2013 DRAFTING REQUEST

Bill

Received:	**7/2/2013**	Received By:	**chanaman**
Wanted:	**As time permits**	Same as LRB:	
For:	**Peter Barca (608) 266-5504**	By/Representing:	**Matt**
May Contact:		Drafter:	**chanaman**
Subject:	**Criminal Law - law enforcement** **Justice - criminal**	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
Requester's email: **Rep.Barca@legis.wisconsin.gov**
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Delete collection of DNA at arrest

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	chanaman 7/2/2013	scalvin 7/17/2013	jmurphy 7/17/2013	_____ _____			
/1				_____ _____	lparisi 7/17/2013	lparisi 7/29/2013	Local

FE Sent For:

@ Intro.

<END>

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/?	chanaman			_____			Local
				_____			
				7/17			

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<END>

State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–2608/1
CMH:.....
SAC

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** eliminating the collection of deoxyribonucleic acid at arrest.

Analysis by the Legislative Reference Bureau

Under current law, certain individuals are required to submit biological specimens to the crime laboratories in the Department of Justice (DOJ) for deoxyribonucleic acid (DNA) analysis. These individuals include a juvenile who has been adjudicated delinquent for certain offenses and an individual who has been found guilty of a felony, fourth–degree sexual assault, lewd and lascivious behavior, or exposing genitals to a child for sexual gratification. In addition, beginning on April 1, 2015, law enforcement agencies must obtain a biological specimen from each individual arrested for a felony or taken into custody for a juvenile offense that would be a felony if committed by an adult. The law enforcement agency must submit the specimen to the crime laboratories if the individual was arrested or taken into custody under a warrant, the court finds probable cause that the individual committed the offense, or the individual fails to appear at the initial appearance, preliminary examination, or delinquency proceeding, whichever is appropriate; otherwise, the law enforcement agency must destroy the specimen within one year of obtaining it.

This bill eliminates the requirement beginning on April 1, 2015, that law enforcement agencies obtain a biological specimen from each individual arrested for a felony or taken into custody for a juvenile offense that would be a felony if committed by an adult.

For further information see the ***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 (1) (gm) of the statutes, as created by 2013 Wisconsin Act
2 20, is repealed.

3 **SECTION 2.** 165.76 (1m) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is amended to read:

5 165.76 **(1m)** If a person is required to provide a biological specimen under sub.
6 (1) (a) to ~~(gm)~~ (g) and the department of justice does not have the data obtained from
7 analysis of a biological specimen from the person that the department is required to
8 maintain in the data bank under s. 165.77 (3), the department may require the
9 person to provide a biological specimen, regardless of whether the person previously
10 provided a biological specimen under this section or s. 51.20 (13) (cr), ~~165.84 (7),~~
11 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or
12 980.063. The department of justice, the department of corrections, a district
13 attorney, or a county sheriff, shall notify any person whom the department of justice
14 requires to provide a biological specimen under this subsection.

15 **SECTION 3.** 165.76 (4) (a), (b) and (c) of the statutes, as created by 2013
16 Wisconsin Act 20, are amended to read:

17 165.76 **(4)** (a) Establish procedures and time limits for obtaining and
18 submitting biological specimens under this section and ss. 51.20 (13) (cr), ~~165.84 (7),~~
19 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, and
20 980.063.

(b) Specify whether an individual who is required under this section or s. 51.20 (13) (cr), ~~165.84 (7),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid analysis must provide a new biological specimen if the crime laboratories already have a biological specimen from the individual or if data obtained from deoxyribonucleic acid analysis of the individual's biological specimen are already included in the data bank under s. 165.77 (3).

(c) Allow a biological specimen, or data obtained from analysis of a biological specimen, obtained under this section or s. 51.20 (13) (cr), ~~165.84 (7),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to be submitted for inclusion in an index established under 42 USC 14132 (a) or in another national index system.

SECTION 4. 165.765 (1m) of the statutes, as created by 2013 Wisconsin Act 20, is amended to read:

165.765 **(1m)** A law enforcement officer; a jail officer; a tribal officer; a correctional officer; a probation, extended supervision, or parole officer; or an employee of the department of health services may use reasonable force to obtain a biological specimen from a person who intentionally refuses to provide a biological specimen that is required under s. 165.76 (1), ~~165.84 (7),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), or 970.02 (8).

SECTION 5. 165.765 (2) (a) 1. of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

165.765 **(2)** (a) 1. Any physician, registered nurse, medical technologist, physician assistant, or person acting under the direction of a physician who obtains a biological specimen under s. 51.20 (13) (cr), 165.76, ~~165.84 (7),~~ 938.21 (1m), 938.30

(2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

SECTION 6. 165.77 (2) (b) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

165.77 **(2)** (b) Paragraph (a) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, ~~165.84 (7),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 7. 165.77 (2m) (c) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

165.77 **(2m)** (c) Paragraph (b) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, ~~165.84 (7),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 8. 165.77 (3) of the statutes, as affected by 2013 Wisconsin Act 20, is amended to read:

165.77 **(3)** If the laboratories receive a human biological specimen under s. 51.20 (13) (cr), 165.76, ~~165.84 (7) (am),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063, the laboratories shall analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain a data bank based on data obtained from deoxyribonucleic acid analysis of those specimens. The laboratories may compare the data obtained from one specimen with the data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense

attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings.

SECTION 9. 165.77 (4) (am) 2. (intro.), a., b. and d. of the statutes, as created by 2013 Wisconsin Act 20, are amended to read:

165.77 **(4)** (am) 2. (intro.) If the person was required to provide a biological specimen ~~under s. 165.84 (7) in connection with an arrest or~~ under s. 970.02 (8), one of the following applies:

a. All charges ~~filed in connection with the arrest and all charges~~ for which the person was required to provide a biological specimen under s. 970.02 (8) have been dismissed.

b. The trial court reached final disposition ~~for all charges in connection with the arrest and~~ for any charges for which the person was required to provide a biological specimen under s. 970.02 (8), and the person was not adjudged guilty of a ~~crime in connection with the arrest or any~~ charge for which the person was required to provide a biological specimen under s. 970.02 (8).

d. The person was adjudged guilty of a ~~crime in connection with either the arrest or any~~ charge for which the person was required to provide a biological specimen under s. 970.02 (8), and all such convictions have been reversed, set aside, or vacated.

SECTION 10. 165.77 (4) (am) 2. c. of the statutes, as created by 2013 Wisconsin Act 20, is repealed.

SECTION 11. 165.77 (4) (am) 3. (intro.), a., b. and d. of the statutes, as created by 2013 Wisconsin Act 20, are amended to read:

165.77 **(4)** (am) 3. (intro.) If the person was required to provide a biological specimen ~~under s. 165.84 (7) in connection with being taken into custody under s. 938.19 or~~ under s. 938.21 (1m) or 938.30 (2m), one of the following applies:

a. All criminal complaints or delinquency petitions that allege that the person committed a violation that would be a felony if committed by an adult in this state ~~and that are in connection with the taking into custody~~ have been dismissed.

b. The trial court reached final disposition for all allegations that the person committed a violation that would be a felony if committed by an adult in this state ~~that are in connection with the taking into custody~~ and the person was not convicted or adjudged delinquent for an offense that would be a felony if committed by an adult in this state ~~that is in connection with the taking into custody.~~

d. The person was convicted or adjudged delinquent for a violation that would be a felony if committed by an adult in this state ~~and that is in connection with the taking into custody~~ and the conviction or delinquency adjudication has been reversed, set aside, or vacated.

SECTION 12. 165.77 (4) (am) 3. c. of the statutes, as created by 2013 Wisconsin Act 20, is repealed.

SECTION 13. 165.77 (7m) of the statutes, as created by 2013 Wisconsin Act 20, is amended to read:

165.77 **(7m)** An entry in the data bank that is found to be erroneous does not prohibit the legitimate use of the entry to further a criminal investigation or prosecution. The failure of a law enforcement agency or the laboratories to comply with this section, s. 165.76~~,~~ or 165.765, ~~or 165.84,~~ or any rules or procedures adopted to administer those sections, is not grounds for challenging the validity of the data

collection, for challenging the use of the sample as provided in those sections, or for the suppression of evidence based upon or derived from any entry in the data bank.

SECTION 14. 165.84 (7) of the statutes, as created by 2013 Wisconsin Act 20, is repealed.

SECTION 15. 938.21 (1m) of the statutes, as created by 2013 Wisconsin Act 20, is amended to read:

938.21 **(1m)** BIOLOGICAL SPECIMEN. If the juvenile has been taken into custody on the basis of a violation that would be a felony if committed by an adult in this state, ~~the court shall determine if a biological specimen has been obtained from the juvenile under s. 165.84 (7), and if not,~~ the court shall direct that a law enforcement agency or tribal law enforcement agency obtain a biological specimen from the juvenile and submit it to the state crime laboratories as specified in rules promulgated by the department of justice under s. 165.76 (4). ~~If the court requires the juvenile to provide a specimen under this subsection or if a biological specimen has already been obtained from the juvenile, the~~ The court shall inform the juvenile that he or she may request expungement under s. 165.77 (4).

SECTION 16. 938.30 (2m) of the statutes, as created by 2013 Wisconsin Act 20, is amended to read:

938.30 **(2m)** BIOLOGICAL SPECIMEN. If the juvenile is before the court on the basis of a violation that would be a felony if committed by an adult in this state, ~~the court shall determine if a biological specimen has been obtained from the juvenile under s. 165.84 (7), and if not,~~ the court shall direct that a law enforcement agency or tribal law enforcement agency obtain a biological specimen from the juvenile and submit it to the state crime laboratories as specified in rules promulgated by the department of justice under s. 165.76 (4). ~~If the court requires the juvenile to provide a specimen~~

~~under this subsection or if a biological specimen has already been obtained from the juvenile, the~~ The court shall inform the juvenile that he or she may request expungement under s. 165.77 (4).

SECTION 17. 946.52 of the statutes, as affected by 2013 Wisconsin Act 20, section 1922, is amended to read:

946.52 Failure to submit biological specimen. Whoever intentionally fails to comply with a requirement to submit a biological specimen under s. 165.76, ~~165.84 (7),~~ 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 973.047, or 980.063 is guilty of a Class A misdemeanor.

SECTION 18. 970.02 (8) of the statutes, as created by 2013 Wisconsin Act 20, is amended to read:

970.02 **(8)** If the offense charged is a felony, ~~the judge shall determine if a biological specimen has been obtained from the defendant under s. 165.84 (7), and, if not,~~ the judge shall direct that a law enforcement agency or tribal law enforcement agency obtain a biological specimen from the defendant and submit it to the state crime laboratories as specified in rules promulgated by the department of justice under s. 165.76 (4). ~~If the judge requires the defendant to provide a specimen under this subsection or if a biological specimen has already been obtained from the defendant, the~~ The judge shall inform the defendant that he or she may request expungement under s. 165.77 (4).

SECTION 19. Initial applicability.

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

SECTION 20. Effective date.

1 (1) This act takes effect on April 1, 2015, or on the day after publication,
2 whichever is later.
3 **(END)**

Parisi, Lori

From: Egerer, Matt
Sent: Monday, July 29, 2013 12:28 PM
To: LRB.Legal
Subject: Draft Review: LRB -2608/1 Topic: Delete collection of DNA at arrest

Please Jacket LRB -2608/1 for the ASSEMBLY.