



## 2001 ASSEMBLY BILL 291

April 3, 2001 – Introduced by Representatives WALKER, WASSERMAN, BIES, BERCEAU, FREESE, GUNDERSON, GUNDRUM, HAHN, HUNDERTMARK, KESTELL, LADWIG, LA FAVE, F. LASEE, KREUSER, MCCORMICK, MUSSEY, NASS, OWENS, PLOUFF, REYNOLDS, STARZYK, TURNER, WADE, STONE, MILLER, KEDZIE, SYKORA, OLSEN, VRAKAS and BALOW, cosponsored by Senators BURKE, ERPENBACH, HUELSMAN, ROSENZWEIG and DARLING. Referred to Committee on Corrections and the Courts.

1     **AN ACT to repeal** 972.11 (5); **to renumber and amend** 757.54; **to amend** 165.77  
2     (2) (a) 2., 165.77 (3), 165.81 (1), 801.02 (7) (a) 2. c., 805.15 (3) (intro.), 808.075  
3     (4) (h), 809.30 (1) (a), 809.30 (2) (L), 938.293 (2), 938.299 (4) (a), 938.46, 939.74  
4     (1), 939.74 (2) (c), 950.04 (1v) (s), 968.20 (1) (intro.), 968.20 (2), 968.20 (4), 971.04  
5     (3), 971.23 (1) (e), 971.23 (2m) (am), 972.11 (1), 974.02 (1), 974.05 (1) (b), 977.07  
6     (1) (b) and 977.07 (1) (c); and **to create** 20.410 (1) (be), 165.77 (2m), 165.81 (3),  
7     757.54 (2), 805.16 (5), 939.74 (2d), 950.04 (1v) (yd), 968.205, 971.23 (9), 974.07,  
8     978.08 and 980.101 of the statutes; **relating to:** time limits for prosecution of  
9     certain sexual assault crimes, preservation of certain evidence, and  
10    postconviction and post commitment deoxyribonucleic acid testing of evidence.

*Analysis by the Legislative Reference Bureau*

***Time limits for prosecuting sexual assault***

Current law provides time limits for commencing the prosecution of most crimes, including sexual assault. The state must initiate prosecution within the time limit or is barred from prosecuting the offense. A prosecution is commenced when a court issues a summons or a warrant for arrest, when a grand jury issues an

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indictment, or when a district attorney files an information alleging that a person committed a specific crime. Time during which a defendant is either a nonresident of the state or is secretly a resident in concealment is not calculated as part of the time limit.

Under current law, the state must prosecute first and second degree sexual assault within six years of the date of the crime. The state must prosecute first and second degree sexual assault of a child, as well as repeated sexual assault of the same child, before the victim reaches the age of 31.

This bill creates an exception to the time limits for prosecuting the crimes of sexual assault, sexual assault of a child, and repeated sexual assault of the same child in certain circumstances if the state has deoxyribonucleic acid (DNA) evidence related to the crime. If the state collects and analyzes DNA evidence related to the crime before the time limit for prosecution expires and does not link the DNA evidence to an identified person until after the time limit expires, the state may initiate prosecution for the crime within one year of matching the DNA evidence to a known person.

***Postconviction deoxyribonucleic acid testing***

Current law provides several options for a person who is convicted of a crime, found not guilty by reason of mental disease or defect, or adjudicated delinquent to challenge his or her conviction, finding of not guilty by reason of mental disease or defect, or delinquency adjudication:

1. The person may file a motion for relief with the trial court, and upon losing the postconviction motion in the trial court may appeal to the appellate court. In some cases the person may bypass the trial court and proceed directly to the appellate court. To initiate either a request for relief from the trial court or to initiate an appeal the person must serve notice of intent to pursue postconviction relief within 20 days of sentencing.

2. The person may file a motion for a new trial on the basis of newly discovered evidence up to one year after a verdict is entered. In order to obtain a new trial the person must show that the new evidence came to the person's attention after the trial, the failure to discover the evidence was not due to lack of diligence, the evidence is material and not cumulative, and the new evidence would probably change the outcome.

3. At any time, a person serving time in prison under a sentence imposed by a state circuit court, or a person serving time under the volunteer probation program for a misdemeanor, who has exhausted direct appeal rights, may file a motion for release from custody under the state postconviction relief law if the person alleges that the sentence was imposed in violation of the U.S. or Wisconsin constitution, or in violation of other state law. In order to prevail on a motion for postconviction relief the person must have raised the issues contained in the motion for postconviction relief at trial or on appeal. A person may not make successive motions for postconviction relief.

4. At any time, a person whose liberty is restrained may seek state habeas corpus relief if the restraint of liberty is imposed in violation of the U.S. or Wisconsin

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constitution or in violation of the sentencing court's jurisdiction, and if no other adequate legal remedy is available to the person.

This bill provides an additional avenue to challenge a conviction, finding of not guilty by reason of mental disease or defect, or delinquency adjudication. The bill authorizes a person who was convicted of a crime, found not guilty by reason of mental disease or defect, or adjudicated delinquent to file a motion for testing of DNA evidence if 1) the evidence is relevant to the conviction, finding of not guilty by reason of mental disease or defect, or delinquency adjudication, 2) the evidence is in the possession of a government agency or court, and 3) the evidence was not previously subjected to DNA testing or was tested with a less advanced method than is currently available. An indigent person making a motion for postconviction DNA testing may be represented by a public defender.

The bill also establishes standards for courts to apply in determining whether to order testing of DNA evidence. A court must order testing if all of the following conditions exist: 1) it is reasonably probable that the person seeking testing would not have been convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent, if exculpatory DNA testing results had been available; 2) the evidence is in the actual or constructive possession of a government agency; 3) the chain of custody of the evidence establishes that it has not been tampered with, or testing can establish the integrity of the evidence; and 4) the evidence has not previously been tested, or was tested with a less advanced method of analysis. Whether to order testing is left to the discretion of the court if conditions 2), 3), and 4) are met and if the court finds that the outcome of a criminal or delinquency proceeding, including the sentence or other disposition, would have been more favorable to the person seeking testing of evidence, if DNA analysis had been available in the criminal or delinquency proceeding. If the person seeking testing is indigent or if the court determines that the person does not have the financial resources to pay for testing, the state is required to pay for testing.

Upon receiving test results that support the person's claim of innocence, the court is required to vacate the conviction, judgment of not guilty by reason of mental disease or defect, or delinquency adjudication, release the person from custody, grant a new trial, or grant a new sentencing hearing. If the person is committed to an institution as a sexually violent person, the court may vacate the commitment order, reverse the finding that the person is sexually violent, or grant the person a new trial to determine whether the person is a sexually violent person.

The bill directs courts, law enforcement agencies, district attorneys, and the state crime laboratories to preserve biological specimen evidence if a person in custody could potentially be exonerated as a result of DNA testing of the evidence and if the person in custody has not waived his or her right to preserve the evidence.

***Use of deoxyribonucleic acid testing evidence at trial***

Current law provides separate discovery rules for use of DNA evidence in a criminal or delinquency proceeding. The rules include a definition for DNA evidence that applies only to evidence obtained by using the restriction fragment length polymorphism (RFLP) technique of DNA analysis. More recently adopted DNA



~~ASSEMBLY AMENDMENT,  
TO 2001 ASSEMBLY BILL 291~~

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

2 ~~1. Page 10, line 12: after that line insert:~~

3 ~~SECTION <sup>38284</sup> ~~12m.~~ 805.16 (4) of the statutes is amended to read:~~

4 805.16 (4) Notwithstanding sub. (1), and except as provided in s. <sup>974.02</sup> 974.02 (1m),  
5 a motion for a new trial based on newly discovered evidence may be made at any time  
6 within one year after verdict. Unless an order granting or denying the motion is  
7 entered within 90 days after the motion is made, it shall be deemed denied.

8 ~~2. Page 10, line 22: before "973.19" insert "805.15 (1) based on newly~~  
9 ~~discovered evidence, s."~~

10 ~~3. Page 11, line 22: delete the material beginning with that line and ending~~  
11 ~~on page 12, line 4 and substitute:~~

12 ~~"SECTION <sup>239085</sup> ~~18g.~~ 938.46 of the statutes is renumbered 938.46 (1) and amended~~  
13 to read:

Insert  
1-3

Insert  
10-12

(insert continues)

INS 1-12  
CONT

1 938.46 (1) -A juvenile Except as provided in sub. (2), a juvenile whose status  
 2 is adjudicated by the court under this chapter, or the juvenile's parent, guardian, or  
 3 legal custodian, may at any time within one year after the entering of the court's  
 4 order petition the court for a rehearing on the ground that new evidence has been  
 5 discovered affecting the advisability of the court's original adjudication. Upon a  
 6 showing that such evidence does exist, the court shall order a new hearing.

7 SECTION ~~13m.~~ <sup>3908s</sup> 938.46 (2) ~~and 13m.~~ of the statutes ~~are~~ <sup>is</sup> created to read:

8 938.46 (2) If a juvenile is adjudged delinquent under s. 938.12, the juvenile or  
 9 the juvenile's parent, guardian, or legal custodian, may at any time after the entering  
 10 of the court's order petition the court for a rehearing on the ground that new evidence  
 11 has been discovered affecting the advisability of the court's original adjudication.  
 12 Upon a showing that such evidence does exist, the court shall order a new hearing.

13 → SECTION <sup>3908t</sup> 938.46(3) of the statutes is created to read:  
 14 938.46 (3) This section does not apply to motions made under s. 974.07 (2)."

14 4. Page 19, line 12: after "than" insert "a motion under s. 805.15 (1) based on  
 15 newly discovered evidence or a motion".

16 5. Page 19, line 20: after that line insert:

17 SECTION ~~13m.~~ <sup>4028e</sup> 974.02 (1m) of the statutes is created to read:

18 974.02 (1m) In criminal cases, a motion under s. 805.15 (1) for a new trial based  
 19 on newly discovered evidence may be made at any time. §

18  
19  
20  
Insert  
217

VEND

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

LRBb1056/1dn

RLR:.....

date

JLD

This amendment adds the provisions from 2001 Assembly Bill 291, without the amendments adopted by the assembly. The amendment also includes the following three changes requested in the caucus memo: 1) requiring a showing of probable cause that the DNA evidence was left by the defendant at the time that the crime was committed as a prerequisite to extending the time limits for prosecution; 2) allowing courts that review postconviction DNA testing motions discretion to order testing of \* DNA evidence "in the interest of justice;" and 3) waiving the one-year time limit for a new trial based on newly discovered evidence for all types of newly discovered evidence, not just DNA evidence.

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

LRBb1056/1dn  
RLR:jld:jf

June 18, 2001

This amendment adds the provisions from 2001 Assembly Bill 291, without the amendments adopted by the assembly. The amendment also includes the following three changes requested in the caucus memo: 1) requiring a showing of probable cause that the DNA evidence was left by the defendant at the time that the crime was committed as a prerequisite to extending the time limits for prosecution; 2) allowing courts that review postconviction DNA testing motions discretion to order testing of DNA evidence "in the interest of justice"; and 3) waiving the one-year time limit for a new trial based on newly discovered evidence for all types of newly discovered evidence, not just DNA evidence.

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SDC:.....Keckhaver – CN6515, DNA evidence and postconviction relief

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

CAUCUS SENATE AMENDMENT

TO SENATE SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

1           At the locations indicated, amend the substitute amendment as follows:

2           **1.** Page 195, line 8: after that line insert:

3           “(be) Postconviction evidence testing

4                   costs                                   GPR      A                   -0-                   -0-”.

5           **2.** Page 350, line 16: after that line insert:

6           “SECTION 676r. 20.410 (1) (be) of the statutes is created to read:

7           20.410 (1) (be) *Postconviction evidence testing costs.* The amounts in the

8           schedule for the costs of performing forensic deoxyribonucleic acid testing for

9           indigent persons under s. 974.07, pursuant to a court order issued under s. 974.07

10          (12).”.



1           **3.** Page 960, line 10: after that line insert:

2           “**SECTION 2858c.** 165.77 (2) (a) 2. of the statutes is amended to read:

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

14           **SECTION 2858e.** 165.77 (2m) of the statutes is created to read:

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

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

1 include data obtained from deoxyribonucleic acid analysis of material received under  
2 par. (a) in the data 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 2858g.** 165.77 (3) of the statutes is amended to read:

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

19 **SECTION 2858i.** 165.81 (1) of the statutes is amended to read:

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

1 information from which it appears probable that the evidence is no longer needed,  
2 the department may give written notice to the submitting agency and the  
3 appropriate district attorney, by registered mail, of the intention to dispose of the  
4 evidence. If no objection is received within 20 days after the notice was mailed, it may  
5 dispose of the evidence.

6 **SECTION 2858k.** 165.81 (3) of the statutes is created to read:

7 165.81 (3) (a) In this subsection:

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

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

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

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

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

22 2. No person who is notified under subd. 1. does either of the following within  
23 90 days after the date on which the person received the notice:

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

1           b. Submits a written request to preserve the biological material to the  
2 department.

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

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

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

16           **4.** Page 1184, line 3: after that line insert:

17           “**SECTION 3780c.** 757.54 of the statutes is renumbered 757.54 (1) and amended  
18 to read:

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

23           **SECTION 3780d.** 757.54 (2) of the statutes is created to read:

24           757.54 (2) (a) In this subsection:

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

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

3           (b) Except as provided in par. (c), if an exhibit in a criminal action or a  
4 delinquency proceeding under ch. 938 includes any biological material that was  
5 collected in connection with the action or proceeding, the court presiding over the  
6 action or proceeding shall ensure that the exhibit is preserved until every person in  
7 custody as a result of the action or proceeding, or as a result of commitment under  
8 s. 980.06 that is based on a judgment of guilty or not guilty by reason of mental  
9 disease or defect in the action or proceeding, has reached his or her discharge date.

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

12           1. The court sends a notice of its intent to destroy the biological material to all  
13 persons who remain in custody as a result of the criminal action, delinquency  
14 proceeding, or commitment under s. 980.06 and to either the attorney of record for  
15 each person in custody or the state public defender.

16           2. No person who is notified under subd. 1. does either of the following within  
17 90 days after the date on which the person received the notice:

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

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

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

22           (d) A notice provided under par. (c) 1. shall clearly inform the recipient that the  
23 biological material will be destroyed unless, within 90 days after the date on which  
24 the person receives the notice, either a motion for testing of the material is filed

1 under s. 974.07 (2) or a written request to preserve the material is submitted to the  
2 court.

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

9 **5.** Page 1205, line 21: after that line insert:

10 **“SECTION 3828c.** 801.02 (7) (a) 2. c. of the statutes is amended to read:

11 801.02 (7) (a) 2. c. A person bringing an action seeking relief from a judgment  
12 of conviction or a sentence of a court, including an action for an extraordinary writ  
13 or a supervisory writ seeking relief from a judgment of conviction or a sentence of a  
14 court or an action under s. 809.30, 809.40, 973.19 ~~or~~, 974.06 or 974.07.

15 **SECTION 3828f.** 805.15 (3) (intro.) of the statutes is amended to read:

16 805.15 (3) (intro.) ~~A~~ Except as provided in ss. 974.07 (10) (b) and 980.101 (2)  
17 (b), a new trial shall be ordered on the grounds of newly–discovered evidence if the  
18 court finds that:

19 **SECTION 3828h.** 805.16 (4) of the statutes is amended to read:

20 805.16 (4) Notwithstanding sub. (1), and except as provided in s. 974.02 (1m),  
21 a motion for a new trial based on newly discovered evidence may be made at any time  
22 within one year after verdict. Unless an order granting or denying the motion is  
23 entered within 90 days after the motion is made, it shall be deemed denied.

24 **SECTION 3828j.** 805.16 (5) of the statutes is created to read:

1           805.16 (5) The time limits in this section for filing motions do not apply to  
2 motions made under s. 974.07 (2) or 980.101.”.

3           **6.** Page 1206, line 4: after that line insert:

4           “**SECTION 3829d.** 808.075 (4) (h) of the statutes is amended to read:

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

8           **SECTION 3829n.** 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. 805.15  
11 (1) based on newly discovered evidence, or under s. 973.19 or, 974.06, or 974.07 (2).

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

16           **SECTION 3829p.** 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           **7.** Page 1223, line 4: after that line insert:

20           “**SECTION 3889p.** 938.293 (2) of the statutes is amended to read:

21           938.293 (2) All records relating to a juvenile which are relevant to the subject  
22 matter of a proceeding under this chapter shall be open to inspection by a guardian  
23 ad litem or counsel for any party, upon demand and upon presentation of releases  
24 where necessary, at least 48 hours before the proceeding. Persons entitled to inspect

1 the records may obtain copies of the records with the permission of the custodian of  
2 the records or with the permission of the court. The court may instruct counsel not  
3 to disclose specified items in the materials to the juvenile or the parent if the court  
4 reasonably believes that the disclosure would be harmful to the interests of the  
5 juvenile. ~~Sections Section 971.23 and 972.11 (5)~~ shall be applicable in all delinquency  
6 proceedings under this chapter, except that the court shall establish the timetable  
7 for the disclosures required under ss. s. 971.23 (1), (2m) and, (8), and 972.11 (5) (9).

8 **SECTION 3889r.** 938.299 (4) (a) of the statutes is amended to read:

9 938.299 (4) (a) Chapters 901 to 911 govern the presentation of evidence at the  
10 fact-finding hearing under s. 938.31. ~~Section 972.11 (5) applies at fact-finding~~  
11 ~~proceedings in all delinquency proceedings under this chapter.”.~~

12 **8.** Page 1224, line 13: after that line insert:

13 “**SECTION 3908r.** 938.46 of the statutes is renumbered 938.46 (1) and amended  
14 to read:

15 938.46 (1) ~~A juvenile~~ Except as provided in sub. (2), a juvenile whose status  
16 is adjudicated by the court under this chapter, or the juvenile’s parent, guardian, or  
17 legal custodian, may at any time within one year after the entering of the court’s  
18 order petition the court for a rehearing on the ground that new evidence has been  
19 discovered affecting the advisability of the court’s original adjudication. Upon a  
20 showing that such evidence does exist, the court shall order a new hearing.

21 **SECTION 3908s.** 938.46 (2) of the statutes is created to read:

22 938.46 (2) If a juvenile is adjudged delinquent under s. 938.12, the juvenile or  
23 the juvenile’s parent, guardian, or legal custodian, may at any time after the entering  
24 of the court’s order petition the court for a rehearing on the ground that new evidence



1 has been discovered affecting the advisability of the court's original adjudication.  
2 Upon a showing that such evidence does exist, the court shall order a new hearing.

3 **SECTION 3908t.** 938.46 (3) of the statutes is created to read:

4 938.46 (3) This section does not apply to motions made under s. 974.07 (2).”.

5 **9.** Page 1232, line 19: delete the material beginning with that line and ending  
6 with page 1233, line 13, and substitute:

7 **“SECTION 3936c.** 939.74 (2d) of the statutes is created to read:

8 939.74 (2d) (a) In this subsection, “deoxyribonucleic acid profile” means an  
9 individual's patterned chemical structure of genetic information identified by  
10 analyzing biological material that contains the individual's deoxyribonucleic acid.

11 (b) If before the time limitation under sub. (1) expired, the state collected  
12 biological material that is evidence of the identity of the person who committed a  
13 violation of s. 940.225 (1) or (2), the state identified a deoxyribonucleic acid profile  
14 from the biological material, and comparisons of that deoxyribonucleic acid profile  
15 to deoxyribonucleic acid profiles of known persons did not result in a probable  
16 identification of the person who is the source of the biological material, the state may  
17 commence prosecution of the person who is the source of the biological material for  
18 violation of s. 940.225 (1) or (2) within 12 months after comparison of the  
19 deoxyribonucleic acid profile relating to the violation results in a probable  
20 identification of the person, if there is probable cause to believe that the biological  
21 material was left by the person at the time the violation was committed.

22 (c) If before the time limitation under sub. (2) (c) expired, the state collected  
23 biological material that is evidence of the identity of the person who committed a  
24 violation of s. 948.02 (1) or (2) or 948.025, the state identified a deoxyribonucleic acid

1 profile from the biological material, and comparisons of that deoxyribonucleic acid  
2 profile to deoxyribonucleic acid profiles of known persons did not result in a probable  
3 identification of the person who is the source of the biological material, the state may  
4 commence prosecution of the person who is the source of the biological material for  
5 violation of s. 948.02 (1) or (2) or 948.025 within 12 months after comparison of the  
6 deoxyribonucleic acid profile relating to the violation results in a probable  
7 identification of the person, if there is probable cause to believe that the biological  
8 material was left by the person at the time the violation was committed.”.

9 **10.** Page 1250, line 5: after that line insert:

10 “SECTION 3984j. 950.04 (1v) (s) of the statutes is amended to read:

11 950.04 (1v) (s) To have any stolen or other personal property expeditiously  
12 returned by law enforcement agencies when no longer needed as evidence, subject  
13 to s. 968.205. If feasible, all such property, except weapons, currency, contraband,  
14 property subject to evidentiary analysis, property subject to preservation under s.  
15 968.205, and property the ownership of which is disputed, shall be returned to the  
16 person within 10 days of being taken.”.

17 **11.** Page 1250, line 14: after that line insert:

18 “SECTION 3984p. 950.04 (1v) (yd) of the statutes is created to read:

19 950.04 (1v) (yd) To have the appropriate clerk of court make a reasonable  
20 attempt to send the victim a copy of a motion made under s. 974.07 (2) for  
21 postconviction deoxyribonucleic acid testing of certain evidence and notification of  
22 any hearing on that motion, as provided under s. 974.07 (4).”.

23 **12.** Page 1256, line 4: after that line insert:

24 “SECTION 3998c. 968.20 (1) (intro.) of the statutes is amended to read:

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

10           **SECTION 3998e.** 968.20 (2) of the statutes is amended to read:

11           968.20 (2) Property not required for evidence or use in further investigation,  
12 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205,  
13 may be returned by the officer to the person from whom it was seized without the  
14 requirement of a hearing.

15           **SECTION 3998g.** 968.20 (4) of the statutes is amended to read:

16           968.20 (4) Any property seized, other than property covered under s. 968.205,  
17 ~~which that~~ poses a danger to life or other property in storage, transportation or use  
18 and ~~which that~~ is not required for evidence or further investigation shall be safely  
19 disposed of upon command of the person in whose custody they are committed. The  
20 city, village, town or county shall by ordinance or resolution establish disposal  
21 procedures. Procedures may include provisions authorizing an attempt to return to  
22 the rightful owner substances which have a commercial value in normal business  
23 usage and do not pose an immediate threat to life or property. If enacted, any such  
24 provision shall include a presumption that if the substance appears to be or is  
25 reported stolen an attempt will be made to return the substance to the rightful owner.

1           **SECTION 3998i.** 968.205 of the statutes is created to read:

2           **968.205 Preservation of certain evidence.** (1) In this section:

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

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

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

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

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

5           (b) No person who is notified under par. (a) does either of the following within  
6 90 days after the date on which the person received the notice:

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

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

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

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

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

23          **SECTION 3998n.** 971.04 (3) of the statutes is amended to read:

24          971.04 (3) If the defendant is present at the beginning of the trial and  
25 thereafter, during the progress of the trial or before the verdict of the jury has been

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

16 **13.** Page 1258, line 7: after that line insert:

17 “**SECTION 4002r.** 971.23 (1) (e) of the statutes is amended to read:

18 971.23 (1) (e) Any relevant written or recorded statements of a witness named  
19 on a list under par. (d), including any videotaped oral statement of a child under s.  
20 908.08, any reports or statements of experts made in connection with the case or, if  
21 an expert does not prepare a report or statement, a written summary of the expert’s  
22 findings or the subject matter of his or her testimony, and the results of any physical  
23 or mental examination, scientific test, experiment or comparison that the district

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 **SECTION 4002t.** 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 **SECTION 4002v.** 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 deoxyribonucleic 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

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.”.

3 **14.** Page 1258, line 15: after that line insert:

4 “SECTION 4003r. 972.11 (1) of the statutes is amended to read:

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

11 SECTION 4003t. 972.11 (5) of the statutes is repealed.”.

12 **15.** Page 1271, line 6: after that line insert:

13 “SECTION 4028c. 974.02 (1) of the statutes is amended to read:

14 974.02 (1) A motion for postconviction relief other than a motion under s.  
15 805.15 (1) based on newly discovered evidence or a motion under s. 974.06 or 974.07  
16 (2) by the defendant in a criminal case shall be made in the time and manner  
17 provided in ss. 809.30 and 809.40. An appeal by the defendant in a criminal case from  
18 a judgment of conviction or from an order denying a postconviction motion or from  
19 both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and  
20 809.40. An appeal of an order or judgment on habeas corpus remanding to custody  
21 a prisoner committed for trial under s. 970.03 shall be taken under ss. 808.03 (2) and  
22 809.50, with notice to the attorney general and the district attorney and opportunity  
23 for them to be heard.

24 SECTION 4028e. 974.02 (1m) of the statutes is created to read:



1           974.02 (1m) In criminal cases, a motion under s. 805.15 (1) for a new trial based  
2 on newly discovered evidence may be made at any time.

3           **SECTION 4028g.** 974.05 (1) (b) of the statutes is amended to read:

4           974.05 (1) (b) Order granting postconviction relief under s. 974.02 ~~or~~, 974.06,  
5 or 974.07.

6           **SECTION 4028j.** 974.07 of the statutes is created to read:

7           **974.07 Motion for postconviction deoxyribonucleic acid testing of**  
8 **certain evidence.** (1) In this section:

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

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

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

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

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

22           (c) The evidence has not previously been subjected to forensic deoxyribonucleic  
23 acid testing or, if the evidence has previously been tested, it may now be subjected  
24 to another test using a scientific technique that was not available or was not utilized

1 at the time of the previous testing and that provides a reasonable likelihood of more  
2 accurate and probative results.

3 (3) A movant or, if applicable, his or her attorney shall serve a copy of the  
4 motion made under sub. (2) on the district attorney's office that prosecuted the case  
5 that resulted in the conviction, adjudication, or finding of not guilty by reason of  
6 mental disease or defect. The court in which the motion is made shall also notify the  
7 appropriate district attorney's office that a motion has been made under sub. (2) and  
8 shall give the district attorney an opportunity to respond to the motion. Failure by  
9 a movant to serve a copy of the motion on the appropriate district attorney's office  
10 does not deprive the court of jurisdiction and is not grounds for dismissal of the  
11 motion.

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

20 (b) Notwithstanding the limitation on the disclosure of mailing addresses from  
21 completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046  
22 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2),  
23 971.17 (6m) (d), and 980.11 (4), the department of corrections, the parole commission,  
24 and the department of health and family services shall, upon request, assist clerks

1 of court in obtaining information regarding the mailing address of victims for the  
2 purpose of sending copies of motions and notices of hearings under par. (a).

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

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

12 1. Findings based on testing of biological materials.

13 2. Physical evidence that is in the actual or constructive possession of a  
14 government agency and that contains biological material or on which there is  
15 biological material.

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

19 1. Findings based on testing of biological materials.

20 2. The movant's biological specimen.

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

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

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

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

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

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

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

22 (b) A court in which a motion under sub. (2) is filed may order forensic  
23 deoxyribonucleic acid testing if all of the following apply or if the court determines  
24 that testing is in the interest of justice:

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

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

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

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

18           **(8)** The court may impose reasonable conditions on any testing ordered under  
19 this section in order to protect the integrity of the evidence and the testing process.  
20 If appropriate and if stipulated to by the movant and the district attorney, the court  
21 may order the state crime laboratories to perform the testing as provided under s.  
22 165.77 (2m).

23           **(9)** If a court in which a motion under sub. (2) is filed does not order forensic  
24 deoxyribonucleic acid testing, or if the results of forensic deoxyribonucleic acid  
25 testing ordered under this section are not supportive of the movant's innocence

1 claim, the court shall determine the disposition of the evidence specified in the  
2 motion subject to the following:

3 (a) If a person other than the movant is in custody, as defined in s. 968.205 (1)  
4 (a), the evidence is relevant to the criminal, delinquency, or commitment proceeding  
5 that resulted in the person being in custody, the person has not been denied  
6 deoxyribonucleic acid testing or postconviction relief under this section, and the  
7 person has not waived his or her right to preserve the evidence under s. 165.81 (3),  
8 757.54 (2), 968.205, or 978.08, the court shall order the evidence preserved until all  
9 persons entitled to have the evidence preserved are released from custody, and the  
10 court shall designate who shall preserve the evidence.

11 (b) If the conditions in par. (a) are not present, the court shall determine the  
12 disposition of the evidence, and, if the evidence is to be preserved, by whom and for  
13 how long. The court shall issue appropriate orders concerning the disposition of the  
14 evidence based on its determinations.

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

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

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

1           3. An order granting the movant a new sentencing hearing, commitment  
2 hearing, or dispositional hearing.

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

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

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

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

13           (12) (a) The court may order a movant to pay the costs of any testing ordered  
14 by the court under this section if the court determines that the movant is not  
15 indigent. If the court determines that the movant is indigent, the court shall order  
16 the costs of the testing to be paid for from the appropriation account under s. 20.410  
17 (1) (be).

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

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

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

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

4           **(13)** An appeal may be taken from an order entered under this section as from  
5 a final judgment.”.

6           **16.** Page 1271, line 13: after that line insert:

7           “**SECTION 4031c.** 977.07 (1) (b) of the statutes is amended to read:

8           977.07 (1) (b) For referrals not made under ss. 809.30 ~~and~~, 974.06, and 974.07,  
9 a representative of the state public defender is responsible for making indigency  
10 determinations unless the county became responsible under s. 977.07 (1) (b) 2. or 3.,  
11 1983 stats., for these determinations. Subject to the provisions of par. (bn), those  
12 counties may continue to be responsible for making indigency determinations. Any  
13 such county may change the agencies or persons who are designated to make  
14 indigency determinations only upon the approval of the state public defender.

15           **SECTION 4031e.** 977.07 (1) (c) of the statutes is amended to read:

16           977.07 (1) (c) For all referrals made under ss. 809.30 ~~and~~, 974.06 (3) (b) and  
17 974.07 (11), except a referral of a child who is entitled to be represented by counsel  
18 under s. 48.23 or 938.23, a representative of the state public defender shall  
19 determine indigency, and. For referrals made under ss. 809.30 and 974.06 (3) (b),  
20 except a referral of a child who is entitled to be represented by counsel under s. 48.23  
21 or 938.23, the representative of the state public defender may, unless a request for  
22 redetermination has been filed under s. 809.30 (2) (d) or the defendant’s request for  
23 representation states that his or her financial circumstances have materially



1 improved, rely upon a determination of indigency made for purposes of trial  
2 representation under this section.

3 **SECTION 4031s.** 978.08 of the statutes is created to read:

4 **978.08 Preservation of certain evidence.** (1) In this section:

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

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

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

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

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

19 (b) No person who is notified under par. (a) does either of the following within  
20 90 days after the date on which the person received the notice:

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

22 2. Submits a written request to preserve the biological material to the district  
23 attorney.

24 (c) No other provision of federal or state law requires the district attorney to  
25 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 (2) or a written request to preserve the material is submitted  
5 to the district attorney.

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

12           **17.** Page 1280, line 22: after that line insert:

13           “SECTION 4034ys. 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

1 postcommitment relief in the court that committed the person. The court shall  
2 proceed as follows on the motion for postcommitment relief:

3 (a) If the sexually violent offense was the sole basis for the allegation under s.  
4 980.02 (2) (a) and there are no other judgments relating to a sexually violent offense  
5 committed by the person, the court shall reverse, set aside, or vacate the judgment  
6 under s. 980.05 (5) that the person is a sexually violent person, vacate the  
7 commitment order, and discharge the person from the custody or supervision of the  
8 department.

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

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

18 **18.** Page 1416, line 16: after that line insert:

19 “(12c) TIME LIMITATIONS ON PROSECUTIONS. The treatment of section 939.74 (1),  
20 (2) (c), and (2d) of the statutes first applies to offenses not barred from prosecution  
21 on the effective date of this subsection.”.

22 (END)