

C

West's Wisconsin Statutes Annotated [Currentness](#)

Criminal Procedure (Ch. 967 to 980)

▢ [Chapter 968](#). Commencement of Criminal Proceedings ([Refs & Annos](#))

→ **968.205. Preservation of certain evidence**

(1) In this section:

(a) "Custody" means actual custody of a person under a sentence of imprisonment, custody of a probationer, parolee, or person on extended supervision by the department of corrections, actual or constructive custody of a person pursuant to a dispositional order under ch. 938, supervision of a person, whether in institutional care or on conditional release, pursuant to a commitment order under [s. 971.17](#) and supervision of a person under ch. 980, whether in detention before trial or while in institutional care or on supervised release pursuant to a commitment order.

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

(2) Except as provided in sub. (3), if physical evidence that is in the possession of a law enforcement agency includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, delinquency adjudication, or commitment under [s. 971.17](#) or [980.06](#) and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the law enforcement agency shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(2m) A law enforcement agency shall retain evidence to which sub. (2) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in [s. 939.74\(2d\)\(a\)](#), from the biological material contained in or included on the evidence.

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

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

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

1. Files a motion for testing of the evidence under [s. 974.07\(2\)](#).
2. Submits a written request for retention of the evidence to the law enforcement agency.

(c) No other provision of federal or state law requires the law enforcement agency to retain the evidence.

(4) A notice provided under sub. (3)(a) shall clearly inform the recipient that the evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the evidence is filed under [s. 974.07\(2\)](#) or a written request for retention of the evidence is submitted to the law enforcement agency.

(5) If, after providing notice under sub. (3)(a) of its intent to destroy evidence, a law enforcement agency receives a written request for retention of the evidence, the law enforcement agency shall retain the evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under [s. 974.07\(7\)](#), [\(9\)\(a\)](#), or [\(10\)\(a\)5.](#), unless the court orders destruction or transfer of the evidence under [s. 974.07\(9\)\(b\)](#) or [\(10\)\(a\)5.](#)

<<For credits, see Historical Note field.>>

Current through 2009 Act 406, published 06/02/2010

© 2010 Thomson Reuters

END OF DOCUMENT