

2001 DRAFTING REQUEST

Senate Amendment (SA-SSA1-SB55)

Received: 07/21/2001

Received By: rryan

Wanted: Today

Identical to LRB:

For: Legislative Fiscal Bureau

By/Representing: Onsager

This file may be shown to any legislator: NO

Drafter: rryan

May Contact:

Addl. Drafters:

Subject: Criminal Law - law enforcement
Criminal Law - procedure

Extra Copies: MGD

Submit via email: NO

Requester's email:

Pre Topic:

LFB:.....Onsager -

Topic:

DNA evidence

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>
/P1	rryan 07/21/2001	csicilia 07/21/2001	haugeca 07/21/2001	_____	lrb_docadmin 07/22/2001		
/1	rryan 07/23/2001	jdyer 07/23/2001	haugeca 07/23/2001	_____	lrb_docadmin 07/23/2001		
	rryan 07/23/2001	jdyer 07/23/2001	jfrantze 07/23/2001	_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	rryan 07/23/2001	jdyer 07/23/2001	jfrantze 07/23/2001	_____	lrb_docadmin 07/23/2001		

FE Sent For:

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Handwritten: 7/23 Self 7/23

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FE Sent For:

1 7/23 jkd
7/23
Jph
7/23
<END>

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/P1	rryan	/P1 gjs 7/21 01	CH 7-21	CH 7/21 7/21			

FE Sent For:

<END>

Paul Onsga

7/17/01

DNA amendment instructions:

AB291 as passed by Assembly
(2 amendments)
plus instructions in email

drop changes to AB291 that were
added in Senate Super amendment
to joint finance

Ryan, Robin

From: Ryan, Robin
Sent: July 18, 2001 11:50 AM
To: 'cmason@wisbar.org'
Cc: Dsida, Michael; Onsager, Paul
Subject: DNA amendment compromise language

We understand that the goal of the compromise language is, on one hand, to assure that the DNA bill is not interpreted to mean that the legislature intends to allow motions for new trials based on new evidence after one year based on DNA evidence, but not on the basis of any other kind of new evidence, and on the other hand, not to go so far as waiving the one-year time limit for a new trial based on newly discovered evidence in all cases of newly discovered evidence. The compromise should instead ultimately leave it to the Supreme Court to determine whether the one-year time limit should be waived for a new trial based on newly discovered evidence in cases where the evidence is not DNA evidence.

The compromise language is confusing because the 2 exceptions under s. 805.16 to the one year time limit both refer to 974.06 without clearly distinguishing the need for two exceptions.

We have two alternative approaches to offer:

Handwritten notes:
- Cowy mason
7/23
Finalley
Smolhaas
& DOJ
OK w/1
9/9/01

FIRST OPTION:

Simply create one new exception under 805.16:

805.16 (5) is created to read:

805.16 (5) The time limits in this section do not apply to motions for a new trial based on newly-discovered evidence that are brought under s. 974.06.

Eliminate the creation of 805.16 (5) that is currently in the DNA amendment. It reads: "The time limits in this section for filing motions do not apply to motions made under s. 974.07 (2) or s. 980.101." I think we can safely eliminate this sentence because 974.07 (2), as created by the DNA amendment, already provides that a motion under s. 974.07 (2) may be made at any time. Similarly, the language of s. 980.101 (2), as created by the DNA amendment, begins, "If, at any time after a person is committed.....the person may bring a motion for postcommitment relief...."

SECOND OPTION:

805.16 (4) is renumbered 805.16 (4) (a) and amended to read:

805.16 (4) (a) Notwithstanding sub. (1), a motion under 805.15 for a new trial based on newly discovered evidence may be made at any time within one year after verdict. Unless an order granting or denying the motion is entered within 90 days after the motion is made, it shall be deemed denied.

805.16 (4) (b) is created to read:

805.16 (4) (b) The time limits in this section do not apply to a motion for a new trial based on newly-discovered evidence, if the discovery of new evidence after the time limit under par. (a) has passed presents a constitutional or jurisdictional issue that may be addressed under s. 974.06.

805.16 (5) is created to read:

805.16 (5) The time limits in this section do not apply to a motion under s. 974.06, 974.07, or 980.101.

Adding the cross reference to s. 805.15 in s. 805.16 (4) (a) isn't necessary, but it may clarify that there are potentially two sections under which a motion for a new trial based on newly discovered evidence may be brought. In this version we added a new paragraph under sub. (4) instead of creating a new subsection, because it keeps the motions for a new trial based on newly discovered evidence together, whereas other motions under 974.06 and motions under 974.07 or 980.101 may be for other forms of relief besides a new trial. The placement is more style than substance.

This second option follows the lead of your compromise language, but perhaps better helps the reader track the difference between the two references to 974.06, and perhaps more clearly leaves the resolution of Bembenek to the Supreme Court.

In working on this language we presumed that the reference to an "equal protection" concern is to the constitutional issue raised by the court in Bembenek even though the Bembenek court labels it a "due process" issue. If there is some other equal protection concern we have not addressed it.

Please free to contact me by email or phone (261-6927), or to contact Mike Dsida at the email addressed listed in the recipient line or by by phone at 266-9867.

No response as of 7/21/01

Ryan, Robin

From: Onsager, Paul
Sent: July 17, 2001 4:54 PM
To: Ryan, Robin
Subject: FW: DNA compromise language

If you have any questions about the compromise language, please feel free to call.

Paul A. Onsager
Legislative Fiscal Bureau
608-266-3847
Paul.Onsager@legis.state.wi.us

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

From: Salm, Debbie
Sent: Monday, July 16, 2001 12:18 PM
To: Onsager, Paul
Subject: FW: DNA compromise language

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

From: Bjork, Tanya
Sent: Monday, July 16, 2001 12:16 PM
To: Salm, Debbie
Subject: FW: DNA compromise language

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

From: Burkert-Brist, Monica A.
Sent: Thursday, July 12, 2001 4:56 PM
To: 'Cory Mason'; Burkert-Brist, Monica A.; Bjork, Tanya
Subject: RE: DNA compromise language

We have reviewed and the draft compromise appears to be fine.

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

From: Cory Mason [<mailto:CMason@wisbar.org>] <[mailto:\[mailto:CMason@wisbar.org\]](mailto:[mailto:CMason@wisbar.org])>
Sent: Thursday, July 12, 2001 3:01 PM
To: Burkert-bristm@doj.state.wi.us; Tanya.bjork@legis.state.wi.us
Subject: DNA compromise language

There has been debate about what to do with the Senate language that would remove the one-year statute of limitations on introducing new evidence to get a new trial in the DNA language.

At issue: would the right to a new trial created under s947.07 created under AB291 unintentionally raise confusion about the prevailing case law that circumvents the statutory one-year statute of limitation on new evidence (based on Constitutional equal protection issues. See State v. Bembenek 140 Wis. 2d 248, 409 N.W. 2d 432 (Ct. App. 1987).)

Concerns were raised by Atty. Bob Donohoo in the Milwaukee DA's office about this language.

The concern was that the Supreme Court had never confirmed Bembenek, and were it overturned, the case law would be left in the statute.

In response, Atty. Keith Findley of the Innocence Project at the UW Law School and Atty. Bob Donohoo came up with the following language:

Delete in Senate Budget page 623 Section 3908s and t.

Delete in Senate Budget page 640 Section 4028e.

Replace it with the following language:

Section 805.16(6) (or whatever number drafters insert after the .16) is created to read:

Time limits in this section do not apply to motions for a new trial based on newly-discovered evidence brought under s.974.06.

Amend the Senate Budget language page 605 Section 3828j (lines 17-19) to read:

805.16 (5) of the statutes is created to read:

805.16(5) The time limits in this section for filing motions do not apply to motions made under [insert:s. 974.06,] s. 974.07 (2) or 980.101.

The rationale:

The compromise provided ties the one-year statute of limitation to Constitutional questions (974.06).

Atty. Donohoo's comfort level on this compromise was contingent on DoJ being comfortable as well.

Please call me with any questions.

Sincerely,

Cory Mason
Government Relations Coordinator
State Bar of Wisconsin
1/800-444-9404 x6128
cmason@wisbar.org

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

return it to the submitting officer or agency

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~~ ^{strike} destroy the ~~same~~ ^{strike} evidence, retain it in the laboratories ~~or~~ ^{strike} turn it over
24 to the University of Wisconsin upon the request of the head of any department. ~~or~~ ^{strike}

25 ~~Whenever~~ Except as provided in sub. (3), whenever the department receives

Insert 3-25

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~~ ^{orders}
15 destruction of the biological material under s. 974.07 (9) (b) or (10) (a) 5. ^{or transfer}

Insert
5-15

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 ^{orders} ~~authorizes~~ ^{or transfer} 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 980.101.²

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~~ ^{orders or transfer} 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. The movant claims that he or she is innocent of the offense at issue in the motion under sub. (2).

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 2.1. 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 4.3. 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.

3. The evidence to be tested meets the conditions under sub. (2)(a) to (c). ✓

Insert 22-1 →

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~~ to be tested meets the conditions under sub. (2) (a) to (c).

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. Insert 23-10 ✓

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. Insert 23-14 ✓

15 (10) (a) If the results of forensic deoxyribonucleic acid testing ordered under
16 this section support the movant's claim of ~~innocence~~ *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~~ ^{orders}
11 ^{or transfer} 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 judgement 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)



INSERTS
to 62217/P1

ASSEMBLY AMENDMENT 2,
TO 2001 ASSEMBLY BILL 291

June 12, 2001 - Offered by Representatives WALKER and WASSERMAN.

no 9

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At the locations indicated, amend the bill as follows:

1. Page 6, line 21: delete the material beginning with "provided" and ending with "Whenever" on line 23 and substitute "provided by law, either destroy the same evidence, retain it in the laboratories, return it to the submitting officer or agency, or turn it over to the University of Wisconsin upon the request of the head of any department, ~~Whenever~~ of the University of Wisconsin. If the department returns the evidence to the submitting officer or agency, any action taken by the officer or agency with respect to the evidence shall be in accordance with s. 968.20.³

2. Page 8, line 12: delete the material beginning with "authorizes" and ending with "destruction" on line 13 and substitute "orders destruction or transfer".

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

*(f) Unless otherwise provided in a court order issued under s. 974.07 (9) (a) or (b) or (10) (a) 5., nothing in this subsection prohibits the laboratories from returning

Insert
3-25

Insert
5-15

(insert continues ->)

must
that ~~has to~~ be preserved under par. (b) or (e)

1 evidence ~~specified under par. (e)~~ to the agency that submitted the evidence to the
2 laboratories. If the laboratories return evidence ~~(specified under par. (c))~~ to a
3 submitting agency, any action taken by the agency with respect to the evidence shall
4 be in accordance with s. 968.205."

- 5 ~~4. Page 10, line 2: delete "authorizes destruction" and substitute "orders~~
- 6 ~~destruction or transfer".~~
- 7 ~~5. Page 16, line 25: delete "authorizes destruction" and substitute "orders~~
- 8 ~~destruction or transfer".~~

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Insert
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6. Page 24, line 23: after "evidence" insert *no 9* "The court may not issue an order
under this paragraph requiring that an agency transfer evidence to a crime
laboratory specified under s. 165.75 for the purpose of preservation of the evidence
by the crime laboratory, unless the crime laboratory consents to the transfer."

13
14
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Insert
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7. Page 25, line 2: after "determinations" insert *no 9* "The court may not issue an
order under this paragraph requiring that an agency transfer evidence to a crime
laboratory specified under s. 165.75 for the purpose of preservation of the evidence
by the crime laboratory, unless the crime laboratory consents to the transfer."

8. Page 28, line 19: delete the material beginning with "authorizes" and
ending with "destruction" on line 20 and substitute "orders destruction or transfer".

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2217/P1ins
RLR:.....

1 **Insert 8-2:** /

2 ¶ **SECTION 3828i.** 805.16 (5) of the statutes is created to read:

3 ¶ 805.16 (5) The time limits in this section for filing motions do not apply to
4 motions for a new trial based on newly-discovered evidence that are brought under
5 s. 974.06[✓].”

6

7 **Insert 22-1:** *the*

8 ¶ 1. It is reasonably probable that the outcome of the proceedings that resulted
9 in the conviction, *the* finding of not guilty by reason of mental disease or defect, or the
10 delinquency adjudication for the offense at issue in the motion under sub. (2), or the
11 terms of the sentence, the commitment under s. 971.17, or the disposition under ch.
12 938, would have been more

13



RMR

LFB:.....Onsager – DNA evidence

FOR 2001-03 BUDGET — NOT READY FOR INTRODUCTION

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 evidence, retain it in the laboratories,
24 return it to the submitting officer or agency, or turn it over to the University of
25 Wisconsin upon the request of the head of any department. ~~Whenever of the~~

1 University of Wisconsin. If the department returns the evidence to the submitting
2 officer or agency, any action taken by the officer or agency with respect to the
3 evidence shall be in accordance with s. 968.20. Except as provided in sub. (3),
4 whenever the department receives information from which it appears probable that
5 the evidence is no longer needed, the department may give written notice to the
6 submitting agency and the appropriate district attorney, by registered mail, of the
7 intention to dispose of the evidence. If no objection is received within 20 days after
8 the notice was mailed, it may dispose of the evidence.

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

10 165.81 (3) (a) In this subsection:

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

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

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

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

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

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

4 b. Submits a written request to preserve the biological material to the
5 department.

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

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

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

19 (f) Unless otherwise provided in a court order issued under s. 974.07 (9) (a) or
20 (b) or (10) (a) 5., nothing in this subsection prohibits the laboratories from returning
21 evidence that must be preserved under par. (b) or (e) to the agency that submitted
22 the evidence to the laboratories. If the laboratories return evidence that must be
23 preserved under par. (b) or (e) to a submitting agency, any action taken by the agency
24 with respect to the evidence shall be in accordance with s. 968.205.”

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

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

4 757.54 (1) The Except as provided in sub. (2), the retention and disposal of all
5 court records and exhibits in any civil or criminal action or proceeding or probate
6 proceeding of any nature in a court of record shall be determined by the supreme
7 court by rule.

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

9 757.54 (2) (a) In this subsection:

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

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

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

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

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

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

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

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

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

12 (e) If, after providing notice under par. (c) 1. of its intent to destroy biological
13 material, a court receives a written request to preserve the material, the court shall
14 preserve the material until the discharge date of the person who made the request
15 or on whose behalf the request was made, subject to a court order issued under s.
16 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the
17 biological material under s. 974.07 (9) (b) or (10) (a) 5.”.

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

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

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

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

1 805.15 (3) (intro.) ~~A~~ Except as provided in ss. 974.07 (10) (b) and 980.101 (2)
 2 (b), a new trial shall be ordered on the grounds of newly-discovered evidence if the
 3 ✓ court finds that:

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

5 805.16 (5) The time limits in this section for filing motions do not apply to
 6 a motions for a new trial based on newly discovered evidence that ~~are~~ ^{is} brought under
 7 s. 974.06.”.

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

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

10 808.075 (4) (h) Commitment, supervised release, recommitment ~~and,~~
 11 discharge, and postcommitment relief under ss. 980.06, 980.08, 980.09 ~~and,~~ 980.10,
 12 and 980.101 of a person found to be a sexually violent person under ch. 980.

13 **SECTION 3829n.** 809.30 (1) (a) of the statutes is amended to read:

14 809.30 (1) (a) “Postconviction relief” means, in a felony or misdemeanor case,
 15 an appeal or a motion for postconviction relief other than a motion under s. ~~905.15~~
 16 ~~(1) based on newly discovered evidence, or under s. 973.19 or, 974.06, or 974.07 (2).~~

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

21 **SECTION 3829p.** 809.30 (2) (L) of the statutes is amended to read:

22 809.30 (2) (L) An appeal under s. 974.06 or 974.07 is governed by the
 23 procedures for civil appeals.”.

24 **7.** Page 1223, line 4: after that line insert:

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

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

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

14 938.299 (4) (a) Chapters 901 to 911 govern the presentation of evidence at the
15 fact-finding hearing under s. 938.31. ~~Section 972.11 (5) applies at fact-finding~~
16 ~~proceedings in all delinquency proceedings under this chapter.”.~~

17 **8.** Page 1232, line 19: delete the material beginning with that line and ending
18 with page 1233, line 13, and substitute:

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

20 939.74 (2d) (a) In this subsection, “deoxyribonucleic acid profile” means an
21 individual’s patterned chemical structure of genetic information identified by
22 analyzing biological material that contains the individual’s deoxyribonucleic acid.

23 (b) If before the time limitation under sub. (1) expired, the state collected
24 biological material that is evidence of the identity of the person who committed a

1 violation of s. 940.225 (1) or (2), the state identified a deoxyribonucleic acid profile
2 from the biological material, and comparisons of that deoxyribonucleic acid profile
3 to deoxyribonucleic acid profiles of known persons did not result in a probable
4 identification of the person who is the source of the biological material, the state may
5 commence prosecution of the person who is the source of the biological material for
6 violation of s. 940.225 (1) or (2) within 12 months after comparison of the
7 deoxyribonucleic acid profile relating to the violation results in a probable
8 identification of the person.

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

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

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

21 950.04 (1v) (s) To have any stolen or other personal property expeditiously
22 returned by law enforcement agencies when no longer needed as evidence, subject
23 to s. 968.205. If feasible, all such property, except weapons, currency, contraband,
24 property subject to evidentiary analysis, property subject to preservation under s.

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

3 **10.** Page 1250, line 14: after that line insert:

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

5 950.04 (1v) (yd) To have the appropriate clerk of court make a reasonable
6 attempt to send the victim a copy of a motion made under s. 974.07 (2) for
7 postconviction deoxyribonucleic acid testing of certain evidence and notification of
8 any hearing on that motion, as provided under s. 974.07 (4).”.

9 **11.** Page 1256, line 4: after that line insert:

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

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

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

21 968.20 (2) Property not required for evidence or use in further investigation,
22 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205,
23 may be returned by the officer to the person from whom it was seized without the
24 requirement of a hearing.

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

2 968.20 (4) Any property seized, other than property covered under s. 968.205,
3 which that poses a danger to life or other property in storage, transportation or use
4 and which that is not required for evidence or further investigation shall be safely
5 disposed of upon command of the person in whose custody they are committed. The
6 city, village, town or county shall by ordinance or resolution establish disposal
7 procedures. Procedures may include provisions authorizing an attempt to return to
8 the rightful owner substances which have a commercial value in normal business
9 usage and do not pose an immediate threat to life or property. If enacted, any such
10 provision shall include a presumption that if the substance appears to be or is
11 reported stolen an attempt will be made to return the substance to the rightful owner.

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

13 **968.205 Preservation of certain evidence.** (1) In this section:

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

22 (b) “Discharge date” means the date on which a person is released or discharged
23 from custody that resulted from a criminal action, a delinquency proceeding under
24 ch. 938, or a commitment proceeding under s. 971.17 or ch. 980 or, if the person is

1 serving consecutive sentences of imprisonment, the date on which the person is
2 released or discharged from custody under all of the sentences.

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

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

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

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

- 19 1. Files a motion for testing of the biological material under s. 974.07 (2).
- 20 2. Submits a written request to preserve the biological material to the law
21 enforcement agency or district attorney.

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

24 (4) A notice provided under sub. (3) (a) shall clearly inform the recipient that
25 the biological material will be destroyed unless, within 90 days after the date on

1 which the person receives the notice, either a motion for testing of the material is
2 filed under s. 974.07 (2) or a written request to preserve the material is submitted
3 to the law enforcement agency.

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

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

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

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

4 **12.** Page 1258, line 7: after that line insert:

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

6 971.23 (1) (e) Any relevant written or recorded statements of a witness named
7 on a list under par. (d), including any videotaped oral statement of a child under s.
8 908.08, any reports or statements of experts made in connection with the case or, if
9 an expert does not prepare a report or statement, a written summary of the expert’s
10 findings or the subject matter of his or her testimony, and the results of any physical
11 or mental examination, scientific test, experiment or comparison that the district
12 attorney intends to offer in evidence at trial. ~~This paragraph does not apply to~~
13 ~~reports subject to disclosure under s. 972.11 (5).~~

14 SECTION 4002t. 971.23 (2m) (am) of the statutes is amended to read:

15 971.23 (2m) (am) Any relevant written or recorded statements of a witness
16 named on a list under par. (a), including any reports or statements of experts made
17 in connection with the case or, if an expert does not prepare a report or statement,
18 a written summary of the expert’s findings or the subject matter of his or her
19 testimony, and including the results of any physical or mental examination, scientific
20 test, experiment or comparison that the defendant intends to offer in evidence at
21 trial. ~~This paragraph does not apply to reports subject to disclosure under s. 972.11~~
22 ~~(5).~~

23 SECTION 4002v. 971.23 (9) of the statutes is created to read:

1 971.23 (9) DEOXYRIBONUCLEIC ACID EVIDENCE. (a) In this subsection
2 “deoxyribonucleic acid profile” has the meaning given in s. 939.74 (2d) (a).

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

10 (c) The court shall exclude deoxyribonucleic acid profile evidence at trial, if the
11 notice and production deadlines under par. (b) are not met, except the court may
12 waive the 45 day notice requirement or may extend the 15 day production
13 requirement upon stipulation of the parties, or for good cause, if the court finds that
14 no party will be prejudiced by the waiver or extension. The court may in appropriate
15 cases grant the opposing party a recess or continuance.”

16 **13.** Page 1258, line 15: after that line insert:

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

18 972.11 (1) Except as provided in subs. (2) to ~~(5)~~ (4), the rules of evidence and
19 practice in civil actions shall be applicable in all criminal proceedings unless the
20 context of a section or rule manifestly requires a different construction. No guardian
21 ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895,
22 except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal
23 proceedings.

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

1 **14.** Page 1271, line 6: after that line insert:

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

3 974.02 (1) A motion for postconviction relief other than ~~a motion under s.~~
4 ~~805.15 (1) based on newly discovered evidence or a motion~~ under s. 974.06 or 974.07
5 (2) by the defendant in a criminal case shall be made in the time and manner
6 provided in ss. 809.30 and 809.40. An appeal by the defendant in a criminal case from
7 a judgment of conviction or from an order denying a postconviction motion or from
8 both shall be taken in the time and manner provided in ss. 808.04 (3), 809.30 and
9 809.40. An appeal of an order or judgment on habeas corpus remanding to custody
10 a prisoner committed for trial under s. 970.03 shall be taken under ss. 808.03 (2) and
11 809.50, with notice to the attorney general and the district attorney and opportunity
12 for them to be heard.

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

14 974.05 (1) (b) Order granting postconviction relief under s. 974.02 or, 974.06,
15 or 974.07.

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

17 **974.07 Motion for postconviction deoxyribonucleic acid testing of**
18 **certain evidence. (1)** In this section:

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

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

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

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

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

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

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

13 (3) A movant or, if applicable, his or her attorney shall serve a copy of the
14 motion made under sub. (2) on the district attorney's office that prosecuted the case
15 that resulted in the conviction, adjudication, or finding of not guilty by reason of
16 mental disease or defect. The court in which the motion is made shall also notify the
17 appropriate district attorney's office that a motion has been made under sub. (2) and
18 shall give the district attorney an opportunity to respond to the motion. Failure by
19 a movant to serve a copy of the motion on the appropriate district attorney's office
20 does not deprive the court of jurisdiction and is not grounds for dismissal of the
21 motion.

22 (4) (a) The clerk of the circuit court in which a motion under sub. (2) is made
23 shall send a copy of the motion and, if a hearing on the motion is scheduled, a notice
24 of the hearing to the victim of the crime or delinquent act committed by the movant,
25 if the clerk is able to determine an address for the victim. The clerk of the circuit court

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

5 (b) Notwithstanding the limitation on the disclosure of mailing addresses from
6 completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046
7 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2),
8 971.17 (6m) (d), and 980.11 (4), the department of corrections, the parole commission,
9 and the department of health and family services shall, upon request, assist clerks
10 of court in obtaining information regarding the mailing address of victims for the
11 purpose of sending copies of motions and notices of hearings under par. (a).

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

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

- 21 1. Findings based on testing of biological materials.
- 22 2. Physical evidence that is in the actual or constructive possession of a
23 government agency and that contains biological material or on which there is
24 biological material.

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

4 1. Findings based on testing of biological materials.

5 2. The movant's biological specimen.

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

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

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

14 1. The movant claims that he or she is innocent of the offense at issue in the
15 motion under sub. (2).

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

21 3. The ^{evidence} ~~evidence~~ to be tested meets the conditions under sub. (2) (a) to (c).

22 4. 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.

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

3 1. It is reasonably probable that the outcome of the proceedings that resulted
4 in the conviction, the finding of not guilty by reason of mental disease or defect, or
5 the delinquency adjudication for the offense at issue in the motion under sub. (2), or
6 the terms of the sentence, the commitment under s. 971.17, or the disposition under
7 ch. 938, would have been more favorable to the movant if the results of
8 deoxyribonucleic acid testing had been available before he or she was prosecuted,
9 convicted, found not guilty by reason of mental disease or defect, or adjudicated
10 delinquent for the offense.

11 2. The evidence to be tested meets the conditions under sub. (2) (a) to (c).

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

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

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

1 (a) If a person other than the movant is in custody, as defined in s. 968.205 (1)
2 (a), the evidence is relevant to the criminal, delinquency, or commitment proceeding
3 that resulted in the person being in custody, the person has not been denied
4 deoxyribonucleic acid testing or postconviction relief under this section, and the
5 person has not waived his or her right to preserve the evidence under s. 165.81 (3),
6 757.54 (2), 968.205, or 978.08, the court shall order the evidence preserved until all
7 persons entitled to have the evidence preserved are released from custody, and the
8 court shall designate who shall preserve the evidence. The court may not issue an
9 order under this paragraph requiring that an agency transfer evidence to a crime
10 laboratory specified under s. 165.75 for the purpose of preservation of the evidence
11 by the crime laboratory, unless the crime laboratory consents to the transfer.

12 (b) If the conditions in par. (a) are not present, the court shall determine the
13 disposition of the evidence, and, if the evidence is to be preserved, by whom and for
14 how long. The court shall issue appropriate orders concerning the disposition of the
15 evidence based on its determinations. The court may not issue an order under this
16 paragraph requiring that an agency transfer evidence to a crime laboratory specified
17 under s. 165.75 for the purpose of preservation of the evidence by the crime
18 laboratory, unless the crime laboratory consents to the transfer.

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

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

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

5 3. An order granting the movant a new sentencing hearing, commitment
6 hearing, or dispositional hearing.

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

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

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

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

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

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

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

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

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

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

10 **15.** Page 1271, line 13: after that line insert:

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

12 977.07 (1) (b) For referrals not made under ss. 809.30 ~~and~~, 974.06, and 974.07,
13 a representative of the state public defender is responsible for making indigency
14 determinations unless the county became responsible under s. 977.07 (1) (b) 2. or 3.,
15 1983 stats., for these determinations. Subject to the provisions of par. (bn), those
16 counties may continue to be responsible for making indigency determinations. Any
17 such county may change the agencies or persons who are designated to make
18 indigency determinations only upon the approval of the state public defender.

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

20 977.07 (1) (c) For all referrals made under ss. 809.30 ~~and~~, 974.06 (3) (b) and
21 974.07 (11), except a referral of a child who is entitled to be represented by counsel
22 under s. 48.23 or 938.23, a representative of the state public defender shall
23 determine indigency, ~~and~~. For referrals made under ss. 809.30 and 974.06 (3) (b),
24 except a referral of a child who is entitled to be represented by counsel under s. 48.23

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

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

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

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

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

10 (2) Except as provided in sub. (3), if physical evidence that is in the possession
11 of a district attorney includes any biological material that was collected in connection
12 with a criminal investigation that resulted in a criminal conviction, delinquency
13 adjudication, or commitment under s. 971.17 or 980.06, the district attorney 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 (3) Subject to sub. (5), a district attorney may destroy biological material before
17 the expiration of the time period specified in sub. (2) if all of the following apply:

18 (a) The district attorney sends a notice of its intent to destroy the biological
19 material 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 (b) No person who is notified under par. (a) does either of the following within
23 90 days after the date on which the person received the notice:

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

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

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

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

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

16 **16.** Page 1280, line 22: after that line insert:

17 “SECTION 4034ys. 980.101 of the statutes is created to read:

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

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

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

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

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

22 **17.** Page 1416, line 16: after that line insert:

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LEGISLATIVE REFERENCE BUREAU

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RLR:.....

Insert 9-16:

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

“SECTION 3908g. 938.46[✓] of the statutes is amended to read:

938.46 New evidence. A juvenile whose status is adjudicated by the court under this chapter, or the juvenile’s parent, guardian or legal custodian, may at any time within one year after the entering of the court’s order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court’s original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. This section does not apply to motions made under s. 974.07 (2).”

History: 1995 a. 77.