

2009 DRAFTING REQUEST

Bill

Received: **02/02/2009**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Matt**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|---------------------|---|------------------------|----------------|-----------------------|-----------------|-----------------|
| /? | rryan 03/09/2009 | wjackson 03/17/2009 nmatzke 03/18/2009 | | _____ | | | S&L Crime |
| /1 | | | rschluet 03/18/2009 | _____ | mbarman 03/18/2009 | | S&L Crime |
| /2 | rryan 04/27/2009 | nmatzke 04/27/2009 | rschluet 04/27/2009 | _____ | lparisi 04/27/2009 | | S&L Crime |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|---------------------|-----------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /3 | rryan 08/20/2009 | nmatzke 08/20/2009 | jfrantze 08/20/2009 | _____ | cduerst 08/20/2009 | cduerst 10/05/2009 | |

FE Sent For:

<END>

↳ At Intro.

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1/3 nwn
8/20

8/20

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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4279
MD PH
4/27

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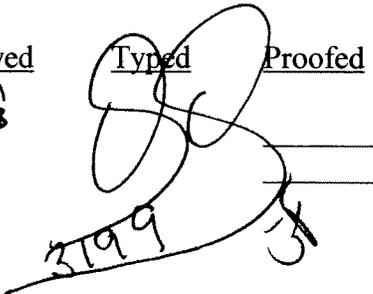
Collecting DNA from persons arrested for a felony

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| /? | rryan | /1 nwn 3/18 |  | | | | |
|----|-------|----------------|---|--|--|--|--|

FE Sent For:

<END>

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

2/6/09

memo for Hansdorf

Redraft of ARB 1

except collect DNA when arrested
not when charged

Washington State, New Mexico - etc.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

LRB-1911

Call to Matt 3/6/09

For juveniles, collect if arrested
for a crime for which current
law requires collection upon
delinquency adjudication.

Table 1.⁷³ STATE LAWS ALLOWING FOR DNA TESTING UPON ARREST

| STATE | YEAR | ARRESTEES INCLUDED | EXPUNGEMENT PROVISIONS |
|-------------------------------------|------|---|---|
| VA (HB 892) | 2002 | "Every person arrested for the commission or attempted commission of a violent felony" | "A person whose DNA profile has been included in the data bank may request expungement on the grounds that the felony conviction... has been reversed and the case dismissed." |
| LA (HB 66) | 2003 | "A person who is arrested for a felony or other specified offense, including an attempt, conspiracy, criminal solicitation, or accessory after the fact of such offenses." Other specified offenses include: battery, unlawful use of a laser on a police officer, simple assault, assault on a schoolteacher, stalking, misdemeanor carnal knowledge of a juvenile, prostitution, soliciting for prostitutes, prostitution by massage, letting premises for prostitution and peeping tom offenses. Includes juveniles. | None found <i>LA Revised Stats</i> <i>La. R.S. 15:609</i> <i>no cases on arrest</i> |
| TX (HB 588) | 2001 | Individuals indicted for certain sex crimes, certain crimes against children and burglary. | "A DNA record may be expunged if the person who is the subject of the record is found not guilty of the offense charged." |
| CA (Prop. 69) | 2004 | All adults arrested for murder or rape; starting in 2009 all adults arrested for any felony offense. <i>Penal Code § 296(a)</i> <i>Title 9, Ch. 6, art. 2</i> | Burden is on the arrestee; innocent person must send a formal request to three offices: the trial court of the county in which he or she was arrested; the CA DOJ's DNA Lab; and the prosecuting attorney of the county in which s/he was arrested. No appeal process is available in case of denial. |
| NM (SB 216) | 2006 | Requires DNA samples from all persons eighteen years of age or over who are arrested for certain felony offenses. | May request expungement if conviction reversed, felony charge resolved (dismissal, successful completion of pre-prosecution diversion program, misdemeanor conviction, acquittal), or no felony charge after a year |
| MN ⁷⁴ | 2005 | Arrests for violent felony or burglary, upon finding of probable cause for the arrest. | |
| KS (HB 2554) | 2006 | Arrests for any felony or drug crime of severity levels 1 or 2. | "Defendant [may] request the DNA samples be expunged and destroyed in the event of a dismissal of charges or acquittal at trial" |
| TN ⁷⁵ (HB 2649, SB 2651) | 2006 | Requires persons arrested for burglary or certain defined violent offenses to give biological sample for purpose of DNA analysis and inclusion in TBI database. | "Creates procedure to destroy DNA samples in cases in which there is a dismissal of charges or an acquittal" |

upheld for arrests

no case law on arrests

no case law

⁷³ Table I prepared with Joanne Kang, ACLU Washington Legislative Office.

⁷⁴ See *In re Welfare of C.T.L.*, *supra* note 13 (declaring the statute unconstitutional, "because Minn. Stat. § 299C.105, subd. 1(a)(1) and (3) (2005), direct law enforcement personnel to conduct searches without first obtaining a search warrant based on a neutral and detached magistrate's determination that there is a fair probability that the search will produce contraband or evidence of a crime, and because the privacy interest of a person who has been charged with a criminal offense, but who has not been convicted, is not outweighed by the state's interest in taking a biological specimen from the person for the purpose of DNA analysis, the portions of Minn. Stat. § 299C.105, subd. 1(a)(1) and (3), that direct law-enforcement personnel to take a biological specimen from a person who has been charged but not convicted violate the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution").

⁷⁵ See Robert Tanner, *More state back taking DNA from arrestees*, DESERET NEWS, June 30, 2006 (finding that state Senator Ron Ramsey's amendment to remove database provisions "won wide support, but was delayed for a year" to add six additional DNA analysts to state lab to address backlog issues).

Feds

42 USC 14135(a) - no case law on arrests

LRB-1911

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

3/6/09

Texas Gov't Code § 411.1471
no arrest cases

Kansas
K.S.A. § 21-2511
no arrest cases

3/19

2007 - 2008 LEGISLATURE

1911/1
LRB-0149/2
RLR:jld:rs
hwn

In 3/19/09

SOON PLEASE

2007 ASSEMBLY BILL 1

RMN(2)
D-N

PWF

January 12, 2007 - Introduced by Representatives WASSERMAN, SUDER, KLEEFISCH, TOWNSEND and ZIEGELBAUER. Referred to Committee on Criminal Justice.

SA ✓
X-ref ✓

Reqm Cat

a person arrested for

1 AN ACT *to amend* 165.76 (3), 165.765 (1), 165.765 (2) (a), 165.77 (3) and 970.03
 2 (7); *to repeal and recreate* 165.77 (4); and *to create* 165.845 of the statutes;
 3 **relating to:** requiring persons charged with a felony to provide a biological
 4 specimen for deoxyribonucleic acid analysis, inclusion of the analysis results in
 5 the Department of Justice deoxyribonucleic acid data bank, requiring the
 6 exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the following people are required to submit biological specimens to the crime laboratories for deoxyribonucleic acid (DNA) analysis: a person sentenced or placed on probation in Wisconsin for a felony (a crime for which a person may be sentenced to prison) or one of the several specified misdemeanors; a person found to be a sexually violent person; a person on probation, parole, or extended supervision in Wisconsin for a crime committed in another state that would be a felony if committed in Wisconsin; and a person found not guilty by reason of mental disease or defect or adjudicated delinquent for certain felony sexual assaults. In addition, a court may order a youth who is adjudicated delinquent for certain other offenses to provide a biological specimen for DNA analysis. The crime laboratories are required to analyze the DNA in the biological specimens and maintain a DNA data bank of information obtained from the analyses. The crime laboratories may compare data obtained from the analysis of specimens and may share the results of

juvenile

or a juvenile taken into custody for certain sexual assault offenses

ASSEMBLY BILL 1

analyses or comparisons with law enforcement agencies, prosecutors, the person who submitted a specimen, and defense attorneys. The crime laboratories must expunge all data relating to a person from the data bank if the person's conviction or adjudication is reversed, set aside, or vacated and the person requests that the data be expunged. A person who is required to submit a biological specimen for DNA analysis, except a person who is committed for mental health reasons, and intentionally fails to provide a specimen is subject to a criminal penalty.

This bill requires that, whenever a person is charged with committing a felony and a court determines that there is probable cause to believe that the person committed the felony, the person must provide a biological specimen for DNA analysis. The person must provide the specimen to the sheriff in the county in which he or she is charged and the sheriff must submit it to the crime laboratories. The crime laboratories must analyze the sample and include information obtained from the analysis in the DNA data bank. If the person is not convicted of a felony in connection with the charge for which he or she was required to submit a specimen and requests that his or her data be expunged from the DNA data bank, the crime laboratories must expunge it unless the data must be maintained in connection with an unrelated conviction, adjudication, or charge. A person who is required under the bill to provide a biological specimen for DNA analysis and intentionally fails to do so is subject to a fine not to exceed \$10,000 or imprisonment not to exceed nine months or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 165.76 (3) of the statutes is amended to read:
2 165.76 (3) If a person is required to submit a biological specimen under s. 51.20
3 (13) (cr), ~~165.845~~ 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, he or she shall
4 comply with that requirement and is not required to comply with this section.

5 SECTION 2. 165.765 (1) of the statutes is amended to read:

165.84(7)

INS A

INS
24

ASSEMBLY BILL 1

1 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
2 a biological specimen under s. 165.76, 165.845, 938.34 (15), 973.047, or 980.063 may
3 be fined not more than \$10,000 or imprisoned for not more than 9 months or both. ✓

4 ^{✓x}
SECTION 3. 165.765 (2) (a) of the statutes is amended to read:

5 165.765 (2) (a) Any physician, registered nurse, medical technologist,
6 physician assistant or person acting under the direction of a physician who obtains
7 a biological specimen under s. 165.76, 165.845, 938.34 (15), 973.047, or 980.063 is
8 immune from any civil or criminal liability for the act, except for civil liability for
9 negligence in the performance of the act. ✓

10 ^{✓x}
SECTION 4. 165.77 (3) of the statutes is amended to read:

11 165.77 (3) If the laboratories receive a human biological specimen under s.
12 51.20 (13) (cr), 165.76, 165.845, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, the
13 laboratories shall analyze the deoxyribonucleic acid in the specimen. The
14 laboratories shall maintain a data bank based on data obtained from
15 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
16 the data obtained from one specimen with the data obtained from other specimens.
17 The laboratories may make data obtained from any analysis and comparison
18 available to law enforcement agencies in connection with criminal or delinquency
19 investigations and, upon request, to any prosecutor, defense attorney or subject of
20 the data. The data may be used in criminal and delinquency actions and proceedings.
21 The laboratories shall destroy specimens obtained under this subsection after
22 analysis has been completed and the applicable court proceedings have concluded. ✓

23 ^{✓x}
SECTION 5. 165.77 (4) of the statutes is repealed and recreated to read:

165.845(7)

ASSEMBLY BILL 1

1 165.77 (4) (a) A person whose deoxyribonucleic acid analysis data has been
2 included in the data bank under sub. (3) may request expungement on the grounds
3 that all of the following conditions are satisfied:

4 1. All convictions or adjudications for which the person was required to submit
5 a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a),
6 973.047, or 980.063 have been reversed, set aside, or vacated.

7 2. Any felony charge for which the person was required to submit a biological
8 specimen under s. 165.845 has been dismissed or the person was found innocent of
9 committing the felony charged.

10 (b) If the conditions under par. (a) are satisfied, the laboratories shall purge all
11 records and identifiable information in the data bank pertaining to the person and
12 destroy all specimens from the person upon receiving the person's written request
13 for expungement and any documentation required by the department of justice
14 under rules promulgated under sub. (8).

15 SECTION 6. 165.845 of the statutes is created to read:

16 **165.845 Submission of biological specimens by persons charged with**
17 **felonies.** (1) Whenever a person is charged with committing a felony and a court
18 makes a determination that there is probable cause to believe that the person
19 committed the felony, the person shall provide the sheriff of the county in which the
20 person is charged a biological specimen for deoxyribonucleic acid analysis. The
21 sheriff shall submit the specimen to the crime laboratories for deoxyribonucleic acid
22 analysis and inclusion of the person's deoxyribonucleic acid profile in a data bank
23 under s. 165.77 (3).

INS
4-6

INS
4-14

ASSEMBLY BILL 1

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(b) (2) The department of justice shall promulgate rules establishing procedures and time limits for providing, collecting, and submitting biological specimens under this section. ✓

(c) (3) Biological specimens collected under this section may only be used as provided under s. 165.77. ✓

SECTION 7. 970.03 (7) of the statutes is amended to read:
970.03 (7) If the court finds probable cause to believe that a felony has been committed by the defendant, it shall bind the defendant over for trial and shall determine whether a biological specimen has been collected from the defendant as required under s. 165.845. If a specimen has not been collected, the court shall direct the defendant to provide and the sheriff to collect a biological specimen for deoxyribonucleic acid analysis.

SECTION 8. Initial applicability.

(1) This act first applies to persons charged with felonies on the effective date of this subsection. ✓

SECTION 9. Effective date.

(1) This act takes effect on the first day of the 2nd month beginning after publication. ✓

(END)

arrested or taken into custody

LEGISLATIVE REFERENCE BUREAU

or the court reaches final disposition with respect to charges in connection with the arrest and the person is not found guilty of a felony or if found guilty of a felony the conviction is later reversed, set aside, or vacated.

1

Ins A:

*the Department of Justice
the Crime Laboratories*

This bill requires law enforcement agencies to collect a biological specimen for DNA analysis from every adult who is arrested for a felony and every juvenile who is taken into custody for certain sexual assault offenses that would be felonies if committed by an adult. The bill further requires DOJ to analyze the specimens and include information obtained from the analyses in the DNA data bank. Under the bill, DOJ must expunge information about a person from the DNA data bank, at the person's request, if the person was required to submit a biological specimen only in connection with an arrest and the person is not charged with a felony within one year after the arrest, felony charges are dismissed, ~~the person is acquitted of all felony charges in connection with that arrest, or the person is found guilty of a misdemeanor instead of a felony.~~ Similarly, DOJ must expunge information about a person from the DNA data bank, at the person's request if the person was required to submit a biological specimen only in connection with being taken into custody as a juvenile and the state does not file a delinquency petition alleging certain sexual assault offenses within a year after taking the juvenile into custody, sexual assault allegations are dismissed, ~~or the person is not adjudged delinquent for certain sexual assault offenses~~ *or the court reaches final disposition with respect to allegations in connection with the taking into custody and the person is not found to have committed certain sexual offenses or if found to have committed such an offense the finding is later reversed, set aside, or vacated.*

criminal complaint of

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Ins 2-4:

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SECTION 1. 165.76 (4) of the statutes is amended to read:

6

165.76 (4) The department of justice shall promulgate rules necessary to carry

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out its duties under this section, including rules specifying whether a person who is

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required under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (1m), 971.17 (1m)

9

(a), or 980.063 to provide a biological specimen for deoxyribonucleic acid analysis

10

must provide a new biological specimen if the crime laboratories already have a

11

biological specimen from the person or if data obtained from deoxyribonucleic acid

12

analysis of the person's biological specimen is already included in the data bank

13

under s. 165.77 (3).

973.047

(15)

1

2

Ins 4-6:

3

2. If the person was required to provide a biological specimen under s. 165.84

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(7) in connection with an arrest, one of the following applies:

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a. All felony charges filed in connection with the arrest have been dismissed.

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b. The trial court reached final disposition for all felony charges in connection

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with the arrest and the person was not adjudged guilty for a felony in connection with

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the arrest.

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c. At least one year has passed since the arrest and the person has not been

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charged with a felony in connection with the arrest.

11

d. The person was adjudged guilty of a felony in connection with the arrest and

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the conviction has been reversed, set aside, or vacated.

13

3. 2. If the person was required to provide a biological specimen under s. 165.84

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(7) in connection with being taken into custody under s. 938.19, one of the following

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applies:

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a. All criminal complaints or delinquency petitions alleging that the person

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violated s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the

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taking into custody have been dismissed.

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b. The trial court reached final disposition for all allegations of a violation of

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s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into

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custody and the person was not convicted or adjudged delinquent for a violation of

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s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into

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custody.

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c. At least one year has passed since the person was taken into custody and no

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criminal complaint or delinquency petition alleging a violation of 940.225, 948.02 (1)

1 or (2), 948.025, or 948.085 (2) has not been filed against the person in connection with
2 the taking into custody.

3 d. The person was convicted or adjudged delinquent for a violation of s. 940.225,
4 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into custody
5 and the conviction or delinquency adjudication has been reversed, set aside, or
6 vacated.

7
8
9 **Ins 4-14:**

10 **SECTION 2.** 165.84 (7) of the statutes is created to read:

11 165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in
12 charge of law enforcement and tribal law enforcement agencies shall obtain, or cause
13 to be obtained, a biological specimen for deoxyribonucleic acid analysis from each
14 adult arrested for a felony and each minor taken into custody for an offense under
15 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2). The person in charge of the law
16 enforcement or tribal law enforcement agency shall submit the specimen to the crime
17 laboratories for deoxyribonucleic acid analysis and inclusion of the adult or minor's
18 deoxyribonucleic acid profile in the data bank under s. 165.77 (3).

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1911/1dn

RLR:|.....

nwn

Date

Senator Harsdorf:

1. Over the last decade, more than one-fifth of the states, and the U.S. government, have enacted laws requiring the taking of a DNA sample from people arrested for various felonies, and requiring that the DNA profiles of these people be included in a DNA database. Since most of these laws are relatively new, there is little case law discussing whether taking a DNA sample from a person before he or she is convicted without consent and without a warrant constitutes an unlawful search. The Virginia Supreme Court in *Anderson v. Commonwealth of Virginia*, 274 Va. 469, 650 S.E.2d 702 (2007), found that taking DNA samples from a person upon arrest for a felony without consent and without a warrant does not constitute an unlawful search. The Virginia court determined that taking a DNA sample is akin to taking fingerprints and photographs upon arrest.

A Minnesota court of appeals reached the opposite conclusion. The relevant Minnesota law is different from this bill and different from the Virginia law in that it requires taking a DNA sample from a person who is charged with a felony, not from all persons arrested for a felony. The Minnesota Court of Appeals found that requiring a person who has not been convicted to provide a sample for DNA analysis without consent and without a warrant constitutes an unlawful search, even after the court makes the probable cause finding necessary to sustain a felony charge. The Minnesota court reasoned that the privacy interests of a defendant who has not been convicted outweigh the state's interest in taking and analyzing the defendant's DNA. *In the Matter of the Welfare of: C.T.L., Juvenile*, 722 N.W.2d 484 (2006). This Minnesota case relates to a juvenile, but there is indication in the opinion that the outcome would have been different for an adult.

Please let me know if you would like an update on court opinions published on this topic as you proceed with this bill.

2. I added a requirement that DOJ promulgate rules to specify whether a person has to submit a new biological specimen for DNA analysis if the crime laboratories already have a specimen from the person or already have the person's DNA profile in the data bank. I assume that if law enforcement agencies are required to collect a specimen in connection with arrest, the crime laboratories will not want a new specimen upon conviction. However, the laboratories may want new specimens in some cases to

confirm a person's identity. This bill leaves it to DOJ to determine by rule when the laboratories need new specimens.

3. I did not amend either s. 165.77 (2) (b) or (2m) (c) to add a cross-reference to proposed s. 165.84 (7), because I do not believe that s. 165.77 (2) (b) or (2m) (c) are necessary. Perhaps s. 165.77 (2) (b) and (2m) (c) should be repealed. It would be useful to learn DOJ's perspective on this question.

W. Ryan
stet

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1911/1dn
RLR:nwn:rs

March 18, 2009

Senator Harsdorf:

1. Over the last decade, more than one-fifth of the states, and the U.S. government, have enacted laws requiring the taking of a DNA sample from people arrested for various felonies, and requiring that the DNA profiles of these people be included in a DNA database. Since most of these laws are relatively new, there is little case law discussing whether taking a DNA sample from a person before he or she is convicted without consent and without a warrant constitutes an unlawful search. The Virginia Supreme Court in *Anderson v. Commonwealth of Virginia*, 274 Va. 469, 650 S.E.2d 702 (2007), found that taking DNA samples from a person upon arrest for a felony without consent and without a warrant does not constitute an unlawful search. The Virginia court determined that taking a DNA sample is akin to taking fingerprints and photographs upon arrest.

A Minnesota court of appeals reached the opposite conclusion. The relevant Minnesota law is different from this bill and different from the Virginia law in that it requires taking a DNA sample from a person who is charged with a felony, not from all persons arrested for a felony. The Minnesota Court of Appeals found that requiring a person who has not been convicted to provide a sample for DNA analysis without consent and without a warrant constitutes an unlawful search, even after the court makes the probable cause finding necessary to sustain a felony charge. The Minnesota court reasoned that the privacy interests of a defendant who has not been convicted outweigh the state's interest in taking and analyzing the defendant's DNA. *In the Matter of the Welfare of: C.T.L., Juvenile*, 722 N.W.2d 484 (2006). This Minnesota case relates to a juvenile, but there is no indication in the opinion that the outcome would have been different for an adult.

Please let me know if you would like an update on court opinions published on this topic as you proceed with this bill.

2. I added a requirement that DOJ promulgate rules to specify whether a person has to submit a new biological specimen for DNA analysis if the crime laboratories already have a specimen from the person or already have the person's DNA profile in the data bank. I assume that if law enforcement agencies are required to collect a specimen in connection with arrest, the crime laboratories will not want a new specimen upon conviction. However, the laboratories may want new specimens in some cases to

confirm a person's identity. This bill leaves it to DOJ to determine by rule when the laboratories need new specimens.

3. I did not amend either s. 165.77 (2) (b) or (2m) (c) to add a cross-reference to proposed s. 165.84 (7), because I do not believe that s. 165.77 (2) (b) or (2m) (c) are necessary. Perhaps s. 165.77 (2) (b) and (2m) (c) should be repealed. It would be useful to learn DOJ's perspective on this question.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.wisconsin.gov

Ryan, Robin

From: Wuebke, Matt
Sent: Thursday, April 16, 2009 4:44 PM
To: Ryan, Robin
Subject: LRB-1911 DNA bill

Hi Robin,

After reviewing the bill, there is one change we would like made. If an individual is arrested on a felony charge, but is only convicted of a misdemeanor based upon that arrest, we want the DNA sample to still be included in the database.

Let me know if you have any questions.

Thanks,
Matt

Matt Wuebke
Office of Senator Sheila Harsdorf
Tel: 800-862-1092 or 608-266-7745
matt.wuebke@legis.wisconsin.gov

Ryan, Robin

From: Wuebke, Matt
Sent: Monday, April 27, 2009 8:41 AM
To: Ryan, Robin
Subject: RE: DNA collection bill

Hi Robin,

Let's keep the DNA samples for juveniles only if they are adjudged delinquent of the listed assaults.
Thanks,
Matt

From: Ryan, Robin
Sent: Friday, April 24, 2009 10:56 AM
To: Wuebke, Matt
Subject: DNA collection bill

Matt,
For the redraft of LRB-1911, on DNA collection in connection with arrests, do you want to keep a juvenile's DNA in the database if he or she is adjudged delinquent of a violation that would be a misdemeanor if the juvenile was an adult or only keep the DNA in the database if the juvenile is adjudicated delinquent of one of the assaults named in the bill that are felonies if committed by an adult?

Thanks
Robin



State of Wisconsin
2009 - 2010 LEGISLATURE

2

LRB-1911/1

RLR:nwn:rs

In 4/27/09

2009 BILL

RMK

SAV

Regen.

1 AN ACT *to amend* 165.76 (3), 165.76 (4), 165.765 (1), 165.765 (2) (a) and 165.77
 2 (3); *to repeal and recreate* 165.77 (4); and *to create* 165.84 (7) of the statutes;
 3 **relating to:** requiring a person arrested for a felony or a juvenile taken into
 4 custody for certain sexual assault offenses to provide a biological specimen for
 5 deoxyribonucleic acid analysis, inclusion of the analysis results in the
 6 Department of Justice deoxyribonucleic acid data bank, requiring the exercise
 7 of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the following people are required to submit biological specimens to the crime laboratories for deoxyribonucleic acid (DNA) analysis: a person sentenced or placed on probation in Wisconsin for a felony (a crime for which a person may be sentenced to prison) or one of the several specified misdemeanors; a person found to be a sexually violent person; a person on probation, parole, or extended supervision in Wisconsin for a crime committed in another state that would be a felony if committed in Wisconsin; and a person found not guilty by reason of mental disease or defect or adjudicated delinquent for certain felony sexual assaults. In addition, a court may order a juvenile who is adjudicated delinquent for certain other offenses to provide a biological specimen for DNA analysis. The crime laboratories are required to analyze the DNA in the biological specimens and

BILL

maintain a DNA data bank of information obtained from the analyses. The crime laboratories may compare data obtained from the analysis of specimens and may share the results of analyses or comparisons with law enforcement agencies, prosecutors, the person who submitted a specimen, and defense attorneys. The crime laboratories must expunge all data relating to a person from the data bank if the person's conviction or adjudication is reversed, set aside, or vacated and the person requests that the data be expunged. A person who is required to submit a biological specimen for DNA analysis, except a person who is committed for mental health reasons, and intentionally fails to provide a specimen is subject to a criminal penalty.

This bill requires law enforcement agencies to collect a biological specimen for DNA analysis from every adult who is arrested for a felony and every juvenile who is taken into custody for certain sexual assault offenses that would be felonies if committed by an adult. The bill further requires the crime laboratories to analyze the specimens and include information obtained from the analyses in the DNA data bank. Under the bill, the crime laboratories must expunge information about a person from the DNA data bank, at the person's request, if the person was required to submit a biological specimen only in connection with an arrest and the person is not charged with a felony within one year after the arrest, felony charges are dismissed, or the court reaches final disposition with respect to charges in connection with the arrest and the person is not found guilty of a felony or, if found guilty of a felony, the conviction is later reversed, set aside, or vacated. Similarly, the crime laboratories must expunge information about a person from the DNA data bank, at the person's request, if the person was required to submit a biological specimen only in connection with being taken into custody as a juvenile and the state does not file a criminal complaint or delinquency petition alleging certain sexual assault offenses within a year after taking the juvenile into custody, sexual assault allegations are dismissed, or the court reaches final disposition with respect to allegations in connection with the taking into custody and the person is not found to have committed certain sexual offenses or, if found to have committed such an offense, the finding is later reversed, set aside, or vacated. A person who is required under the bill to provide a biological specimen for DNA analysis and intentionally fails to do so is subject to a fine not to exceed \$10,000 or imprisonment not to exceed nine months or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

BILL

1 **SECTION 1.** [✓] 165.76 (3) of the statutes is amended to read:

2 165.76 (3) If a person is required to submit a biological specimen under s. 51.20
3 (13) (cr), 165.84 (7), 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, he or she shall
4 comply with that requirement and is not required to comply with this section.

5 **SECTION 2.** [✓] 165.76 (4) of the statutes is amended to read:

6 165.76 (4) The department of justice shall promulgate rules necessary to carry
7 out its duties under this section, including rules specifying whether a person who is
8 required under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 971.17 (1m)
9 (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
10 analysis must provide a new biological specimen if the crime laboratories already
11 have a biological specimen from the person or if data obtained from deoxyribonucleic
12 acid analysis of the person's biological specimen is already included in the data bank
13 under s. 165.77 (3).

14 **SECTION 3.** [✓] 165.765 (1) of the statutes is amended to read:

15 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
16 a biological specimen under s. 165.76, 165.84 (7), 938.34 (15), 973.047, or 980.063
17 may be fined not more than \$10,000 or imprisoned for not more than 9 months or
18 both.

19 **SECTION 4.** [✓] 165.765 (2) (a) of the statutes is amended to read:

20 165.765 (2) (a) Any physician, registered nurse, medical technologist,
21 physician assistant or person acting under the direction of a physician who obtains
22 a biological specimen under s. 165.76, 165.84 (7), 938.34 (15), 973.047, or 980.063 is
23 immune from any civil or criminal liability for the act, except for civil liability for
24 negligence in the performance of the act.

25 **SECTION 5.** [✓] 165.77 (3) of the statutes is amended to read:

BILL

1 165.77 (3) If the laboratories receive a human biological specimen under s.
2 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063,
3 the laboratories shall analyze the deoxyribonucleic acid in the specimen. The
4 laboratories shall maintain a data bank based on data obtained from
5 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
6 the data obtained from one specimen with the data obtained from other specimens.
7 The laboratories may make data obtained from any analysis and comparison
8 available to law enforcement agencies in connection with criminal or delinquency
9 investigations and, upon request, to any prosecutor, defense attorney or subject of
10 the data. The data may be used in criminal and delinquency actions and proceedings.
11 The laboratories shall destroy specimens obtained under this subsection after
12 analysis has been completed and the applicable court proceedings have concluded.

13 **SECTION 6.** [✓]165.77 (4) of the statutes is repealed and recreated to read:

14 165.77 (4) (a) A person whose deoxyribonucleic acid analysis data has been
15 included in the data bank under sub. (3) may request expungement on the grounds
16 that all of the following conditions are satisfied:

17 1. All convictions or adjudications for which the person was required to submit
18 a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a),
19 973.047, or 980.063 have been reversed, set aside, or vacated.

20 2. If the person was required to provide a biological specimen under s. 165.84
21 (7) in connection with an arrest, ^{for a felony} one of the following applies:

22 a. All felony charges filed in connection with the arrest have been dismissed.

23 b. The trial court reached final disposition for all felony charges in connection
24 with the arrest and the person was not adjudged guilty for a felony in connection with
25 the arrest.

of a crime

BILL

1 c. At least one year has passed since the arrest and the person has not been
2 charged with a felony in connection with the arrest. *crime*

3 d. The person was adjudged guilty of a felony in connection with the arrest and *crime*
4 the conviction has been reversed, set aside, or vacated.

5 3. If the person was required to provide a biological specimen under s. 165.84
6 (7) in connection with being taken into custody under s. 938.19, one of the following
7 applies:

8 a. All criminal complaints or delinquency petitions alleging that the person
9 violated s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the
10 taking into custody have been dismissed.

11 b. The trial court reached final disposition for all allegations of a violation of
12 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
13 custody and the person was not convicted or adjudged delinquent for a violation of
14 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
15 custody.

16 c. At least one year has passed since the person was taken into custody and no
17 criminal complaint or delinquency petition alleging a violation of s. 940.225, 948.02
18 (1) or (2), 948.025, or 948.085 (2) has not been filed against the person in connection
19 with the taking into custody.

20 d. The person was convicted or adjudged delinquent for a violation of s. 940.225,
21 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into custody
22 and the conviction or delinquency adjudication has been reversed, set aside, or
23 vacated.

24 (b) If the conditions under par. (a) are satisfied, the laboratories shall purge all
25 records and identifiable information in the data bank pertaining to the person and

BILL

1 destroy all specimens from the person upon receiving the person's written request
2 for expungement and any documentation required by the department of justice
3 under rules promulgated under sub. (8).

4 **SECTION 7.** [✓] 165.84 (7) of the statutes is created to read:

5 165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in
6 charge of law enforcement and tribal law enforcement agencies shall obtain, or cause
7 to be obtained, a biological specimen for deoxyribonucleic acid analysis from each
8 adult arrested for a felony and each minor taken into custody for an offense under
9 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2). The person in charge of the law
10 enforcement or tribal law enforcement agency shall submit the specimen to the crime
11 laboratories for deoxyribonucleic acid analysis and inclusion of the adult or minor's
12 deoxyribonucleic acid profile in the data bank under s. 165.77 (3).

13 (b) The department of justice shall promulgate rules establishing procedures
14 and time limits for providing, collecting, and submitting biological specimens under
15 this section.

16 (c) Biological specimens collected under this section may only be used as
17 provided under s. 165.77.

18 **SECTION 8. Initial applicability.**

19 (1) This act first applies to persons arrested or taken into custody on the
20 effective date of this subsection.

21 **SECTION 9. Effective date.**

22 (1) This act takes effect on the first day of the 2nd month beginning after
23 publication.

24 (END)

Ryan, Robin

From: Wuebke, Matt
Sent: Thursday, August 20, 2009 12:36 PM
To: Ryan, Robin
Subject: Submitted: LRB 09-1911/2 Topic: Collecting DNA from persons arrested for a felony?body=

Hi Robin,

We are seeking one more tweak to our bill draft indicated in the Subject line. Could you redraft it to establish an effective date of January 1, 2011?

Thanks,
Matt

Matt Wuebke
Office of Sen. Sheila Harsdorf



State of Wisconsin
2009 - 2010 LEGISLATURE

3
LRB-1911/2

RLR:nwn:rs

soon

In 8/20/09

2009 BILL

RMR

SAV

Regen.

1 AN ACT *to amend* 165.76 (3), 165.76 (4), 165.765 (1), 165.765 (2) (a) and 165.77
 2 (3); *to repeal and recreate* 165.77 (4); and *to create* 165.84 (7) of the statutes;
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 4 custody for certain sexual assault offenses to provide a biological specimen for
 5 deoxyribonucleic acid analysis, inclusion of the analysis results in the
 6 Department of Justice deoxyribonucleic acid data bank, requiring the exercise
 7 of rule-making authority, and providing a penalty.

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Under current law, the following people are required to submit biological specimens to the crime laboratories for deoxyribonucleic acid (DNA) analysis: a person sentenced or placed on probation in Wisconsin for a felony (a crime for which a person may be sentenced to prison) or one of the several specified misdemeanors; a person found to be a sexually violent person; a person on probation, parole, or extended supervision in Wisconsin for a crime committed in another state that would be a felony if committed in Wisconsin; and a person found not guilty by reason of mental disease or defect or adjudicated delinquent for certain felony sexual assaults. In addition, a court may order a juvenile who is adjudicated delinquent for certain other offenses to provide a biological specimen for DNA analysis. The crime laboratories are required to analyze the DNA in the biological specimens and

BILL

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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BILL

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3 (13) (cr), 165.84 (7), 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, he or she shall
4 comply with that requirement and is not required to comply with this section.

5 **SECTION 2.** [✓] 165.76 (4) of the statutes is amended to read:

6 165.76 (4) The department of justice shall promulgate rules necessary to carry
7 out its duties under this section, including rules specifying whether a person who is
8 required under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 971.17 (1m)
9 (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
10 analysis must provide a new biological specimen if the crime laboratories already
11 have a biological specimen from the person or if data obtained from deoxyribonucleic
12 acid analysis of the person's biological specimen is already included in the data bank
13 under s. 165.77 (3).

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22 a biological specimen under s. 165.76, 165.84 (7), 938.34 (15), 973.047, or 980.063 is
23 immune from any civil or criminal liability for the act, except for civil liability for
24 negligence in the performance of the act.

25 **SECTION 5.** [✓] 165.77 (3) of the statutes is amended to read:

BILL

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3 the laboratories shall analyze the deoxyribonucleic acid in the specimen. The
4 laboratories shall maintain a data bank based on data obtained from
5 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
6 the data obtained from one specimen with the data obtained from other specimens.
7 The laboratories may make data obtained from any analysis and comparison
8 available to law enforcement agencies in connection with criminal or delinquency
9 investigations and, upon request, to any prosecutor, defense attorney or subject of
10 the data. The data may be used in criminal and delinquency actions and proceedings.
11 The laboratories shall destroy specimens obtained under this subsection after
12 analysis has been completed and the applicable court proceedings have concluded.

13 **SECTION 6.** [✓]165.77 (4) of the statutes is repealed and recreated to read:

14 165.77 (4) (a) A person whose deoxyribonucleic acid analysis data has been
15 included in the data bank under sub. (3) may request expungement on the grounds
16 that all of the following conditions are satisfied:

17 1. All convictions or adjudications for which the person was required to submit
18 a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a),
19 973.047, or 980.063 have been reversed, set aside, or vacated.

20 2. If the person was required to provide a biological specimen under s. 165.84
21 (7) in connection with an arrest for a felony, one of the following applies:

22 a. All charges filed in connection with the arrest have been dismissed.

23 b. The trial court reached final disposition for all charges in connection with
24 the arrest and the person was not adjudged guilty of a crime in connection with the
25 arrest.

BILL

1 c. At least one year has passed since the arrest and the person has not been
2 charged with a crime in connection with the arrest.

3 d. The person was adjudged guilty of a crime in connection with the arrest and
4 the conviction has been reversed, set aside, or vacated.

5 3. If the person was required to provide a biological specimen under s. 165.84
6 (7) in connection with being taken into custody under s. 938.19, one of the following
7 applies:

8 a. All criminal complaints or delinquency petitions alleging that the person
9 violated s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the
10 taking into custody have been dismissed.

11 b. The trial court reached final disposition for all allegations of a violation of
12 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
13 custody and the person was not convicted or adjudged delinquent for a violation of
14 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
15 custody.

16 c. At least one year has passed since the person was taken into custody and no
17 criminal complaint or delinquency petition alleging a violation of s. 940.225, 948.02
18 (1) or (2), 948.025, or 948.085 (2) has not been filed against the person in connection
19 with the taking into custody.

20 d. The person was convicted or adjudged delinquent for a violation of s. 940.225,
21 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into custody
22 and the conviction or delinquency adjudication has been reversed, set aside, or
23 vacated.

24 (b) If the conditions under par. (a) are satisfied, the laboratories shall purge all
25 records and identifiable information in the data bank pertaining to the person and

BILL

1 destroy all specimens from the person upon receiving the person's written request
2 for expungement and any documentation required by the department of justice
3 under rules promulgated under sub. (8).

4 **SECTION 7.** 165.84 (7) of the statutes is created to read:

5 165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in
6 charge of law enforcement and tribal law enforcement agencies shall obtain, or cause
7 to be obtained, a biological specimen for deoxyribonucleic acid analysis from each
8 adult arrested for a felony and each minor taken into custody for an offense under
9 s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2). The person in charge of the law
10 enforcement or tribal law enforcement agency shall submit the specimen to the crime
11 laboratories for deoxyribonucleic acid analysis and inclusion of the adult or minor's
12 deoxyribonucleic acid profile in the data bank under s. 165.77 (3).

13 (b) The department of justice shall promulgate rules establishing procedures
14 and time limits for providing, collecting, and submitting biological specimens under
15 this section.

16 (c) Biological specimens collected under this section may only be used as
17 provided under s. 165.77.

18 **SECTION 8. Initial applicability.**

19 (1) This act first applies to persons arrested or taken into custody on the
20 effective date of this subsection.

21 **SECTION 9. Effective date.**

22 (1) This act takes effect on the first day of the 2nd month beginning after
23 publication

January 1, 2011.

24 (END)

Parisi, Lori

From: Wagner, Michael
Sent: Monday, October 05, 2009 10:17 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-1911/3 Topic: Collecting DNA from persons arrested for a felony

Please Jacket LRB 09-1911/3 for the SENATE.