonucleic acid in the specimen. The
7 laboratories shall maintain a data bank based on data obtained from
8 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
9 the data obtained from one specimen with the data obtained from other specimens.
10 The laboratories may make data obtained from any analysis and comparison
11 available to law enforcement agencies in connection with criminal or delinquency
12 investigations and, upon request, to any prosecutor, defense attorney or subject of
13 the data. The data may be used in criminal and delinquency actions and proceedings.
14 ~~In this state, the use is subject to s. 972.11 (5).~~ The laboratories shall destroy
15 specimens obtained under this subsection after analysis has been completed and the
16 applicable court proceedings have concluded.

17 SECTION ²⁸⁵⁸ⁱ 165.81 (1) of the statutes is amended to read:

18 165.81 (1) Whenever the department is informed by the submitting officer or
19 agency that physical evidence in the possession of the laboratories is no longer
20 needed the department may, except as provided in sub. (3) or unless otherwise
21 provided by law, either destroy the same, retain it in the laboratories or turn it over
22 to the University of Wisconsin upon the request of the head of any department.
23 ~~Whenever~~ Except as provided in sub. (3), whenever the department receives
24 information from which it appears probable that the evidence is no longer needed,
25 the department may give written notice to the submitting agency and the

ASSEMBLY BILL 291

1 appropriate district attorney, by registered mail, of the intention to dispose of the
2 evidence. If no objection is received within 20 days after the notice was mailed, it may
3 dispose of the evidence.

4 SECTION ^{2852K} 165.81 (3) of the statutes is created to read:

5 165.81 (3) (a) In this subsection:

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

7 2. "Discharge date" has the meaning given in s. 968.205 (1) (b). ✓

8 (b) Except as provided in par. (c), if physical evidence that is in the possession
9 of the laboratories includes any biological material that was collected in connection
10 with a criminal investigation that resulted in a criminal conviction, a delinquency
11 adjudication, or commitment under s. 971.17 or ⁹ (s.) 980.06, the laboratories shall
12 preserve the physical evidence until every person in custody as a result of the
13 conviction, adjudication, or commitment has reached his or her discharge date.

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

16 1. The department sends a notice of its intent to destroy the biological material
17 to all persons who remain in custody as a result of the criminal conviction,
18 delinquency adjudication, or commitment, and to either the attorney of record for
19 each person in custody or the state public defender.

20 2. No person who is notified under subd. 1. does either of the following within
21 90 days after the date on which the person received the notice:

22 a. Files a motion for testing of the biological material under s. [✓]974.07 (2).

23 b. Submits a written request to preserve the biological material to the
24 department.

ASSEMBLY BILL 291

SECTION 7

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

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

8 (e) If, after providing notice under par. (c) 1. of its intent to destroy biological
9 material, the department receives a written request to preserve the material, the
10 department shall preserve the material until the discharge date of the person who
11 made the request or on whose behalf the request was made, subject to a court order
12 issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court authorizes
13 destruction of the biological material under s. 974.07 (9) (b) or (10) (a) 5.

14 #. Page 1184, line 3: after that line insert:
SECTION 757.54 of the statutes is renumbered 757.54 (1) and amended to
15 read: 3780c

16 757.54 (1) The Except as provided in sub. (2), the retention and disposal of all
17 court records and exhibits in any civil or criminal action or proceeding or probate
18 proceeding of any nature in a court of record shall be determined by the supreme
19 court by rule.

20 SECTION 757.54 (2) of the statutes is created to read: 3780d

21 757.54 (2) (a) In this subsection:

- 22 1. "Custody" has the meaning given in s. 968.205 (1) (a).
23 2. "Discharge date" has the meaning given in s. 968.205 (1) (b).

24 (b) Except as provided in par. (c), if an exhibit in a criminal action or a
25 delinquency proceeding under ch. 938 includes any biological material that was

ASSEMBLY BILL 291

1 collected in connection with the action or proceeding, the court presiding over the
2 action or proceeding shall ensure that the exhibit is preserved until every person in
3 custody as a result of the action or proceeding, or as a result of commitment under
4 s. 980.06 that is based on a judgment of guilty or not guilty by reason of mental
5 disease or defect in the action or proceeding, has reached his or her discharge date.

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

8 1. The court sends a notice of its intent to destroy the biological material to all
9 persons who remain in custody as a result of the criminal action, delinquency
10 proceeding, or commitment under s. 980.06[✓] and to either the attorney of record for
11 each person in custody or the state public defender.

12 2. No person who is notified under subd. 1. does either of the following within
13 90 days after the date on which the person received the notice:

14 a. Files a motion for testing of the biological material under s. 974.07 (2)[✓].

15 b. Submits a written request to preserve the biological material to the court.

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

18 (d) A notice provided under par. (c) 1. shall clearly inform the recipient that the
19 biological material will be destroyed unless, within 90 days after the date on which
20 the person receives the notice, either a motion for testing of the material is filed
21 under s. 974.07 (2)[✓] or a written request to preserve the material is submitted to the
22 court.

23 (e) If, after providing notice under par. (c) 1. of its intent to destroy biological
24 material, a court receives a written request to preserve the material, the court shall
25 preserve the material until the discharge date of the person who made the request

ASSEMBLY BILL 291

SECTION 9

1 or on whose behalf the request was made, subject to a court order issued under s.
2 974.07 (7), (9) (a), or (10) (a) 5., unless the court authorizes destruction of the

3 biological material under s. 974.07 (9) (b) or (10) (a) 5.
Page 1205, line 21: after that line insert:

4 SECTION 10. 801.02 (7) (a) 2. c. of the statutes is amended to read:

5 801.02 (7) (a) 2. c. A person bringing an action seeking relief from a judgment
6 of conviction or a sentence of a court, including an action for an extraordinary writ
7 or a supervisory writ seeking relief from a judgment of conviction or a sentence of a
8 court or an action under s. 809.30, 809.40, 973.19 or, 974.06 or 974.07.

9 SECTION 11. 805.15 (3) (intro.) of the statutes is amended to read:

10 805.15 (3) (intro.) -A- Except as provided in ss. 974.07 (10) (b) and 980.101 (2)
11 (b), a new trial shall be ordered on the grounds of newly-discovered evidence if the
12 court finds that:

Insert 1-3

13 SECTION 12. 805.16 (5) of the statutes is created to read:

14 805.16 (5) The time limits in this section for filing motions do not apply to
15 motions made under s. 974.07 (2) or 980.101.

Page 1206, line 4: after that line insert:

16 SECTION 13. 808.075 (4) (h) of the statutes is amended to read:

17 808.075 (4) (h) Commitment, supervised release, recommitment and,
18 discharge, and postcommitment relief under ss. 980.06, 980.08, 980.09 and, 980.10,
19 and 980.101 of a person found to be a sexually violent person under ch. 980.

20 SECTION 14. 809.30 (1) (a) of the statutes is amended to read:

21 809.30 (1) (a) "Postconviction relief" means, in a felony or misdemeanor case,
22 an appeal or a motion for postconviction relief other than a motion under s. 973.19
23 or, 974.06 or 974.07 (2). In a ch. 48, 51, 55 or 938 case, other than a termination of
24 parental rights case under s. 48.43, it means an appeal or a motion for
25 reconsideration by the trial court of its final judgment or order; in such cases a notice

805.15 (1) based on newly discovered evidence, or under 15.

ASSEMBLY BILL 291

1 of intent to pursue such relief or a motion for such relief need not be styled as seeking
2 "postconviction" relief.

3 SECTION ~~18.~~ ^{3829D} 809.30 (2) (L) of the statutes is amended to read:

4 809.30 (2) (L) An appeal under s. 974.06 or 974.07 is governed by the
5 procedures for civil appeals."

#. Page

1223, line 4: after that line insert:

6 "SECTION ~~18.~~ ^{3889P} 938.293 (2) of the statutes is amended to read:

7 938.293 (2) All records relating to a juvenile which are relevant to the subject
8 matter of a proceeding under this chapter shall be open to inspection by a guardian
9 ad litem or counsel for any party, upon demand and upon presentation of releases
10 where necessary, at least 48 hours before the proceeding. Persons entitled to inspect
11 the records may obtain copies of the records with the permission of the custodian of
12 the records or with the permission of the court. The court may instruct counsel not
13 to disclose specified items in the materials to the juvenile or the parent if the court
14 reasonably believes that the disclosure would be harmful to the interests of the
15 juvenile. ~~Sections~~ Section 971.23 and 972.11 (5) shall be applicable in all delinquency
16 proceedings under this chapter, except that the court shall establish the timetable
17 for the disclosures required under ss. s. 971.23 (1), (2m) and (8), and 972.11 (5) (9).

18 SECTION ~~18.~~ ^{3889r} 938.299 (4) (a) of the statutes is amended to read:

19 938.299 (4) (a) Chapters 901 to 911 govern the presentation of evidence at the
20 fact-finding hearing under s. 938.31. ~~Section 972.11 (5) applies at fact-finding~~
21 ~~proceedings in all delinquency proceedings under this chapter.~~ "

22 SECTION 18. 938.46 of the statutes is amended to read:

23 938.46 New evidence. A juvenile whose status is adjudicated by the court
24 under this chapter, or the juvenile's parent, guardian or legal custodian, may at any
25 time within one year after the entering of the court's order petition the court for a

#. Page 1224, line 13: after that line insert:

Insert 1-12 →

ASSEMBLY BILL 291

SECTION 18

1 rehearing on the ground that new evidence has been discovered affecting the
 2 advisability of the court's original adjudication. Upon a showing that such evidence
 3 does exist, the court shall order a new hearing. This section does not apply to motions
 4 made under s. 974.07 (2).

5 SECTION 19. 939.74 (1) of the statutes is amended to read:

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

11 SECTION 20. 939.74 (2) (c) of the statutes is amended to read:

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

15 (e) *1232, line 19: delete the material beginning with that line and*
 # *Page ending on page 1233, line 13, and sub. (2) (c):*
 16 SECTION 21. 939.74 (2d) of the statutes is created to read:
23936c ✓

17 939.74 (2d) (a) In this subsection, "deoxyribonucleic acid profile" means an
 18 individual's patterned chemical structure of genetic information identified by
 19 analyzing biological material that contains the individual's deoxyribonucleic acid.

20 (b) If before the time limitation under sub. (1) expired, the state collected
 21 biological material that is evidence of the identity of the person who committed a
 22 violation of s. 940.225 (1) or (2),[✓] the state identified a deoxyribonucleic acid profile
 23 from the biological material, and comparisons of that deoxyribonucleic acid profile
 24 to deoxyribonucleic acid profiles of known persons did not result in a probable
 25 identification of the person who is the source of the biological material, the state may

ASSEMBLY BILL 291

1 commence prosecution of the person who is the source of the biological material for
2 violation of s. 940.225 (1) or (2) within 12 months after comparison of the
3 deoxyribonucleic acid profile relating to the violation results in a probable
4 identification of the person.

5 (c) If before the time limitation under sub. (2) (c) expired, the state collected
6 biological material that is evidence of the identity of the person who committed a
7 violation of s. 948.02 (1) or (2) or 948.025, the state identified a deoxyribonucleic acid
8 profile from the biological material, and comparisons of that deoxyribonucleic acid
9 profile to deoxyribonucleic acid profiles of known persons did not result in a probable
10 identification of the person who is the source of the biological material, the state may
11 commence prosecution of the person who is the source of the biological material for
12 violation of s. 948.02 (1) or (2) or 948.025 within 12 months after comparison of the
13 deoxyribonucleic acid profile relating to the violation results in a probable
14 identification of the person.

Page 1250, line 5; after that line insert:

15 "SECTION 22. 950.04 (1v) (s) of the statutes is amended to read:
23984j

16 950.04 (1v) (s) To have any stolen or other personal property expeditiously
17 returned by law enforcement agencies when no longer needed as evidence, subject
18 to s. 968.205. If feasible, all such property, except weapons, currency, contraband,
19 property subject to evidentiary analysis, property subject to preservation under s.
20 968.205, and property the ownership of which is disputed, shall be returned to the

21 person within 10 days of being taken."
Page 1250, line 14; after that line insert:

22 "SECTION 22. 950.04 (1v) (yd) of the statutes is created to read:
23984p

23 950.04 (1v) (yd) To have the appropriate clerk of court make a reasonable
24 attempt to send the victim a copy of a motion made under s. 974.07 (2) for

if there is probable cause to believe that the biological material was left by the person at the time the violation was committed

ASSEMBLY BILL 291

SECTION 23

1 postconviction deoxyribonucleic acid testing of certain evidence and notification of
2 any hearing on that motion, as provided under s. 974.07 (4). "

Page 125b, line 4: after that line insert:

3 "SECTION ^{23998C}~~24~~. 968.20 (1) (intro.) of the statutes is amended to read:

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

13 SECTION ^{3998e}~~25~~. 968.20 (2) of the statutes is amended to read:

14 968.20 (2) Property not required for evidence or use in further investigation,
15 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205,
16 may be returned by the officer to the person from whom it was seized without the
17 requirement of a hearing.

18 SECTION ^{3998g}~~26~~. 968.20 (4) of the statutes is amended to read:

19 968.20 (4) Any property seized, other than property covered under s. 968.205,
20 which that poses a danger to life or other property in storage, transportation or use
21 and which that is not required for evidence or further investigation shall be safely
22 disposed of upon command of the person in whose custody they are committed. The
23 city, village, town or county shall by ordinance or resolution establish disposal
24 procedures. Procedures may include provisions authorizing an attempt to return to
25 the rightful owner substances which have a commercial value in normal business

ASSEMBLY BILL 291

1 usage and do not pose an immediate threat to life or property. If enacted, any such
2 provision shall include a presumption that if the substance appears to be or is
3 reported stolen an attempt will be made to return the substance to the rightful owner.

4 SECTION ~~27~~³⁵⁹⁸. 968.205 of the statutes is created to read:

5 **968.205 Preservation of certain evidence.** (1) In this section:

6 (a) “Custody” means actual custody of a person under a sentence of
7 imprisonment, custody of a probationer, parolee, or person on extended supervision
8 by the department of corrections, actual or constructive custody of a person pursuant
9 to a dispositional order under ch. 938[✓], supervision of a person, whether in
10 institutional care or on conditional release, pursuant to a commitment order under
11 s. 971.17[✓] and supervision of a person under ch. 980, whether in detention before trial
12 or while in institutional care or on supervised release pursuant to a commitment
13 order.

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

19 (2) Except as provided in sub. (3), if physical evidence that is in the possession
20 of a law enforcement agency includes any biological material that was collected in
21 connection with a criminal investigation that resulted in a criminal conviction,
22 delinquency adjudication, or commitment under s. 971.17 or 980.06, the law
23 enforcement agency shall preserve the physical evidence until every person in
24 custody as a result of the conviction, adjudication, or commitment has reached his
25 or her discharge date.

ASSEMBLY BILL 291

SECTION 27

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

4 (a) The law enforcement agency sends a notice of its intent to destroy the
5 biological material to all persons who remain in custody as a result of the criminal
6 conviction, delinquency adjudication, or commitment, and to either the attorney of
7 record for each person in custody or the state public defender.

8 (b) No person who is notified under par. (a) does either of the following within
9 90 days after the date on which the person received the notice:

10 1. Files a motion for testing of the biological material under s. 974.07 (2).

11 2. Submits a written request to preserve the biological material to the law
12 enforcement agency or district attorney.

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

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

20 (5) If, after providing notice under sub. (3) (a) of its intent to destroy biological
21 material, a law enforcement agency receives a written request to preserve the
22 material, the law enforcement agency shall preserve the material until the discharge
23 date of the person who made the request or on whose behalf the request was made,
24 subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court
25 authorizes destruction of the biological material under s. 974.07 (9) (b) or (10) (a) 5.

ASSEMBLY BILL 291

3998n

1 SECTION ~~28~~. 971.04 (3) of the statutes is amended to read:

2 971.04 (3) If the defendant is present at the beginning of the trial and
3 thereafter, during the progress of the trial or before the verdict of the jury has been
4 returned into court, voluntarily absents himself or herself from the presence of the
5 court without leave of the court, the trial or return of verdict of the jury in the case
6 shall not thereby be postponed or delayed, but the trial or submission of said case to
7 the jury for verdict and the return of verdict thereon, if required, shall proceed in all
8 respects as though the defendant were present in court at all times. A defendant
9 need not be present at the pronouncement or entry of an order granting or denying
10 relief under s. 974.02 ~~or~~, 974.06, or 974.07. If the defendant is not present, the time
11 for appeal from any order under ss. 974.02 ~~and~~, 974.06, and 974.07 shall commence
12 after a copy has been served upon the attorney representing the defendant, or upon
13 the defendant if he or she appeared without counsel. Service of such an order shall
14 be complete upon mailing. A defendant appearing without counsel shall supply the
15 court with his or her current mailing address. If the defendant fails to supply the
16 court with a current and accurate mailing address, failure to receive a copy of the
17 order granting or denying relief shall not be a ground for tolling the time in which
18 an appeal must be taken. " ✓

Page 1258, line 7; after that line insert:

19 " SECTION ~~28~~. 971.23 (1) (e) of the statutes is amended to read:

24002r

20 971.23 (1) (e) Any relevant written or recorded statements of a witness named
21 on a list under par. (d), including any videotaped oral statement of a child under s.
22 908.08, any reports or statements of experts made in connection with the case or, if
23 an expert does not prepare a report or statement, a written summary of the expert's
24 findings or the subject matter of his or her testimony, and the results of any physical
25 or mental examination, scientific test, experiment or comparison that the district

ASSEMBLY BILL 291

SECTION 29

1 attorney intends to offer in evidence at trial. ~~This paragraph does not apply to~~
2 ~~reports subject to disclosure under s. 972.11 (5).~~

3 ^{4002t} SECTION ~~80~~ 971.23 (2m) (am) of the statutes is amended to read:

4 971.23 (2m) (am) Any relevant written or recorded statements of a witness
5 named on a list under par. (a), including any reports or statements of experts made
6 in connection with the case or, if an expert does not prepare a report or statement,
7 a written summary of the expert's findings or the subject matter of his or her
8 testimony, and including the results of any physical or mental examination, scientific
9 test, experiment or comparison that the defendant intends to offer in evidence at
10 trial. ~~This paragraph does not apply to reports subject to disclosure under s. 972.11~~
11 ~~(5).~~

12 ^{4002r ✓} SECTION ~~81~~ 971.23 (9) of the statutes is created to read:

13 971.23 (9) DEOXYRIBONUCLEIC ACID EVIDENCE. (a) In this subsection
14 “deoxyribonucleic acid profile” has the meaning given in s. 939.74 (2d) (a). ✓

15 (b) Notwithstanding sub. (1) (e) or (2m) (am), if either party intends to submit
16 deoxyribonucleic acid profile evidence at a trial to prove or disprove the identity of
17 a person, the party seeking to introduce the evidence shall notify the other party of
18 the intent to introduce the evidence in writing by mail at least 45 days before the date
19 set for trial; and shall provide the other party, within 15 days of request, the material
20 identified under sub. (1) (e), or par. (2m) (am), whichever is appropriate, that relates
21 to the evidence.

22 (c) The court shall exclude dcoxyribonucleic acid profile evidence at trial, if the
23 notice and production deadlines under par. (b) are not met, except the court may
24 waive the 45 day notice requirement or may extend the 15 day production
25 requirement upon stipulation of the parties, or for good cause, if the court finds that

ASSEMBLY BILL 291

1 no party will be prejudiced by the waiver or extension. The court may in appropriate

2 cases grant the opposing party a recess or continuance."

Page 1258, line 15: after that line insert:

3 "SECTION ~~22~~ 972.11 (1) of the statutes is amended to read:
4003r

4 972.11 (1) Except as provided in subs. (2) to (5) (4), the rules of evidence and
5 practice in civil actions shall be applicable in all criminal proceedings unless the
6 context of a section or rule manifestly requires a different construction. No guardian
7 ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895,
8 except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal
9 proceedings.

4003t ✓

10 SECTION ~~23~~ 972.11 (5) of the statutes is repealed. "

Page 1271, line 6: after that line insert:

11 "SECTION ~~24~~ 974.02 (1) of the statutes is amended to read:
4028c

12 974.02 (1) A motion for postconviction relief other than under s. 974.06 or
13 974.07 (2) by the defendant in a criminal case shall be made in the time and manner
14 provided in ss. 809.30 and 809.40. An appeal by the defendant in a criminal case from
15 a judgment of conviction or from an order denying a postconviction motion or from
16 both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and
17 809.40. An appeal of an order or judgment on habeas corpus remanding to custody
18 a prisoner committed for trial under s. 970.03 shall be taken under ss. 808.03 (2) and
19 809.50, with notice to the attorney general and the district attorney and opportunity
20 for them to be heard.

Insert 2-17 →

21 SECTION ~~25~~ 974.05 (1) (b) of the statutes is amended to read:
4028g

22 974.05 (1) (b) Order granting postconviction relief under s. 974.02 or, 974.06
23 or 974.07.

4028j

24 SECTION ~~26~~ 974.07 of the statutes is created to read:

a motion under s. 805.15 (1) based on newly discovered evidence or a motion

1 **974.07 Motion for postconviction deoxyribonucleic acid testing of**
2 **certain evidence.** (1) In this section:

3 (a) “Movant” means a person who makes a motion under sub. (2).

4 (b) “Government agency” means any department, agency, or court of the federal
5 government, of this state, or of a city, village, town, or county in this state.

6 (2) At any time after being convicted of a crime, adjudicated delinquent, or
7 found not guilty by reason of mental disease or defect, a person may make a motion
8 in the court in which he or she was convicted, adjudicated delinquent, or found not
9 guilty by reason of mental disease or defect for an order requiring forensic
10 deoxyribonucleic acid testing of evidence to which all of the following apply:

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

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

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

21 (3) A movant or, if applicable, his or her attorney shall serve a copy of the
22 motion made under sub. (2) on the district attorney’s office that prosecuted the case
23 that resulted in the conviction, adjudication, or finding of not guilty by reason of
24 mental disease or defect. The court in which the motion is made shall also notify the
25 appropriate district attorney’s office that a motion has been made under sub. (2) and

ASSEMBLY BILL 291

1 shall give the district attorney an opportunity to respond to the motion. Failure by
2 a movant to serve a copy of the motion on the appropriate district attorney's office
3 does not deprive the court of jurisdiction and is not grounds for dismissal of the
4 motion.

5 (4) (a) The clerk of the circuit court in which a motion under sub. (2) is made
6 shall send a copy of the motion and, if a hearing on the motion is scheduled, a notice
7 of the hearing to the victim of the crime or delinquent act committed by the movant,
8 if the clerk is able to determine an address for the victim. The clerk of the circuit court
9 shall make a reasonable attempt to send the copy of the motion to the address of the
10 victim within 7 days of the date on which the motion is filed and shall make a
11 reasonable attempt to send a notice of hearing, if a hearing is scheduled, to the
12 address of the victim, postmarked at least 10 days before the date of the hearing.

13 (b) Notwithstanding the limitation on the disclosure of mailing addresses from
14 completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046
15 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.11⁰5 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2),
16 971.17 (6m) (d), and 980.11 (4), the department of corrections, the parole commission,
17 and the department of health and family services shall, upon request, assist clerks
18 of court in obtaining information regarding the mailing address of victims for the
19 purpose of sending copies of motions and notices of hearings under par. (a).

20 (5) Upon receiving under sub. (3) a copy of a motion made under sub. (2) or
21 notice from a court that a motion has been made, whichever occurs first, the district
22 attorney shall take all actions necessary to ensure that all biological material that
23 was collected in connection with the investigation or prosecution of the case and that
24 remains in the actual or constructive custody of a government agency is preserved
25 pending completion of the proceedings under this section.

ASSEMBLY BILL 291

SECTION 36

1 (6) (a) Upon demand the district attorney shall disclose to the movant or his
2 or her attorney whether biological material has been tested and shall make available
3 to the movant or his or her attorney the following material:

4 1. Findings based on testing of biological materials.

5 2. Physical evidence that is in the actual or constructive possession of a
6 government agency and that contains biological material or on which there is
7 biological material.

8 (b) Upon demand the movant or his or her attorney shall disclose to the district
9 attorney whether biological material has been tested and shall make available to the
10 district attorney the following material:

11 1. Findings based on testing of biological materials.

12 2. The movant's biological specimen.

13 (c) Upon motion of the district attorney or the movant, the court may impose
14 reasonable conditions on availability of material requested under pars. (a) 2. and (b)
15 2. in order to protect the integrity of the evidence.

16 (d) This subsection does not apply unless the information being disclosed or the
17 material being made available is relevant to the movant's claim of innocence at issue
18 in the motion made under sub. (2).

19 (7) (a) A court in which a motion under sub. (2) is filed shall order forensic
20 deoxyribonucleic acid testing if all of the following apply:

21 1. It is reasonably probable that the movant would not have been prosecuted,
22 convicted, found not guilty by reason of mental discase or defect, or adjudicated
23 delinquent for the offense at issue in the motion under sub. (2), if exculpatory
24 deoxyribonucleic acid testing results had been available before the prosecution,
25 conviction, finding of not guilty, or adjudication for the offense.

ASSEMBLY BILL 291

1 2. The evidence is in the actual or constructive possession of a government
2 agency.

3 3. The chain of custody of the evidence to be tested establishes that the evidence
4 has not been tampered with, replaced, or altered in any material respect or, if the
5 chain of custody does not establish the integrity of the evidence, the testing itself can
6 establish the integrity of the evidence.

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

12 (b) A court in which a motion under sub. (2) is filed may order forensic
13 deoxyribonucleic acid testing if all of the following apply:

14 1. The conviction or sentence in a criminal proceeding, the finding of not guilty
15 by reason of mental disease or defect, the commitment under s. 971.17, or the
16 adjudication or disposition in a proceeding under ch. 938, would have been more
17 favorable to the movant if the results of deoxyribonucleic acid testing had been
18 available before he or she was prosecuted, convicted, found not guilty by reason of
19 mental disease or defect, or adjudicated delinquent for the offense.

20 2. The evidence is in the actual or constructive possession of a government
21 agency.

22 3. The chain of custody of the evidence to be tested establishes that the evidence
23 has not been tampered with, replaced, or altered in any material respect or, if the
24 chain of custody does not establish the integrity of the evidence, the testing itself can
25 establish the integrity of the evidence.

or if the court determines that testing is in
the interest of justice

ASSEMBLY BILL 291

SECTION 36

1 4. The evidence has not previously been subjected to forensic deoxyribonucleic
2 acid testing or, if the evidence has previously been tested, it may now be subjected
3 to another test using a scientific technique that was not available or was not utilized
4 at the time of the previous testing and that provides a reasonable likelihood of more
5 accurate and probative results.

6 (8) The court may impose reasonable conditions on any testing ordered under
7 this section in order to protect the integrity of the evidence and the testing process.
8 If appropriate and if stipulated to by the movant and the district attorney, the court
9 may order the state crime laboratories to perform the testing as provided under s.
10 165.77 (2m).

11 (9) If a court in which a motion under sub. (2) is filed does not order forensic
12 deoxyribonucleic acid testing, or if the results of forensic deoxyribonucleic acid
13 testing ordered under this section are not supportive of the movant's innocence
14 claim, the court shall determine the disposition of the evidence specified in the
15 motion subject to the following:

16 (a) If a person other than the movant is in custody, as defined in s. 968.205 (1)
17 (a), the evidence is relevant to the criminal, delinquency, or commitment proceeding
18 that resulted in the person being in custody, the person has not been denied
19 deoxyribonucleic acid testing or postconviction relief under this section, and the
20 person has not waived his or her right to preserve the evidence under s. 165.81 (3),
21 757.54 (2), 968.205, or 978.08, the court shall order the evidence preserved until all
22 persons entitled to have the evidence preserved are released from custody, and the
23 court shall designate who shall preserve the evidence.

24 (b) If the conditions in par. (a) are not present, the court shall determine the
25 disposition of the evidence, and, if the evidence is to be preserved, by whom and for

ASSEMBLY BILL 291

1 how long. The court shall issue appropriate orders concerning the disposition of the
2 evidence based on its determinations.

3 (10) (a) If the results of forensic deoxyribonucleic acid testing ordered under
4 this section support the movant's claim of innocence, the court shall schedule a
5 hearing to determine the appropriate relief to be granted to the movant. After the
6 hearing, and based on the results of the testing and any evidence or other matter
7 presented at the hearing, the court shall enter any order that serves the interests of
8 justice, including any of the following:

9 1. An order setting aside or vacating the movant's judgment of conviction,
10 judgment of not guilty by reason of mental disease or defect, or adjudication of
11 delinquency.

12 2. An order granting the movant a new trial or fact-finding hearing.

13 3. An order granting the movant a new sentencing hearing, commitment
14 hearing, or dispositional hearing.

15 4. An order discharging the movant from custody, as defined in s. 968.205 (1)
16 (a), if the movant is in custody.

17 5. An order specifying the disposition of any evidence that remains after the
18 completion of the testing, subject to sub. (9) (a) and (b).

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

21 (11) A court considering a motion made under sub. (2) by a movant who is not
22 represented by counsel shall, if the movant claims or appears to be indigent, refer the
23 movant to the state public defender for determination of indigency and appointment
24 of counsel under s. 977.05 (4) (j).

ASSEMBLY BILL 291

SECTION 36

1 (12) (a) The court may order a movant to pay the costs of any testing ordered
 2 by the court under this section if the court determines that the movant is not
 3 indigent. If the court determines that the movant is indigent, the court shall order
 4 the costs of the testing to be paid for from the appropriation account under s. 20.410
 5 (1) (be).[✓]

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

7 1. The movant was referred to the state public defender under sub. (11) for a
 8 determination of indigency and was found to be indigent.

9 2. The movant was referred to the state public defender under sub. (11) for a
 10 determination of indigency but was found not to be indigent, and the court
 11 determines that the movant does not possess the financial resources to pay the costs
 12 of testing.

13 3. The movant was not referred to the state public defender under sub. (11) for
 14 a determination of indigency and the court determines that the movant does not
 15 possess the financial resources to pay the costs of testing.

16 (13) An appeal may be taken from an order entered under this section as from
 17 a final judgment.[✓]

Page 1271, line 13: after that line insert:

18 " SECTION ~~31~~ 977.07 (1) (b) of the statutes is amended to read:
 2 4031C

19 977.07 (1) (b) For referrals not made under ss. 809.30 and, 974.06⁽²⁾ and 974.07,
 20 a representative of the state public defender is responsible for making indigency
 21 determinations unless the county became responsible under s. 977.07 (1) (b) 2. or 3.,
 22 1983 stats., for these determinations. Subject to the provisions of par. (bn), those
 23 counties may continue to be responsible for making indigency determinations. Any
 24 such county may change the agencies or persons who are designated to make
 25 indigency determinations only upon the approval of the state public defender.

ASSEMBLY BILL 291

1 ^{4031e}
SECTION ~~38~~. 977.07 (1) (c) of the statutes is amended to read:

2 977.07 (1) (c) For all referrals made under ss. 809.30 ~~and~~, 974.06 (3) (b) and
3 974.07 (11), except a referral of a child who is entitled to be represented by counsel
4 under s. 48.23 or 938.23, a representative of the state public defender shall
5 determine indigency, ~~and~~. For referrals made under ss. 809.30 and 974.06 (3) (b),
6 except a referral of a child who is entitled to be represented by counsel under s. 48.23
7 or 938.23, the representative of the state public defender may, unless a request for
8 redetermination has been filed under s. 809.30 (2) (d) or the defendant's request for
9 representation states that his or her financial circumstances have materially
10 improved, rely upon a determination of indigency made for purposes of trial
11 representation under ^{letter} (this section).

12 SECTION ~~38~~. ^{4031s} 978.08 of the statutes is created to read:

13 **978.08 Preservation of certain evidence.** (1) In this section:

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

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

16 (2) Except as provided in sub. (3), if physical evidence that is in the possession
17 of a district attorney includes any biological material that was collected in connection
18 with a criminal investigation that resulted in a criminal conviction, delinquency
19 adjudication, or commitment under s. 971.17 or 980.06, the district attorney shall
20 preserve the physical evidence until every person in custody as a result of the
21 conviction, adjudication, or commitment has reached his or her discharge date.

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

24 (a) The district attorney sends a notice of its intent to destroy the biological
25 material to all persons who remain in custody as a result of the criminal conviction,

ASSEMBLY BILL 291

SECTION 39

1 delinquency adjudication, or commitment and to either the attorney of record for
2 each person in custody or the state public defender.

3 (b) No person who is notified under par. (a) does either of the following within
4 90 days after the date on which the person received the notice:

5 1. Files a motion for testing of the biological material under s. 974.07 (2).

6 2. Submits a written request to preserve the biological material to the district
7 attorney.

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

10 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that
11 the biological material will be destroyed unless, within 90 days after the date on
12 which the person receives the notice, either a motion for testing of the material is
13 filed under s. 974.07 (2) or a written request to preserve the material is submitted
14 to the district attorney.

15 (5) If, after providing notice under sub. (3) (a) of its intent to destroy biological
16 material, a district attorney receives a written request to preserve the material, the
17 district attorney shall preserve the material until the discharge date of the person
18 who made the request or on whose behalf the request was made, subject to a court
19 order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court authorizes
20 destruction of the biological material under s. 974.07 (9) (b) or (10) (a) 5.) ✓

21 # Page 1280, line 20: after that line insert:
SECTION 40. 980.101 of the statutes is created to read:

22 980.101 Reversal, vacation or setting aside of judgment relating to a
23 sexually violent offense; effect. (1) In this section, "judgment relating to a
24 sexually violent offense" means a judgment of conviction for a sexually violent
25 offense, an adjudication of delinquency on the basis of a sexually violent offense, or

ASSEMBLY BILL 291

1 a judgment of not guilty of a sexually violent offense by reason of mental disease or
2 defect.

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

9 (a) If the sexually violent offense was the sole basis for the allegation under s.
10 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense
11 committed by the person, the court shall reverse, set aside, or vacate the judgment
12 under s. 980.05 (5) that the person is a sexually violent person, vacate the
13 commitment order, and discharge the person from the custody or supervision of the
14 department.

15 (b) If the sexually violent offense was the sole basis for the allegation under s.
16 980.02 (2) (a) but there are other judgments relating to a sexually violent offense
17 committed by the person that have not been reversed, set aside, or vacated, or if the
18 sexually violent offense was not the sole basis for the allegation under s. 980.02 (2)
19 (a), the court shall determine whether to grant the person a new trial under s. 980.05
20 because the reversal, setting aside, or vacating of the judgement for the sexually
21 violent offense would probably change the result of the trial.

22 (3) An appeal may be taken from an an order entered under sub. (2) as from
23 a final judgment. " ✓

24 ~~SECTION 41. Initial applicability.~~

ASSEMBLY BILL 291

SECTION 41

Page 1416, line 16: after that line insert

1 " (12c) The treatment of section 939.74 (1), (2) (c), and (2d) of the statutes first
2 applies to offenses not barred from prosecution on the effective date of this
3 subsection. "

4 ~~SECTION 42. Effective dates. This act takes effect on the day after publication,~~
5 ~~except as follows:~~

6 ~~(1) The treatment of sections 20.005 (3) (schedule), 20.410 (1) (be), and 974.07~~
7 ~~(12) of the statutes takes effect on the day after publication, or on the 2nd day after~~
8 ~~the publication of the 2001-2003 biennial budget act, whichever is later.~~

9 (END)

(12c) ^(CS) TIME LIMITATIONS ON PROSECUTIONS!