

2013 DRAFTING REQUEST

Bill

Received: **10/18/2012** Received By: **chanaman**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Kirby**
May Contact: Drafter: **chanaman**
Subject: **Criminal Law - miscellaneous** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to:

Pre Topic:

DOA:.....Kirby, BB0199 -

Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached-- 2011 SB-214

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>
/?	chanaman 10/25/2012	kfollett 10/29/2012		_____			
/P1	chanaman 1/28/2013	kfollett 1/29/2013	rschluet 1/29/2013	_____	rosee 10/29/2012		State S&L Crime
/P2	chanaman 1/29/2013	kfollett 1/30/2013	jfrantze 1/30/2013	_____	rosee 1/29/2013		State 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>
/P3	chanaman 1/31/2013	kfollett 2/1/2013	rschluet 2/1/2013	_____ _____	sbasford 1/30/2013		State S&L Crime
/P4				_____ _____	mbarman 2/1/2013		State S&L Crime

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 10/18/2012	Received By: chanaman
Wanted: As time permits	Same as LRB:
For: Administration-Budget	By/Representing: Kirby
May Contact:	Drafter: chanaman
Subject: Criminal Law - miscellaneous	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to:

Pre Topic:

DOA:.....Kirby, BB0199 -

Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached-- 2011 SB-214

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>
/?	chanaman 10/25/2012	kfollett 10/29/2012		_____			
/P1	chanaman 1/28/2013	kfollett 1/29/2013	rschluet 1/29/2013	_____	rosee 10/29/2012		State S&L Crime
/P2	chanaman 1/29/2013	kfollett 1/30/2013	jfrantze 1/30/2013	_____	rosee 1/29/2013		State S&L Crime

1P416F
2/1
2/1/13
HC

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P3				_____	sbasford		State
				_____	1/30/2013		S&L
							Crime

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 10/18/2012	Received By: chanaman
Wanted: As time permits	Same as LRB:
For: Administration-Budget	By/Representing: Kirby
May Contact:	Drafter: chanaman
Subject: Criminal Law - miscellaneous	Addl. Drafters:
	Extra Copies:

Submit via email: **YES**
 Requester's email:
 Carbon copy (CC) to:

Pre Topic:

DOA:.....Kirby, BB0199 -

Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached-- 2011 SB-214

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>
/?	chanaman 10/25/2012	kfollett 10/29/2012		_____			
/P1	chanaman 1/28/2013	kfollett 1/29/2013	rschluet 1/29/2013	_____	rose 10/29/2012		State S&L Crime
/P2		<i>1 P3/5 f 1/30</i>	<i>1/30</i>	<i>pk 1/30</i>	rose 1/29/2013		State S&L Crime

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 10/18/2012 Received By: chanaman
Wanted: As time permits Companion to LRB:
For: Administration-Budget By/Representing: Kirby
May Contact: Drafter: chanaman
Subject: Criminal Law - miscellaneous Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to:

Pre Topic:

DOA:.....Kirby, BB0199 -

Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached-- 2011 SB-214

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>
/?	chanaman 10/25/2012	kfollett 10/29/2012		_____			
/P1		1/25/12 1/29/12	10/29/2012 U n/13	_____	srose 10/29/2012		State S&L Crime

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: **10/18/2012** Received By: **chanaman**
Wanted: **As time permits** Companion to LRB:
For: **Administration-Budget** By/Representing: **Kirby**
May Contact: Drafter: **chanaman**
Subject: **Criminal Law - miscellaneous** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to:

Pre Topic:

DOA:.....Kirby, BB0199 -

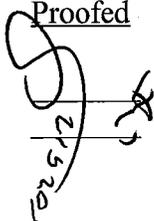
Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached-- 2011 SB-214

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>
/?	chanaman	1 P/15f 10/29	1 P/15f 10/29				

FE Sent For:

<END>

Hanaman, Cathlene

From: Peter.Kirby@Wisconsin.gov
Sent: Thursday, October 18, 2012 9:41 AM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Wavrunek, Leah J - DOA; Kirby, Peter W - DOA
Subject: [Possible SPAM] Statutory Language Drafting Request - BB0199
Attachments: 10_11_2012 (2) revision of SB214_DVL.docx

Importance: Low

Biennial Budget: 2013-15

Topic: Test DNA at Arrest

Tracking Code: BB0199

SBO Team: AEJ

SBO Analyst: Kirby, Peter W - DOA
Phone: 608-267-0370
E-mail: Peter.Kirby@Wisconsin.gov

Agency Acronym: DOJ

Agency Number: 455

Priority: High

Intent:

Please see attached. Not that this is the recommended language from DOJ but is not mandatory.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

DNA AT ARREST: PROPOSED DRAFT 10/11/2012

Comment: In drafting the proposed language for the DNA at arrest language, we used 2011 SB 214 as our template. For the most part, we have adopted LRB's proposed changes, retaining the LRB's markups (underline and ~~strikethroughs~~). To the extent that we have added or modified current legislation or SB 214 as previously proposed, we highlight those changes in **gray**. We have made the following changes:

- Incorporated language for DNA collection for misdemeanor convictions.
- Expressly authorize the collection for certain sex offenses for which judges were required to order the collection of DNA under Wis. Stat. §973.046 since 1993. When the DNA law first passed in 1993, courts were required to order offenders convicted of first through fourth degree sexual assault to provide biological specimens. See Wis. Stat. §973.046 (1993-94). Through 2009 Act 261, the Legislature provided both civil and criminal enforcement authority to collect specimens from individuals who were previously obligated to provide them for first and second degree sexual assault since 1993. Unfortunately, through an oversight, the language should have been drafted more broadly to permit the collection for third and fourth degree sexual assault—offenses for which DNA at conviction was mandated since 1993.
- Clarify language authorizing reasonable use of force to collect DNA and immunity provisions.
- Change current DNA surcharge funding mechanism to require payment of a DNA surcharge on a per case basis.
- In setting the effective dates, DLS needs 15 months to go online for DNA at arrest submissions and adopt administrative rules. However, it wants to start collecting the surcharges on the effective date following publication.
- This draft expands collection of biological specimens from juveniles in two ways: (a) it includes collection at time of arrest for the same offenses that will trigger an obligation to give in adults; (b) it includes collection from adjudicated juveniles for any felony or the specified misdemeanors.

SECTION 1. 51.20 (13) (cr) of the statutes is amended to read:

51.20 (13) (cr) If the subject individual is before the court on a petition filed under a court order under s. 938.30 (5) (c) 1. and is found to have committed a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall require the individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. Biological specimens required under this paragraph shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

SECTION 2. 165.76 (1) (av) of the statutes is amended to read:

165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony or any violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b).

SECTION 3. 165.76 (1) (br) of the statutes is amended to read:

165.76 (1) (br) Has been found not guilty or not responsible by reason of mental disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17, for any felony or a violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b).

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

165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for a felony or any violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b).

SECTION 5. 165.76 (1) (g) of the statutes is amended to read:

165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

Section . 165.76 (1)() is created to read:

165.76(1)() Is or was sentenced or placed on probation for a violation of s. 940.225 ; 948.02(1) or (2) or 948.025, on or after August 12, 1993.

Section . 165.76 (1)() is created to read:

165.76(1)() Is or was found guilty of any misdemeanor on or after [effective date].

Section . 165.76 (1)() is created to read:

165.76(1)() Is or was adjudicated delinquent on or after [EFFECTIVE DATE] on the basis of a violation of statute that would constitute a felony if committed by an adult or a violation of 940.225 (3m), 941.20(1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2).

SECTION 6. 165.76 (1m) of the statutes is amended to read:

165.76 (1m) If a person is required to provide a biological specimen under sub. (1) (a) to (g) and the department of justice does not have the data obtained from analysis of a biological specimen from the person that the department is required to maintain in the data bank under s. 165.77 (3), the department may require the person to provide a biological specimen, regardless of whether the person previously provided a

biological specimen under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or ~~980.63~~ 980.063. The department of justice, the department of corrections, a district attorney, or a county sheriff, shall notify any person whom the department of justice requires to provide a biological specimen under this subsection.

SECTION 7. 165.76 (2m) of the statutes is repealed.

SECTION 8. 165.76 (2r) of the statutes is amended to read:

165.76 (2r) Failure by a person who is required to provide a biological specimen under sub. (1) to provide the biological specimen ~~at the time and place provided under sub. (2m)~~ in accordance with the rules promulgated under sub. (4) does not relieve the person of the obligation to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

SECTION 9. 165.76 (3) of the statutes is repealed.

SECTION 10. 165.76 (4) of the statutes is amended to read:

165.76 (4) The department of justice ~~may~~ shall promulgate rules ~~to implement~~ establishing procedures and time limits for obtaining and submitting biological specimens under this section and ss. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, and 980.063, and for carrying out the department's duties under this section. The rules shall specify whether a person who is required under this section or s. 51.20 (13) (cr), 165.84 (7), 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 person or if data obtained from deoxyribonucleic acid analysis of the person's biological specimen are already included in the data bank under s. 165.77 (3).

Section . 165.76 () is created to read:

165.76 () A law enforcement officer as defined under §165.85(2)(c), a jail officer as defined under §165.85(2)(bn), a tribal officer as defined under §165.85(2)(g), a correctional officer as defined under §301.28(1), or a probation, extended supervision, and parole agent, 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 required under this chapter.

SECTION 11. 165.765 (title) of the statutes is amended to read:

165.765 (title) Biological specimen; ~~penalty and~~ immunity.

SECTION 12. 165.765 (1) of the statutes is renumbered 946.52 and 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), 938.34 (15), 970.02 (8), 973.047, or ~~980.063~~ may be fined not more than \$10,000 ~~or imprisoned for not more than 9 months or both~~ is guilty of a Class A misdemeanor.

SECTION 13. 165.765 (2) (a) and (b) of the statutes are renumbered 165.765 (1m)

and (2m) and amended to read:

165.765 (1m) Any physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician who obtains a biological specimen under s. 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 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.

(2m) Any employer of the physician, nurse, technologist, assistant, or person under ~~par. (a)~~ sub. (1m) or any hospital where blood is withdrawn by that physician, nurse, technologist, assistant, or person has the same immunity from liability under ~~par. (a)~~ sub. 2 (1m).

Section _____, 165.765 (3) is created to read:

165.765(3) No law enforcement officer as defined under §165.85(2)(c), a jail officer as defined under §165.85(2)(bn), a tribal officer as defined under §165.85(2)(g), a correctional officer as defined under §301.28(1), or a probation, extended supervision, and parole agent, or an employee of the Department of Health Services, authorized to collect biological specimens may be held civilly or criminally liable for the collection of a biological specimen pursuant to this chapter if such person performs these duties in good faith and in a reasonable manner, including the use of reasonable force pursuant to s. 165.76 (_____).

SECTION _____, 165.77 (2) (a) 2. of the statutes is amended to read:

2. The laboratories may compare the data obtained from the specimen with 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. The laboratories shall not include data obtained from deoxyribonucleic acid analysis of those specimens received under this paragraph in the data bank under sub. (3). ~~The laboratories shall destroy specimens obtained under this paragraph after analysis has been completed and the applicable court proceedings have concluded.~~

SECTION 14. 165.77 (2) (b) of the statutes 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), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 15. 165.77 (2m) (c) of the statutes 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), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 16. 165.77 (3) of the statutes 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), 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. ~~The laboratories shall destroy specimens obtained under this subsection after analysis has been completed and the applicable court proceedings have concluded.~~

SECTION 17. 165.77 (4) (intro.) of the statutes is renumbered 165.77 (4) (am) (intro.) and amended to read:

165.77 (4) (am) (intro.) A person whose deoxyribonucleic acid analysis data has have been included in the data bank under sub. (3) may request expungement on the grounds that ~~his or her conviction or adjudication has been reversed, set aside or vacated, all convictions or adjudications for which the person was required to submit a biological specimen under s. 51.20 (13) (c), 165.76, 938.34 (15), 971.17(1m)(a), 973.047, or 980.063 have been reversed, set aside, or vacated, and if that all any of the following conditions listed in 165.77 (4) (am) are satisfied:~~

~~(bm) If the conditions under par. (am) are satisfied, the laboratories shall purge all records and identifiable information in the data bank pertaining to the~~

~~person and destroy all samples from the person if it receives all of the following:
upon receiving the person's written request for expungement and any
documentation required by the department of justice under rules promulgated
under sub. (8).~~

SECTION 18. 165.77 (4) (a) and (b) of the statutes are repealed.

SECTION 19. 165.77 (4) (am) ~~1, and 2, and 3.~~ of the statutes are created to read:

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

21. 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).

c. At least one year has passed since the arrest and the person has not been charged with a crime in connection with the arrest, and the person was ~~not~~ required to provide a biological specimen under s. 970.02 (8).

d. The person was 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), and all such convictions have been reversed, set aside, or vacated.

~~3.2.~~ 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, one of the following applies:

a. All criminal complaints or delinquency petitions alleging that the person violated ~~s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2)~~ ~~an offense for which the person was required to provide a biological specimen under Wis. Stat. §938.34(15)(a)1.~~ in connection with the taking into custody have been dismissed.

b. The trial court reached final disposition for all allegations of a violation of ~~s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2)~~ ~~for an offense for which the person was required to provide a biological specimen under Wis. Stat. §938.34(15)(a)1.~~ in connection with the taking into custody and the person was not convicted or adjudged delinquent for a violation of ~~s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2)~~ ~~for an offense for~~

which the person was required to provide a biological specimen under Wis. Stat. §938.34(15)(a)1 in connection with the taking into custody.

c. At least one year has passed since the person was taken into custody and no criminal complaint or delinquency petition alleging a violation of s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) for an offense for which the person was required to provide a biological specimen under Wis. Stat. §938.34(15)(a)1 has been filed against the person in connection with the taking into custody.

d. The person was convicted or adjudged delinquent for a violation of s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) for an offense for which the person was required to provide a biological specimen under Wis. Stat. §938.34(15)(a)1 in connection with the taking into custody and the conviction or delinquency adjudication has been reversed, set aside, or vacated.

Section . 165.77(4) (bm) of the statutes is created to read:

165.77(4)(bm). If the Department (of Justice) determines that the conditions under par. (am) are satisfied, the laboratories shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receiving the person's written request for expungement and any documentation required by the department of justice under rules promulgated under sub. (8).

Section . Section 165.77 () is created to read.

165.77 (). Any entry into the data bank which is found to be erroneous shall not prohibit the legitimate use of the information in the furtherance of a criminal investigation or prosecution. The failure of a law enforcement agency or the laboratories to comply with ss. 165.76 to 166.77 or s. 165.84 or any rules or procedures adopted to administer those sections shall not constitute grounds for challenging the validity of collection and use of the sample as provided in this section or for the exclusion of evidence based upon, or derived, from, any sample so taken.

SECTION 20. 165.84 (7) of the statutes is created to read:

165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in charge of law enforcement and tribal law enforcement agencies shall obtain a biological specimen for deoxyribonucleic acid analysis at booking from each adult person arrested for a felony or for an offense under s. 940.225 (3m), 941.20(1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b) and each minor taken into custody for an offense under 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) that would constitute a felony if committed by an adult or a violation of under s. 940.225 (3m), 941.20(1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b). All persons in charge of law enforcement and tribal law enforcement agencies shall also obtain a biological specimen for deoxyribonucleic acid analysis from each adult convicted of a misdemeanor. The person in charge of the law enforcement or tribal law enforcement agency shall submit the specimen to the crime laboratories for deoxyribonucleic acid analysis

and inclusion of the adult or minor's deoxyribonucleic acid profile in the data bank under s. 165.77 (3).

(b) Biological samples required under par. (a) shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

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

~~Section . Section 938.34 (15)(a)1. is amended to read.~~

~~938.34(15)(a)1. If the juvenile is adjudicated delinquent on the basis of a violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), a statute that would constitute a felony if committed by an adult or a violation of under s. 940.225 (3m), 941.20(1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b), the court shall require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.~~

~~Section . Section 938.34 (15)(a)2. is repealed.~~

SECTION 21. 938.34 (15) (b) of the statutes is amended to read:

938.34 (15) (b) ~~The department of justice shall promulgate rules providing procedures for juveniles to provide specimens~~ Biological samples required under par. (a) and for the transportation of the specimens to the state crime laboratories under s. 165.77 shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

SECTION 22. 970.02 (8) of the statutes is created to read:

970.02 (8) If the offense charged is a felony or an offense under s. 940.225 (3m), ~~941.20(1)~~, 944.20, ~~944.30, 944.31, 944.33 (1)~~, 946.52, or 948.10 (1) (b), 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).

SECTION 23. 971.17 (1m) (a) of the statutes is amended to read:

971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a felony or a violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), ~~941.20(1)~~, 944.20, ~~944.30, 944.31, 944.33 (1)~~, 946.52, or 948.10(1)(b), the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. Biological specimens required under this paragraph shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

~~Section . 973.046 (1g) is repealed.~~

~~Section . 973.046 (1r) is amended to read:~~

~~973.046 (1r) If a court imposes a sentence or places a person on probation for a felony or a violation of s. 940.225, 948.02 (1) or (2), 948.025, 948.085, 165.765 (1), 940.225 (3m), 944.20, 944.30, 944.33, or 948.10, the court shall impose a mandatory deoxyribonucleic acid analysis surcharge of \$250 calculated as follows:~~

(a) For each case in which a conviction for a felony offense occurs, \$250

(b) In all other criminal cases, \$150

superfluous
The surcharge is mandatory and shall be imposed in every case in which the court imposes a sentence or places a person on probation regardless of whether the defendant provided a DNA sample in connection with the case.

SECTION 24. 973.047 (1f) of the statutes is amended to read:

973.047 (1f) If a court imposes a sentence or places a person on probation for a felony or misdemeanor conviction ~~or for a conviction for a violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 941.20, 944.20, 944.30, 944.31, 944.33 (1), or 948.10 (1) (b).~~ the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

SECTION 25. 973.047 (2) of the statutes is amended to read:

973.047 (2) ~~The department of justice shall promulgate rules providing for procedures for defendants to provide specimens when Biological samples required to do so under this section and for the transportation of those specimens to the state crime laboratories for analysis under s. 165.77 sub. (1f) shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).~~

SECTION 26. 980.063 (2) of the statutes is amended to read:

980.063 (2) ~~The department of justice shall promulgate rules providing for procedures for defendants to provide specimens Biological samples required under sub. (1) and for the transportation of those specimens to the state crime laboratories~~

for analysis under s. 165.77 (a) shall be obtained and submitted as specified in rules promulgated by the department of justice under s. 165.76 (4).

SECTION 27. Nonstatutory provisions.

(1) EARLY SUBMISSION OF BIOLOGICAL SPECIMENS FOR PERSONS ARRESTED OR TAKEN INTO CUSTODY.

(a) Beginning on the effective date of this paragraph, a law enforcement agency or a tribal law enforcement agency may obtain a biological specimen from an adult arrested for a felony or for a violation of section 165.765 (1), 940.225 (3m), 944.20, or 948.10 (1) (b) of the statutes or from a minor taken into custody for an offense under section 165.765 (1), 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) of the statutes, and submit the specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) If a law enforcement or tribal law enforcement agency submits a biological specimen to the state crime laboratories under paragraph (a), the crime laboratories shall analyze the deoxyribonucleic acid in the biological specimen and include the deoxyribonucleic acid profile from the biological specimen in the data bank under section 165.77 (3) of the statutes.

(c) Paragraph (a) does not apply after the effective date of this paragraph.

(1) LEGISLATIVE FINDINGS. The legislature finds that the state has a compelling interest in the accurate identification of criminal offenders and that there is a critical and urgent need to provide law enforcement officers and agencies with the latest scientific technology available for accurately and expeditiously identifying, apprehending, arresting, and convicting criminal offenders and exonerating persons wrongly suspected or accused of crime. The legislature further finds that DNA testing allows a more certain and rapid identification of offenders as well as the exoneration of those wrongfully suspected or accused and that DNA databanks are an important tool in criminal

investigations and in deterring and detecting recidivist acts. The legislature further finds that DNA testing at the earliest stages of criminal proceedings will help prevent criminal perpetrators from concealing their identities and will prevent time-consuming and expensive investigations of innocent persons. The legislature further finds that the degree of intrusion on an individual's privacy interests is minimized by the method of collection of the biological sample, by the policy of using only DNA sequences not currently associated with any known physical or medical characteristics in the creation of a DNA profile, by the limited purposes for which a DNA profile may be used pursuant to state and federal law, and the availability of expungement for individuals who are not charged with or convicted of the offenses for which the DNA sample was collected.

SECTION 28. Initial applicability.

- (1) The treatment of section 165.84 (7) (a) of the statutes first applies to persons arrested or taken into custody on the effective date of this subsection.
- (2) The treatment of section 970.02 (8) of the statutes first applies to initial appearances held on the effective date of this subsection.
- (3) The treatment of section 938.34 (15)(a)1 of the statutes first applies to sentences imposed on the effective date of this subsection.

SECTION 29. Effective dates. This act takes effect on the first day of the ~~13th~~ 15th month beginning after publication, except as follows:

SECTION _____ [WHICH RELATES TO THE IMPOSITION OF THE DNA SURCHARGE UNDER WIS. STAT. §973.046] of this act takes effect on the day after publication.

(END)