



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Assembly Bill 291

Assembly Amendments 1 and 2

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Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)

2001 Assembly Bill 291 extends the statute of limitations for certain crimes of sexual assault if DNA evidence is available, requires the preservation of biological evidence, and permits post-conviction DNA testing.

Assembly Amendment 1

Current statutes impose various time limits on post-conviction motions and appeals of criminal convictions. **Assembly Bill 291** creates a special provision permitting motions for post-conviction DNA testing of evidence. 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 where the judgment was rendered for an order requiring forensic DNA testing of evidence that is relevant to the investigation or prosecution that resulted in the judgment and that meets other conditions to assure its credibility.

The bill **requires** the court in which the motion is made to order forensic DNA testing if it is reasonably probable that the person would not have been prosecuted, convicted, found not guilty by reason of mental disease or deficit, or adjudicated delinquent if exculpatory DNA testing results had been available and if specified conditions relating to the evidence are met.

The court **may** order DNA testing if the criminal conviction or sentence, the finding or commitment due to a finding of not guilty by reason of mental disease or defect, or the juvenile delinquency adjudication or disposition would have been more favorable to the person if the results of DNA testing had been available and conditions relating to the evidence are met.

Assembly Amendment 1 provides that a court is required to order DNA testing if the person making the motion for the testing claims that he or she is innocent of the offense at issue in addition to making the other required showings under the bill.

Regarding permissive DNA testing, under the amendment, the person making the motion must show that it is reasonably probable that the outcome of the proceedings that resulted in the conviction or other judgment would have been more favorable to the person if the results of DNA testing had been available.

The amendment also makes several technical changes to the provisions relating to post-conviction DNA testing.

Assembly Amendment 2

Assembly Bill 291 generally provides that the state crime laboratories, the courts, law enforcement agencies and district attorneys must preserve physical evidence that includes any biological material collected in connection with a criminal action or a juvenile delinquency proceeding until every person in custody as a result of the criminal action or delinquency proceeding has reached his or her discharge date.

Assembly Amendment 2 allows the state crime laboratories to return biological evidence to the officer or agency that submitted the evidence to the laboratory. Also under the amendment, the court, in determining whether biological evidence must be preserved, may not order an agency to transfer evidence to a crime laboratory for preservation unless the laboratory consents to the transfer.

The Assembly adopted Assembly Amendments 1 and 2 on a voice vote and unanimously passed Assembly Bill 291 on June 12, 2001.

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