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

Criminal Procedure (Ch. 967 to 980)

▢ [Chapter 978. District Attorneys \(Refs & Annos\)](#)

→ **978.08. Preservation of certain evidence**

(1) In this section:

(a) “Custody” has the meaning given in [s. 968.205\(1\)\(a\)](#).

(b) “Discharge date” has the meaning given in [s. 968.205\(1\)\(b\)](#).

(2) Except as provided in sub. (3), if physical evidence that is in the possession of a district attorney 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 district attorney 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 district attorney 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 district attorney 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 district attorney 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 district attorney.

(c) No other provision of federal or state law requires the district attorney 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 district attorney.

(5) If, after providing notice under sub. (3)(a) of its intent to destroy evidence, a district attorney receives a written request for retention of the evidence, the district attorney 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.](#)

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