

Fiscal Estimate - 2009 Session

Original Updated Corrected Supplemental

LRB Number 09-1911/3		Introduction Number SB-336	
Description Requiring a person arrested for a felony or a juvenile taken into custody for certain sexual assault offenses to provide a biological specimen for deoxyribonucleic acid analysis, inclusion of the analysis results in the Department of Justice deoxyribonucleic acid data bank, requiring the exercise of rule-making authority, and providing a penalty			
Fiscal Effect			
State:			
<input type="checkbox"/> No State Fiscal Effect			
<input type="checkbox"/> Indeterminate			
<input type="checkbox"/> Increase Existing Appropriations		<input type="checkbox"/> Increase Existing Revenues	
<input type="checkbox"/> Decrease Existing Appropriations		<input type="checkbox"/> Decrease Existing Revenues	
<input type="checkbox"/> Create New Appropriations		<input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget	
		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
		<input type="checkbox"/> Decrease Costs	
Local:			
<input type="checkbox"/> No Local Government Costs			
<input type="checkbox"/> Indeterminate			
1. <input checked="" type="checkbox"/> Increase Costs		3. <input type="checkbox"/> Increase Revenue	
<input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory		<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
2. <input type="checkbox"/> Decrease Costs		4. <input type="checkbox"/> Decrease Revenue	
<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory		<input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	
5. Types of Local Government Units Affected			
<input type="checkbox"/> Towns		<input type="checkbox"/> Village	
<input checked="" type="checkbox"/> Counties		<input type="checkbox"/> Others	
<input type="checkbox"/> School Districts		<input type="checkbox"/> WTCS Districts	
<input type="checkbox"/> Cities			
Fund Sources Affected		Affected Ch. 20 Appropriations	
<input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS			
Agency/Prepared By		Authorized Signature	
DOJ/ Mark Rinehart (608) 264-9463		Mark Rinehart (608) 264-9463	
		Date	
		12/1/2009	

Fiscal Estimate Narratives

DOJ 12/1/2009

LRB Number	09-1911/3	Introduction Number	SB-336	Estimate Type	Original
Description Requiring a person arrested for a felony or a juvenile taken into custody for certain sexual assault offenses to provide a biological specimen for deoxyribonucleic acid analysis, inclusion of the analysis results in the Department of Justice deoxyribonucleic acid data bank, requiring the exercise of rule-making authority, and providing a penalty					

Assumptions Used in Arriving at Fiscal Estimate

Currently, under s. 973.047, if a court imposes a sentence or places a person on probation for a felony conviction or for a misdemeanor conviction under s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall require the person to provide a biological specimen to the Department of Justice (DOJ) state crime laboratories for deoxyribonucleic acid (DNA) analysis. Under s. 165.77, when the crime labs receive a biological specimen, the labs are required to analyze the DNA of the specimen and maintain a data bank based on data obtained from the DNA analysis. This requirement results in the analysis of approximately 8,500 biological specimens each year.

Currently, under s. 165.77, the crime lab shall purge all records and identifiable information in the DNA data bank pertaining to a person and destroy all samples from the person if the person provides a written request for expungement and a certified copy of the court order reversing, setting aside, or vacating the conviction or adjudication for which their DNA was submitted. This requirement results in the crime lab expunging fewer than 10 records from the DNA data bank each year.

Generally, biological specimens ordered under 973.047 are collected by the Department of Corrections from offenders in prison and collected by county sheriffs from offenders not in prison. Biological specimens are placed in collection kits and mailed to DOJ. DOJ reimburses sheriffs \$20 for their work each time they obtain a sample.* DOJ also covers the cost of the collection kits and the postage each way between sheriff offices and DOJ.

In addition, DOJ contracts with a private vendor to do the DNA analysis of offender samples. The private vendor currently charges DOJ \$33.50 for each sample analyzed. Under Federal Bureau of Investigation quality control regulations, DOJ is required to conduct a cursory analysis of every outsourced specimen upon its return from a private vendor and a full analysis of 5% of the outsourced specimens upon their return from a private vendor.

Under 2009 Senate Bill 336, all law enforcement agencies shall obtain a biological specimen from each adult arrested for a felony and each minor taken into custody for an offense under s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2). All law enforcement agencies shall submit each specimen to the crime labs for DNA analysis and inclusion in the DNA databank.

Under SB 336, a person whose DNA data has been included in the data bank due to a felony arrest or due to being taken into custody for an offense under s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), may request expungement if: 1) all charges filed in connection with the arrest, or all criminal complaints or delinquency petitions alleging the person violated s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), have been dismissed; 2) the trial court reached final disposition for all charges in connection with the arrest or all allegations of a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into custody, and the person was not adjudged guilty of a crime in connection with the arrest or the person was not convicted or adjudged delinquent for a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into custody; 3) at least one year has passed since the arrest or the taking into custody, and the person has not been charged with a crime in connection with the arrest or no criminal complaint or delinquency petition alleging a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) has been filed in connection with the taking into custody; or 4) the person was adjudged guilty of a crime in connection with the arrest or convicted or adjudged delinquent for a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into custody, and the conviction or delinquency adjudication has been reversed, set aside, or vacated. If any of the conditions above are satisfied, DOJ shall purge all records and identifiable information in the data bank relating to the person and destroy all specimens from the person.

The department anticipates that SB 336 will result in a substantial increase in the number of biological specimens submitted to the crime lab for DNA analysis and will result in a substantial increase in the number of people requesting expungement of their DNA records from the DNA data bank. However, the department is not aware of any state agency that tracks data specific to the number of people who are arrested for a felony or taken into custody for an offense under s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2). The department is not aware of any data specific to the number of people who would qualify for, and request, expungement.

Data from the Office of Justice Assistance (OJA) may be the best indicator of how many additional people would be subject to the provisions of SB 336. OJA tracks the number of annual arrests in Wisconsin. According to OJA's 2008 Arrests in Wisconsin Report, there were 415,543 total arrests in Wisconsin in 2008. DOJ estimates that approximately 25% of the 2008 arrests were arrests for felonies. If this assumption is correct and the number of arrests remains constant, under SB 336 DOJ would receive approximately 104,000 samples the first year. Due to recidivism, DOJ expects the number of samples collected after the first year to drop approximately 30%. As a result, DOJ would expect to receive approximately 72,685 samples in the second and subsequent years. Since DOJ already receives about 8,500 samples per year from convicted felons, the net impact of SB 336 would be the generation of approximately 95,500 new samples in the first year and approximately 64,185 new samples in subsequent years.

SB 336 also has the potential to require DOJ to expunge thousands of DNA profiles from the DNA data bank. Unfortunately, there is no way to accurately estimate how many arrestees will qualify for, and request, expungement.

Based on these estimates, DOJ will need the following resources to meet its new DNA analysis and expungement responsibilities under SB 336.

First year costs:

1) Supplies & Services:

DNA collection kits @ \$1.14 x 95,500 = \$108,870
DNA collection kit postage @ .80 x 95,500 = \$76,400
Sheriff specimen collection fee @ \$20 x 95,500 = \$1,910,000*
Private vendor outsourcing fee @ \$33.50 x 95,500 = \$3,199,250

Total Supplies & Services Costs = \$5,294,520

2) Staff:

3 senior level DNA Analysts @ \$25/hr x 2080 x 3 = \$156,000
Fringe Benefits @ 41.63% = \$64,943
Equipment & Supplies \$21,800 x 3 = \$65,400
Rent space @ \$29.75/sqft. x 517 sqft./position x 3 = \$46,142**

8 DNA Lab Technicians @ \$11/hr x 2080 x 8 = \$183,040
Fringe Benefits @ 41.63% = \$76,200
Equipment & Supplies \$21,800 x 8 = \$174,400
Rent space @ \$29.75/sqft. x 64 sqft./position x 8 positions = \$15,232**

Total Staff Costs \$781,357

3) Equipment:

TECAN Robot-Instrumentation = \$250,000
Expert System = \$50,000

Total Equipment = \$300,000

Total First Year Costs = \$6,375,877

Second year costs:

1) Supplies & Services:

DNA collection kits @ \$1.14 x 64,185 = \$73,170
DNA collection kits postage @ \$.80 x 64,185 = \$51,348
Sheriff specimen collection fee @ \$20 x 64,185 = \$1,283,700*
Private vendor outsourcing fee @ \$33.50 x 64,185 = \$2,150,197

Total Supplies & Services costs = \$3,558,415

2) Staff:

3 senior level DNA Analysts @ \$25/hr x 2080 x 3 = \$156,000
Fringe Benefits @ 41.63% = \$64,943
Equipment & Supplies \$3,555 x 3 = \$10,665
Rent space @ \$29.75/sqft. x 517 sqft./position x 3 = \$46,142**

8 DNA Lab Technicians @ \$11/hr x 2080 x 8 = \$183,040
Fringe Benefits @ 41.63% = \$76,200
Equipment & Supplies \$3,555 x 8 = \$28,440
Rent space @ \$29.75/sqft. x 64 sqft./position x 8 positions = \$15,232**

Total Staff = \$580,662

3) Equipment:

Expert System = \$10,000

Total second year costs = \$4,149,077

* Prior to 1999 Wisconsin Act 9, courts were required to order only persons sentenced or placed on probation for a violation of s. 940.225, 948.02 (1) or (2), or 948.025 to provide a biological specimen to the state crime labs for DNA analysis. Generally, DOC collected samples from offenders in prison for those crimes and sheriffs collected samples from offenders of those crimes who were not in prison. Act 9 created the current requirement that courts order persons sentenced or placed on probation for any felony conviction to provide a biological specimen to the state crime labs for DNA analysis. No additional resources were provided to cover the cost of obtaining samples from all felons.

At that time, several sheriffs called the change an unfunded mandate and some refused to collect samples. In 2001, DOJ's Crime Laboratories/DNA Analysis appropriation under s. 20.455 (2) (Lm) had an unexpected surplus and then Attorney General Doyle worked with DOA, through the state's allotment process, to increase the appropriation's spending authority to an amount sufficient to reimburse sheriffs \$20 for each sample collected. While the s. 20.455 (2) (Lm) appropriation surplus no longer exists, DOJ has reimbursed sheriffs \$20 for each sample collected for the past eight years. If SB 336 were to pass without resources sufficient to allow DOJ to reimburse sheriffs for collecting samples or to directly fund sheriffs' collection costs, once again, sheriffs may view an expansion of DNA collection as an unfunded mandate. Absent funding, DOJ would not be in a position to fund sheriffs' collection costs.

**The crime labs currently have room for only 1 additional position. There is no space available at the labs for the remaining 10 positions.

Long-Range Fiscal Implications