



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

D-note

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 a
6 motion for a new trial based on newly discovered evidence that is brought under s.
7 974.06.”.

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. 973.19
16 ~~or, 974.06, or 974.07 (2).~~ In a ch. 48, 51, 55 or 938 case, other than a termination of
17 parental rights case under s. 48.43, it means an appeal or a motion for
18 reconsideration by the trial court of its final judgment or order; in such cases a notice
19 of intent to pursue such relief or a motion for such relief need not be styled as seeking
20 “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 1224, line 13: after that line insert:

18 **“SECTION 3908g.** 938.46 of the statutes is amended to read:

19 **938.46 New evidence.** A juvenile whose status is adjudicated by the court
20 under this chapter, or the juvenile’s parent, guardian or legal custodian, may at any
21 time within one year after the entering of the court’s order petition the court for a
22 rehearing on the ground that new evidence has been discovered affecting the
23 advisability of the court’s original adjudication. Upon a showing that such evidence

1 does exist, the court shall order a new hearing. This section does not apply to motions
2 made under s. 974.07 (2).”.

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

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

6 939.74 (2d) (a) In this subsection, “deoxyribonucleic acid profile” means an
7 individual’s patterned chemical structure of genetic information identified by
8 analyzing biological material that contains the individual’s deoxyribonucleic acid.

9 (b) If before the time limitation under sub. (1) expired, the state collected
10 biological material that is evidence of the identity of the person who committed a
11 violation of s. 940.225 (1) or (2), the state identified a deoxyribonucleic acid profile
12 from the biological material, and comparisons of that deoxyribonucleic acid profile
13 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. 940.225 (1) or (2) 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 (c) If before the time limitation under sub. (2) (c) expired, the state collected
20 biological material that is evidence of the identity of the person who committed a
21 violation of s. 948.02 (1) or (2) or 948.025, the state identified a deoxyribonucleic acid
22 profile from the biological material, and comparisons of that deoxyribonucleic acid
23 profile to deoxyribonucleic acid profiles of known persons did not result in a probable
24 identification of the person who is the source of the biological material, the state may

1 commence prosecution of the person who is the source of the biological material for
2 violation of s. 948.02 (1) or (2) or 948.025 within 12 months after comparison of the
3 deoxyribonucleic acid profile relating to the violation results in a probable
4 identification of the person.”.

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

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

7 950.04 (1v) (s) To have any stolen or other personal property expeditiously
8 returned by law enforcement agencies when no longer needed as evidence, subject
9 to s. 968.205. If feasible, all such property, except weapons, currency, contraband,
10 property subject to evidentiary analysis, property subject to preservation under s.
11 968.205, and property the ownership of which is disputed, shall be returned to the
12 person within 10 days of being taken.”.

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

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

15 950.04 (1v) (yd) To have the appropriate clerk of court make a reasonable
16 attempt to send the victim a copy of a motion made under s. 974.07 (2) for
17 postconviction deoxyribonucleic acid testing of certain evidence and notification of
18 any hearing on that motion, as provided under s. 974.07 (4).”.

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

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

21 968.20 (1) (intro.) Any person claiming the right to possession of property
22 seized pursuant to a search warrant or seized without a search warrant may apply
23 for its return to the circuit court for the county in which the property was seized or
24 where the search warrant was returned. The court shall order such notice as it

1 deems adequate to be given the district attorney and all persons who have or may
2 have an interest in the property and shall hold a hearing to hear all claims to its true
3 ownership. If the right to possession is proved to the court's satisfaction, it shall
4 order the property, other than contraband or property covered under sub. (1m) or (1r)
5 or s. 173.12 ~~or~~ 173.21 (4), or 968.205, returned if:

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

7 968.20 (2) Property not required for evidence or use in further investigation,
8 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205,
9 may be returned by the officer to the person from whom it was seized without the
10 requirement of a hearing.

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

12 968.20 (4) Any property seized, other than property covered under s. 968.205,
13 ~~which that~~ poses a danger to life or other property in storage, transportation or use
14 and ~~which that~~ is not required for evidence or further investigation shall be safely
15 disposed of upon command of the person in whose custody they are committed. The
16 city, village, town or county shall by ordinance or resolution establish disposal
17 procedures. Procedures may include provisions authorizing an attempt to return to
18 the rightful owner substances which have a commercial value in normal business
19 usage and do not pose an immediate threat to life or property. If enacted, any such
20 provision shall include a presumption that if the substance appears to be or is
21 reported stolen an attempt will be made to return the substance to the rightful owner.

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

23 **968.205 Preservation of certain evidence. (1)** In this section:

24 (a) "Custody" means actual custody of a person under a sentence of
25 imprisonment, custody of a probationer, parolee, or person on extended supervision

1 by the department of corrections, actual or constructive custody of a person pursuant
2 to a dispositional order under ch. 938, supervision of a person, whether in
3 institutional care or on conditional release, pursuant to a commitment order under
4 s. 971.17 and supervision of a person under ch. 980, whether in detention before trial
5 or while in institutional care or on supervised release pursuant to a commitment
6 order.

7 (b) "Discharge date" means the date on which a person is released or discharged
8 from custody that resulted from a criminal action, a delinquency proceeding under
9 ch. 938, or a commitment proceeding under s. 971.17 or ch. 980 or, if the person is
10 serving consecutive sentences of imprisonment, the date on which the person is
11 released or discharged from custody under all of the sentences.

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

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

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

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

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

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

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

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

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

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

21 971.04 (3) If the defendant is present at the beginning of the trial and
22 thereafter, during the progress of the trial or before the verdict of the jury has been
23 returned into court, voluntarily absents himself or herself from the presence of the
24 court without leave of the court, the trial or return of verdict of the jury in the case
25 shall not thereby be postponed or delayed, but the trial or submission of said case to

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

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

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

15 971.23 (1) (e) Any relevant written or recorded statements of a witness named
16 on a list under par. (d), including any videotaped oral statement of a child under s.
17 908.08, any reports or statements of experts made in connection with the case or, if
18 an expert does not prepare a report or statement, a written summary of the expert’s
19 findings or the subject matter of his or her testimony, and the results of any physical
20 or mental examination, scientific test, experiment or comparison that the district
21 attorney intends to offer in evidence at trial. ~~This paragraph does not apply to~~
22 ~~reports subject to disclosure under s. 972.11 (5).~~

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

1 971.23 (2m) (am) Any relevant written or recorded statements of a witness
2 named on a list under par. (a), including any reports or statements of experts made
3 in connection with the case or, if an expert does not prepare a report or statement,
4 a written summary of the expert's findings or the subject matter of his or her
5 testimony, and including the results of any physical or mental examination, scientific
6 test, experiment or comparison that the defendant intends to offer in evidence at
7 trial. ~~This paragraph does not apply to reports subject to disclosure under s. 972.11~~
8 (5).

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

10 971.23 (9) DEOXYRIBONUCLEIC ACID EVIDENCE. (a) In this subsection
11 “deoxyribonucleic acid profile” has the meaning given in s. 939.74 (2d) (a).

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

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

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

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

3 972.11 (1) Except as provided in subs. (2) to ~~(5)~~ (4), the rules of evidence and
4 practice in civil actions shall be applicable in all criminal proceedings unless the
5 context of a section or rule manifestly requires a different construction. No guardian
6 ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895,
7 except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal
8 proceedings.

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

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

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

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

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

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

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

974.07 Motion for postconviction deoxyribonucleic acid testing of

certain evidence. (1) In this section:

MOVE (a) "Movant" means a person who makes a motion under sub. (2).

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

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

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

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

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

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

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

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

13 (b) Notwithstanding the limitation on the disclosure of mailing addresses from
14 completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046
15 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2),
16 971.17 (6m) (d), and 980.11 (4), the department of corrections, the parole commission,
17 and the department of health and family services shall, upon request, assist clerks
18 of court in obtaining information regarding the mailing address of victims for the
19 purpose of sending copies of motions and notices of hearings under par. (a).

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

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

4 1. Findings based on testing of biological materials.

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

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

11 1. Findings based on testing of biological materials.

12 2. The movant's biological specimen.

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

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

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

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

23 2. It is reasonably probable that the movant would not have been prosecuted,
24 convicted, found not guilty by reason of mental disease or defect, or adjudicated
25 delinquent for the offense at issue in the motion under sub. (2), if exculpatory

1 deoxyribonucleic acid testing results had been available before the prosecution,
2 conviction, finding of not guilty, or adjudication for the offense.

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

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

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

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

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

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

23 (8) The court may impose reasonable conditions on any testing ordered under
24 this section in order to protect the integrity of the evidence and the testing process.
25 If appropriate and if stipulated to by the movant and the district attorney, the court

1 may order the state crime laboratories to perform the testing as provided under s.
2 165.77 (2m).

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

8 (a) If a person other than the movant is in custody, as defined in s. 968.205 (1)
9 (a), the evidence is relevant to the criminal, delinquency, or commitment proceeding
10 that resulted in the person being in custody, the person has not been denied
11 deoxyribonucleic acid testing or postconviction relief under this section, and the
12 person has not waived his or her right to preserve the evidence under s. 165.81 (3),
13 757.54 (2), 968.205, or 978.08, the court shall order the evidence preserved until all
14 persons entitled to have the evidence preserved are released from custody, and the
15 court shall designate who shall preserve the evidence. The court may not issue an
16 order under this paragraph requiring that an agency transfer evidence to a crime
17 laboratory specified under s. 165.75 for the purpose of preservation of the evidence
18 by the crime laboratory, unless the crime laboratory consents to the transfer.

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

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

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

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

11 3. An order granting the movant a new sentencing hearing, commitment
12 hearing, or dispositional hearing.

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

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

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

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

23 **(12)** (a) The court may order a movant to pay the costs of any testing ordered
24 by the court under this section if the court determines that the movant is not
25 indigent. If the court determines that the movant is indigent, the court shall order

1 the costs of the testing to be paid for from the appropriation account under s. 20.410
2 (1) (be).

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

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

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

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

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

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

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

17 977.07 (1) (b) For referrals not made under ss. 809.30 and, 974.06, and 974.07,
18 a representative of the state public defender is responsible for making indigency
19 determinations unless the county became responsible under s. 977.07 (1) (b) 2. or 3.,
20 1983 stats., for these determinations. Subject to the provisions of par. (bn), those
21 counties may continue to be responsible for making indigency determinations. Any
22 such county may change the agencies or persons who are designated to make
23 indigency determinations only upon the approval of the state public defender.

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

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

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

12 **978.08 Preservation of certain evidence.** (1) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **980.101 Reversal, vacation or setting aside of judgment relating to a**
24 **sexually violent offense; effect.** (1) In this section, “judgment relating to a

1 sexually violent offense” means a judgment of conviction for a sexually violent
2 offense, an adjudication of delinquency on the basis of a sexually violent offense, or
3 a judgment of not guilty of a sexually violent offense by reason of mental disease or
4 defect.

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

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

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

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2217/2dn

RLR:.....

Jld

This redraft corrects the alphabetization of definitions under s. 974.07 (1), ~~which~~ as created by the amendment. ✓

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBb2217/2dn
RLR:jld:jf

July 23, 2001

This redraft corrects the alphabetization of definitions under s. 974.07 (1), as created by the amendment.

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State of Wisconsin
2001 - 2002 LEGISLATURE

LRBb2217/2
RLR:jld&cs:jf

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 a
6 motion for a new trial based on newly discovered evidence that is brought under s.
7 974.06.”.

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. 973.19
16 ~~or, 974.06, or 974.07 (2).~~ In a ch. 48, 51, 55 or 938 case, other than a termination of
17 parental rights case under s. 48.43, it means an appeal or a motion for
18 reconsideration by the trial court of its final judgment or order; in such cases a notice
19 of intent to pursue such relief or a motion for such relief need not be styled as seeking
20 “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 1224, line 13: after that line insert:

18 **“SECTION 3908g.** 938.46 of the statutes is amended to read:

19 **938.46 New evidence:** A juvenile whose status is adjudicated by the court
20 under this chapter, or the juvenile’s parent, guardian or legal custodian, may at any
21 time within one year after the entering of the court’s order petition the court for a
22 rehearing on the ground that new evidence has been discovered affecting the
23 advisability of the court’s original adjudication. Upon a showing that such evidence

1 does exist, the court shall order a new hearing. This section does not apply to motions
2 made under s. 974.07 (2).”.

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

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

6 939.74 (2d) (a) In this subsection, “deoxyribonucleic acid profile” means an
7 individual’s patterned chemical structure of genetic information identified by
8 analyzing biological material that contains the individual’s deoxyribonucleic acid.

9 (b) If before the time limitation under sub. (1) expired, the state collected
10 biological material that is evidence of the identity of the person who committed a
11 violation of s. 940.225 (1) or (2), the state identified a deoxyribonucleic acid profile
12 from the biological material, and comparisons of that deoxyribonucleic acid profile
13 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. 940.225 (1) or (2) 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 (c) If before the time limitation under sub. (2) (c) expired, the state collected
20 biological material that is evidence of the identity of the person who committed a
21 violation of s. 948.02 (1) or (2) or 948.025, the state identified a deoxyribonucleic acid
22 profile from the biological material, and comparisons of that deoxyribonucleic acid
23 profile to deoxyribonucleic acid profiles of known persons did not result in a probable
24 identification of the person who is the source of the biological material, the state may

1 commence prosecution of the person who is the source of the biological material for
2 violation of s. 948.02 (1) or (2) or 948.025 within 12 months after comparison of the
3 deoxyribonucleic acid profile relating to the violation results in a probable
4 identification of the person.”.

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

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

7 950.04 (1v) (s) To have any stolen or other personal property expeditiously
8 returned by law enforcement agencies when no longer needed as evidence, subject
9 to s. 968.205. If feasible, all such property, except weapons, currency, contraband,
10 property subject to evidentiary analysis, property subject to preservation under s.
11 968.205, and property the ownership of which is disputed, shall be returned to the
12 person within 10 days of being taken.”.

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

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

15 950.04 (1v) (yd) To have the appropriate clerk of court make a reasonable
16 attempt to send the victim a copy of a motion made under s. 974.07 (2) for
17 postconviction deoxyribonucleic acid testing of certain evidence and notification of
18 any hearing on that motion, as provided under s. 974.07 (4).”.

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

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

21 968.20 (1) (intro.) Any person claiming the right to possession of property
22 seized pursuant to a search warrant or seized without a search warrant may apply
23 for its return to the circuit court for the county in which the property was seized or
24 where the search warrant was returned. The court shall order such notice as it

1 deems adequate to be given the district attorney and all persons who have or may
2 have an interest in the property and shall hold a hearing to hear all claims to its true
3 ownership. If the right to possession is proved to the court's satisfaction, it shall
4 order the property, other than contraband or property covered under sub. (1m) or (1r)
5 or s. 173.12 ~~or~~ 173.21 (4), or 968.205, returned if:

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

7 968.20 (2) Property not required for evidence or use in further investigation,
8 unless contraband or property covered under sub. (1m) or (1r) or s. 173.12 or 968.205,
9 may be returned by the officer to the person from whom it was seized without the
10 requirement of a hearing.

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

12 968.20 (4) Any property seized, other than property covered under s. 968.205,
13 which that poses a danger to life or other property in storage, transportation or use
14 and which that is not required for evidence or further investigation shall be safely
15 disposed of upon command of the person in whose custody they are committed. The
16 city, village, town or county shall by ordinance or resolution establish disposal
17 procedures. Procedures may include provisions authorizing an attempt to return to
18 the rightful owner substances which have a commercial value in normal business
19 usage and do not pose an immediate threat to life or property. If enacted, any such
20 provision shall include a presumption that if the substance appears to be or is
21 reported stolen an attempt will be made to return the substance to the rightful owner.

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

23 **968.205 Preservation of certain evidence.** (1) In this section:

24 (a) "Custody" means actual custody of a person under a sentence of
25 imprisonment, custody of a probationer, parolee, or person on extended supervision

1 by the department of corrections, actual or constructive custody of a person pursuant
2 to a dispositional order under ch. 938, supervision of a person, whether in
3 institutional care or on conditional release, pursuant to a commitment order under
4 s. 971.17 and supervision of a person under ch. 980, whether in detention before trial
5 or while in institutional care or on supervised release pursuant to a commitment
6 order.

7 (b) "Discharge date" means the date on which a person is released or discharged
8 from custody that resulted from a criminal action, a delinquency proceeding under
9 ch. 938, or a commitment proceeding under s. 971.17 or ch. 980 or, if the person is
10 serving consecutive sentences of imprisonment, the date on which the person is
11 released or discharged from custody under all of the sentences.

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

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

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

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

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

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

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

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

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

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

21 971.04 (3) If the defendant is present at the beginning of the trial and
22 thereafter, during the progress of the trial or before the verdict of the jury has been
23 returned into court, voluntarily absents himself or herself from the presence of the
24 court without leave of the court, the trial or return of verdict of the jury in the case
25 shall not thereby be postponed or delayed, but the trial or submission of said case to

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

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

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

15 971.23 (1) (e) Any relevant written or recorded statements of a witness named
16 on a list under par. (d), including any videotaped oral statement of a child under s.
17 908.08, any reports or statements of experts made in connection with the case or, if
18 an expert does not prepare a report or statement, a written summary of the expert’s
19 findings or the subject matter of his or her testimony, and the results of any physical
20 or mental examination, scientific test, experiment or comparison that the district
21 attorney intends to offer in evidence at trial. ~~This paragraph does not apply to~~
22 ~~reports subject to disclosure under s. 972.11 (5).~~

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

1 971.23 (2m) (am) Any relevant written or recorded statements of a witness
2 named on a list under par. (a), including any reports or statements of experts made
3 in connection with the case or, if an expert does not prepare a report or statement,
4 a written summary of the expert's findings or the subject matter of his or her
5 testimony, and including the results of any physical or mental examination, scientific
6 test, experiment or comparison that the defendant intends to offer in evidence at
7 trial. ~~This paragraph does not apply to reports subject to disclosure under s. 972.11~~
8 ~~(5).~~

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

10 971.23 (9) DEOXYRIBONUCLEIC ACID EVIDENCE. (a) In this subsection
11 “deoxyribonucleic acid profile” has the meaning given in s. 939.74 (2d) (a).

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

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

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

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

3 972.11 (1) Except as provided in subs. (2) to ~~(5)~~ (4), the rules of evidence and
4 practice in civil actions shall be applicable in all criminal proceedings unless the
5 context of a section or rule manifestly requires a different construction. No guardian
6 ad litem need be appointed for a defendant in a criminal action. Chapters 885 to 895,
7 except ss. 804.02 to 804.07 and 887.23 to 887.26, shall apply in all criminal
8 proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (b) Notwithstanding the limitation on the disclosure of mailing addresses from
14 completed information cards submitted by victims under ss. 51.37 (10) (dx), 301.046
15 (4) (d), 301.048 (4m) (d), 301.38 (4), 302.105 (4), 304.06 (1) (f), 304.063 (4), 938.51 (2),
16 971.17 (6m) (d), and 980.11 (4), the department of corrections, the parole commission,
17 and the department of health and family services shall, upon request, assist clerks
18 of court in obtaining information regarding the mailing address of victims for the
19 purpose of sending copies of motions and notices of hearings under par. (a).

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

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

4 1. Findings based on testing of biological materials.

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

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

11 1. Findings based on testing of biological materials.

12 2. The movant's biological specimen.

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

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

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

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

23 2. It is reasonably probable that the movant would not have been prosecuted,
24 convicted, found not guilty by reason of mental disease or defect, or adjudicated
25 delinquent for the offense at issue in the motion under sub. (2), if exculpatory

1 deoxyribonucleic acid testing results had been available before the prosecution,
2 conviction, finding of not guilty, or adjudication for the offense.

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

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

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

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

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

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

23 (8) The court may impose reasonable conditions on any testing ordered under
24 this section in order to protect the integrity of the evidence and the testing process.
25 If appropriate and if stipulated to by the movant and the district attorney, the court

1 may order the state crime laboratories to perform the testing as provided under s.
2 165.77 (2m).

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

8 (a) If a person other than the movant is in custody, as defined in s. 968.205 (1)
9 (a), the evidence is relevant to the criminal, delinquency, or commitment proceeding
10 that resulted in the person being in custody, the person has not been denied
11 deoxyribonucleic acid testing or postconviction relief under this section, and the
12 person has not waived his or her right to preserve the evidence under s. 165.81 (3),
13 757.54 (2), 968.205, or 978.08, the court shall order the evidence preserved until all
14 persons entitled to have the evidence preserved are released from custody, and the
15 court shall designate who shall preserve the evidence. The court may not issue an
16 order under this paragraph requiring that an agency transfer evidence to a crime
17 laboratory specified under s. 165.75 for the purpose of preservation of the evidence
18 by the crime laboratory, unless the crime laboratory consents to the transfer.

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

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

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

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

11 3. An order granting the movant a new sentencing hearing, commitment
12 hearing, or dispositional hearing.

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

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

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

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

23 (12) (a) The court may order a movant to pay the costs of any testing ordered
24 by the court under this section if the court determines that the movant is not
25 indigent. If the court determines that the movant is indigent, the court shall order

1 the costs of the testing to be paid for from the appropriation account under s. 20.410
2 (1) (be).

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

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

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

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

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

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

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

17 977.07 (1) (b) For referrals not made under ss. 809.30 and, 974.06, and 974.07,
18 a representative of the state public defender is responsible for making indigency
19 determinations unless the county became responsible under s. 977.07 (1) (b) 2. or 3.,
20 1983 stats., for these determinations. Subject to the provisions of par. (bn), those
21 counties may continue to be responsible for making indigency determinations. Any
22 such county may change the agencies or persons who are designated to make
23 indigency determinations only upon the approval of the state public defender.

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

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

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

12 **978.08 Preservation of certain evidence.** (1) In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **980.101 Reversal, vacation or setting aside of judgment relating to a**
24 **sexually violent offense; effect.** (1) In this section, “judgment relating to a

1 sexually violent offense” means a judgment of conviction for a sexually violent
2 offense, an adjudication of delinquency on the basis of a sexually violent offense, or
3 a judgment of not guilty of a sexually violent offense by reason of mental disease or
4 defect.

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

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

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

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

