State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–0422/P2 P3
CMH:kjf:rs

DOA:.....Kirby, BB0199 – Collecting DNA from persons arrested for a felony

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

JUSTICE

Under current law, certain persons are required to submit biological specimens to the crime laboratories in DOJ for deoxyribonucleic acid (DNA) analysis. These persons include: a juvenile who has been adjudicated delinquent for certain offenses; a person who is or was in prison for a felony or found guilty of a felony; a person who was found guilty of fourth–degree sexual assault, lewd and lascivious behavior, or exposing genitals to a child for sexual gratification; a person who has been found not guilty by reason of mental disease or defect for certain sex offenses; a person who has been found to be a sexually violent person; and a person who is required by a court to provide a biological specimen. Under this bill, the following individuals must submit biological specimens to the crime laboratories in DOJ for DNA analysis: a juvenile who has been adjudicated delinquent, or taken into custody, for an offense that would be a felony if committed by an adult, fourth–degree sexual assault, endangering safety by the use of a dangerous weapon, lewd and lascivious behavior, prostitution, patronizing prostitutes, pandering, failure to submit a biological specimen, or exposing genitals to a child for sexual gratification; an adult who is convicted of a misdemeanor; and an adult who is arrested for a felony or for fourth–degree sexual assault, endangering safety by the use of a dangerous weapon, lewd and lascivious behavior, prostitution, patronizing prostitutes, pandering, failure to submit a biological specimen, or exposing genitals to a child for sexual

gratification. If, at the time the individual is charged with one of these offenses, the court determines that a biological specimen was not obtained when he or she was arrested or taken into custody, the court must order a law enforcement agency to obtain the specimen.

Current law grants immunity from civil or criminal liability to certain medical persons who obtain biological specimens in accordance with the requirements. This bill grants similar immunity to certain law enforcement personnel and DHS employees and allows them to use reasonable force in obtaining a specimen if the individual refuses to provide the specimen.

Under current law, specimens obtained must be submitted to the crime laboratories in DOJ for DNA analysis and inclusion of the DNA profile in the data bank. An individual whose DNA data are in the data bank due to a conviction or adjudication may request in writing that the data be removed on the grounds that the conviction or adjudication has been reversed, set aside, or vacated. If the crime laboratories receive a certified copy of the court order reversing, setting aside, or vacating the conviction or adjudication, the laboratories must purge all records and identifiable information in the data bank pertaining to the individual and destroy all samples from the individual. Under this bill, if an individual submitted a specimen at arrest, when taken into custody, or by court order if, when the charges were filed, the judge determined that the individual had not submitted a specimen, DOJ must similarly purge all records and information after receiving a written request if all charges requiring submission have been dismissed; if the trial court reached a final disposition and the person was not found guilty of any charges requiring submission; if at least one year has passed since the arrest and the person has not been charged; or if the person was found guilty of a crime requiring submission but all such convictions have since been reversed, set aside, or vacated.

Under current law, if a court imposes a sentence or places a person on probation for sexual assault, first–degree or second–degree sexual assault of a child, repeated sexual assault of a child, or sexual assault of a child placed in substitute care (sex offense), the court must impose a DNA analysis surcharge of $250 and if a court imposes a sentence or places a person on probation for a felony conviction that is not a sex offense, the court may impose a DNA analysis surcharge of $250. Under this bill, if a court imposes a sentence or places a person on probation, the court must impose a $250 DNA surcharge for any felony conviction and a $150 DNA surcharge for any misdemeanor conviction.

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:

INS 3-1

1 **SECTION 1.** 20.455 (2) (Lm) of the statutes is amended to read:

2 20.455 **(2)** (Lm) *Crime laboratories; deoxyribonucleic acid analysis.* All moneys
3 received from crime laboratories and drug law enforcement surcharges authorized
4 under s. 165.755 and deoxyribonucleic acid analysis surcharges authorized under s.
5 973.046 (1r) to provide deoxyribonucleic acid analysis, to administer s. 165.77, to pay
6 for the costs of mailing and materials under s. 165.76 for the submission of biological
7 specimens by the departments of corrections and health services and by county
8 sheriffs, and to transfer to the appropriation account under par. (kd) the amounts in
9 the schedule under par. (kd).

10 **SECTION 2.** 46.07 of the statutes is amended to read:

11 **46.07 Property of patients or residents.** All money including wages and
12 other property delivered to an officer or employee of any institution for the benefit
13 of a patient or resident shall immediately be delivered to the steward, who shall enter
14 the money upon the steward's books to the credit of the patient or resident. The
15 property shall be used only under the direction and with the approval of the
16 superintendent and for the crime victim and witness assistance surcharge under s.
17 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34
18 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child
19 pornography surcharge under s. 973.042, the drug offender diversion surcharge
20 under s. 973.043, or the benefit of the patient or resident. If the money remains
21 uncalled for for one year after the patient's or resident's death or departure from the
22 institution, the superintendent shall deposit the money in the general fund. If any
23 patient or resident leaves property, other than money, uncalled for at an institution
24 for one year, the superintendent shall sell the property, and the proceeds shall be
25 deposited in the general fund. If any person satisfies the department, within 5 years

after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (c).

SECTION 3. 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 that would be a felony if committed by an adult in this state or a violation of s. 940.225 ~~(1) or (2), 948.02 (1) or (2), 948.025, or 948.085~~ (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 individual to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

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

165.76 **(1)** (am) Is or was adjudicated delinquent for an act that if committed by an adult in this state would be a felony or for a violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1), 946.52, or 948.10 (1) (b).

SECTION 5. 165.76 (1) (as) of the statutes is created to read:

165.76 **(1)** (as) Is or was found guilty of any misdemeanor on or after the effective date of this paragraph .... [LRB inserts date].

SECTION 6. 165.76 (1) (av) of the statutes is renumbered 165.76 (1) (av) (intro.) and amended to read:

165.76 **(1)** (av) (intro.) Is or was found guilty on or after January 1, 2000, of any of the following:

1. Any felony ~~or any.~~

2. Before the effective date of this subdivision .... [LRB inserts date], any violation of s. 165.765 (1), 2011 stats., 940.225 (3m), 944.20, or 948.10 (1) (b).

1 **SECTION 7.** 165.76 (1) (aw) of the statutes is created to read:

2 165.76 **(1)** (aw) Is or was found guilty on or after January 1, 2000, and before
3 the effective date of this paragraph .... [LRB inserts date], of any violation of s.
4 940.225 (3m), 944.20, or 948.10.

5 **SECTION 8.** 165.76 (1) (b) of the statutes is renumbered 165.76 (1) (bm).

6 **SECTION 9.** 165.76 (1) (bg) of the statutes is created to read:

7 165.76 **(1)** (bg) Is or was sentenced or placed on probation on or after August
8 12, 1993, for a violation of s. 940.225, 948.02 (1) or (2), or 948.025.

9 **SECTION 10.** 165.76 (1) (br) of the statutes is amended to read:

10 165.76 **(1)** (br) Has been found not guilty or not responsible by reason of mental
11 disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,
12 for any felony or a violation of s. 165.765 (1), 2011 stats., or of s. 940.225 (3m), 944.20,
13 946.52, or 948.10 (1) (b).

14 **SECTION 11.** 165.76 (1) (cr) of the statutes is amended to read:

15 165.76 **(1)** (cr) Is or was in institutional care on or after January 1, 2000, for
16 a felony or any violation of s. 165.765 (1), 2011 stats., or of s. 940.225 (3m), 944.20,
17 946.52, or 948.10 (1) (b).

18 **SECTION 12.** 165.76 (1) (g) of the statutes is amended to read:

19 165.76 **(1)** (g) Has been required by a court under s. 51.20 (13) (cr), 165.84 (7),
20 938.21 (1m), 938.30 (2m), 938.34 ~~(15m)~~ (15), 970.02 (8), 971.17 (1m) (a), 973.047, or
21 980.063 to provide a biological specimen to the state crime laboratories for
22 deoxyribonucleic acid analysis.

23 **SECTION 13.** 165.76 (1m) of the statutes is amended to read:

24 165.76 **(1m)** If a person is required to provide a biological specimen under sub.
25 (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), 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 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 14. 165.76 (2m) of the statutes is repealed.

SECTION 15. 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 16. 165.76 (3) of the statutes is repealed.

SECTION 17. 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), 938.21 (1m), 938.30 (2m), 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), 938.21 (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 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). The department shall promulgate rules that 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 18. 165.765 (title) of the statutes is amended to read:

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

SECTION 19. 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), 938.21 (1m), 938.30 (2m), 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 20. 165.765 (1g) and (1m) of the statutes are created to read:

165.765 **(1g)** In this section:

(a) "Correctional officer" has the meaning given in s. 301.28 (1).

(b) "Jail officer" has the meaning given in s. 165.85 (2) (bn).

(c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(d) "Tribal officer" has the meaning given in s. 165.85 (2) (g).

(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), or 970.02 (8).

SECTION 21. 165.765 (2) (a) of the statutes is renumbered 165.765 (2) (a) 1. and 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 22. 165.765 (2) (b) of the statutes is renumbered 165.765 (2) (a) 2. and amended to read:

165.765 **(2)** (a) 2. Any employer of the physician, nurse, technologist, assistant, or person under ~~par. (a)~~ subd. 1. or any hospital where blood is withdrawn by that physician, nurse, technologist, assistant, or person ~~has the same immunity from liability under par. (a)~~ is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

SECTION 23. 165.765 (2) (bm) of the statutes is created to read:

165.765 **(2)** (bm) 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, who is authorized to collect biological specimens, is immune from civil or criminal liability for collecting a biological

specimen if the collection is in compliance with sub. (1m) and s. 165.76 and performed in good faith and in a reasonable manner.

SECTION 24. 165.77 (1) (am) of the statutes is created to read:

165.77 **(1)** (am) "Juvenile offense requiring the submission of a specimen" means an offense for which the juvenile is required under s. 938.34 (15) (a) to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

SECTION 25. 165.77 (2) (a) 2. of the statutes is amended to read:

165.77 **(2)** (a) 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 26. 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), 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 27. 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), 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063.

SECTION 28. 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), 938.21 (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. ~~The laboratories shall destroy specimens obtained under this subsection after analysis has been completed and the applicable court proceedings have concluded.~~

SECTION 29. 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. The~~ all of the following conditions are satisfied:

(bm) If the department 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 ~~if it receives all of the following:~~ upon receiving the person's written request for expungement and any documentation the department requires under rules promulgated under sub. (8).

SECTION 30. 165.77 (4) (a) and (b) of the statutes are repealed.

SECTION 31. 165.77 (4) (am) 1., 2. and 3. of the statutes are created to read:

165.77 **(4)** (am) 1. If 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, 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.

2. 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.

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

1 specimen under s. 970.02 (8), and all such convictions have been reversed, set aside,
2 or vacated.

3 3. If the person was required to provide a biological specimen under s. 165.84
4 (7) in connection with being taken into custody under s. 938.19 or under s. 938.21
5 (1m) or 938.30 (2m), one of the following applies:

6 a. All criminal complaints or delinquency petitions alleging that the person
7 committed a violation of a juvenile offense requiring the submission of a specimen
8 in connection with the taking into custody have been dismissed.

9 b. The trial court reached final disposition for all allegations that the person
10 committed a violation of a juvenile offense requiring the submission of a specimen
11 in connection with the taking into custody and the person was not convicted or
12 adjudged delinquent for a juvenile offense requiring the submission of a specimen
13 in connection with the taking into custody.

14 c. At least one year has passed since the person was taken into custody and no
15 criminal complaint or delinquency petition alleging that the person committed a
16 violation of a juvenile offense requiring the submission of a specimen has been filed
17 against the person in connection with the taking into custody.

18 d. The person was convicted or adjudged delinquent for a juvenile offense
19 requiring the submission of a specimen in connection with the taking into custody
20 and the conviction or delinquency adjudication has been reversed, set aside, or
21 vacated.

22 **SECTION 32.** 165.77 (7m) of the statutes is created to read:

23 165.77 **(7m)** An entry in the data bank that is found to be erroneous does not
24 prohibit the legitimate use of the entry to further a criminal investigation or
25 prosecution. The failure of a law enforcement agency or the laboratories to comply

with s. 165.76, 165.765, 165.77, 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 33. 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, when the individual's fingerprints or other identifying data are obtained, a biological specimen for deoxyribonucleic acid analysis from each individual 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 a juvenile offense requiring the submission of a specimen, as defined under s. 165.77 (1) (am). 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 individual'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 34. 301.32 (1) of the statutes is amended to read:

301.32 **(1)** PROPERTY DELIVERED TO WARDEN OR SUPERINTENDENT; CREDIT AND DEBIT. All money and other property delivered to an employee of any state correctional institution for the benefit of a prisoner or resident shall be delivered to the warden or superintendent, who shall enter the property upon his or her accounts to the credit

of the prisoner or resident. The property may be used only under the direction and with the approval of the superintendent or warden and for the crime victim and witness assistance surcharge under s. 973.045 (4), the delinquency victim and witness assistance surcharge under s. 938.34 (8d) (c), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042, the drug offender diversion surcharge under s. 973.043, or the benefit of the prisoner or resident. If the money remains uncalled for for one year after the prisoner's or resident's death or departure from the state correctional institution, the superintendent shall deposit it in the general fund. If any prisoner or resident leaves property, other than money, uncalled for at a state correctional institution for one year, the superintendent shall sell the property and deposit the proceeds in the general fund, donate the property to a public agency or private, nonprofit organization or destroy the property. If any person satisfies the department, within 5 years after the deposit, of his or her right to the deposit, the department shall direct the department of administration to draw its warrant in favor of the claimant and it shall charge the same to the appropriation made by s. 20.913 (3) (bm).

SECTION 35. 302.12 (2) of the statutes is amended to read:

302.12 **(2)** Money accruing under this section remains under the control of the department, to be used for the crime victim and witness assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis surcharge under s. 973.046 (1r), the drug offender diversion surcharge under s. 973.043, and the benefit of the inmate or the inmate's family or dependents, under rules promulgated by the department as to time, manner and amount of disbursements. The rules shall provide that the money be used for the reasonable support of the inmate's family or dependents before it is allocated for the drug offender diversion surcharge.

1 **SECTION 36.** 302.13 of the statutes is amended to read:

2 **302.13 Preservation of property an inmate brings to prison.** The
3 department shall preserve money and effects, except clothes, in the possession of an
4 inmate when admitted to the prison and, subject to the crime victim and witness
5 assistance surcharge under s. 973.045 (4), the deoxyribonucleic acid analysis
6 surcharge under s. 973.046 (1r), the child pornography surcharge under s. 973.042,
7 and the drug offender diversion surcharge under s. 973.043, shall restore the money
8 and effects to the inmate when discharged.

9 **SECTION 37.** 814.75 (7) of the statutes is amended to read:

10 814.75 **(7)** The deoxyribonucleic acid analysis surcharge under s. 973.046 (1r).

11 **SECTION 38.** 814.76 (5) of the statutes is amended to read:

12 814.76 **(5)** The deoxyribonucleic acid analysis surcharge under s. 973.046 (1r).

13 **SECTION 39.** 938.21 (1m) of the statutes is created to read:

14 938.21 **(1m)** BIOLOGICAL SPECIMEN. If the juvenile has been taken into custody
15 on the basis of a violation that would be a felony if committed by an adult in this state
16 or of a violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30, 944.31, 944.33 (1),
17 946.52, or 948.10 (1) (b), the court shall determine if a biological specimen has been
18 obtained from the juvenile under s. 165.84 (7), and if not, the court shall direct that
19 a law enforcement agency or tribal law enforcement agency obtain a biological
20 specimen from the juvenile and submit it to the state crime laboratories as specified
21 in rules promulgated by the department of justice under s. 165.76 (4).

22 **SECTION 40.** 938.30 (2m) of the statutes is created to read:

23 938.30 **(2m)** BIOLOGICAL SPECIMEN. If the juvenile is before the court on the basis
24 of a violation that would be a felony if committed by an adult in this state or of a
25 violation 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 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).

SECTION 41. 938.34 (15) (a) 1. and 3. of the statutes are consolidated, renumbered 938.34 (15) (a) and amended to read:

938.34 **(15)** (a) If the juvenile is adjudicated delinquent on the basis of a violation that would be a felony if committed by an adult in this state or of a violation of s. 940.225~~, 948.02 (1) or (2), 948.025, or 948.085 (2)~~ (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~~ comply with the requirement under s. 165.76 (1) (am) by providing a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. ~~3.~~ The results from deoxyribonucleic acid analysis of a specimen under ~~subd. 1. or 2.~~ this paragraph may be used only as authorized under s. 165.77 (3). ~~The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).~~

SECTION 42. 938.34 (15) (a) 2. of the statutes is repealed.

SECTION 43. 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 44. 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 45. 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), 2011 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 46. 973.046 (1g) of the statutes is repealed.

SECTION 47. 973.046 (1r) of the statutes is renumbered 973.046 (1r) (intro.) and amended to read:

973.046 **(1r)** (intro.) If a court imposes a sentence or places a person on probation ~~for a violation of s. 940.225, 948.02 (1) or (2), 948.025, 948.085~~, the court shall impose a deoxyribonucleic acid analysis surcharge ~~of $250.~~, calculated as follows:

SECTION 48. 973.046 (1r) (a) and (b) of the statutes are created to read:

973.046 **(1r)** (a) For each conviction for a felony, $250.

(b) For each conviction for a misdemeanor, $150.

SECTION 49. 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 conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m), 944.20, 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 50. 973.047 (1m) of the statutes is amended to read:

973.047 **(1m)** The results from deoxyribonucleic acid analysis of a specimen provided under this section may be used only as authorized under s. 165.77 (3). ~~The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).~~

SECTION 51. 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 52. 980.063 (1) (b) of the statutes is amended to read:

980.063 **(1)** (b) The results from deoxyribonucleic acid analysis of a specimen under par. (a) may be used only as authorized under s. 165.77 (3). ~~The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).~~

SECTION 53. 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 9126. Nonstatutory provisions; Justice.

(1) BIOLOGICAL SPECIMEN; LEGISLATIVE FINDINGS AND RULES.

(a) *Legislative findings.* 20.455 (2) (jb)

1. The legislative findings in this paragraph relate exclusively to the treatment in this act of sections 51.20 (13) (cr), 165.76 (1) (am), (as), (av), (aw), (b), (bg), (br), (cr), and (g), (1m), (2m), (2r), (3), and (4), 165.765 (title), (1), (1g), (1m), and (2) (a), (b), and (bm), 165.77 (1) (am), (2) (a) 2. and (b), (2m) (c), (3), (4) (intro.), (a), (am) 1., 2., and 3., and (b), and (7m), 165.84 (7), 938.21 (1m), 938.30 (2m), 938.34 (15) (a) 1., 2., and 3. and (b), 970.02 (8), 971.17 (1m) (a), 973.047 (1f), (1m), and (2), and 980.063 (1) (b) and (2) of the statutes.

2. 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 individuals wrongly suspected or accused of a crime. The legislature further finds that deoxyribonucleic acid testing allows a more certain and rapid identification of offenders as well as the exoneration of those wrongfully suspected or accused and that deoxyribonucleic acid data banks are an important tool in criminal investigations and in deterring and detecting recidivist acts. The legislature further finds that deoxyribonucleic acid testing at the earliest stages of criminal and juvenile proceedings will help prevent perpetrators from concealing their identities and will prevent time–consuming and expensive investigations of innocent individuals. The legislature further finds that the degree

1 of intrusion on an individual's privacy interests is minimized by the method of
2 collection of the biological sample, by the policy of using only deoxyribonucleic acid
3 sequences not currently associated with any known physical or medical
4 characteristics in the creation of a deoxyribonucleic acid profile, by the limited
5 purposes for which a deoxyribonucleic acid profile may be used under state and
6 federal law, and by the availability of expungement for individuals who are not
7 charged with or convicted of the offenses for which the deoxyribonucleic acid sample
8 was collected.

9 (b) *Rules.* The department of justice may, in rules it promulgates under section
10 165.76 of the statutes, as affected by this act, bring the method to obtain or to submit
11 a biological specimen in conformity with the act of Congress known as the Katie
12 Sepich Enhanced DNA Collection Act of 2012 (HR–6014) to apply for nonsupplanting
13 grant funding under that act.

14 **SECTION 9326. Initial applicability; Justice.**

15 (1) DEOXYRIBONUCLEIC ACID SPECIMEN SUBMISSIONS AND SURCHARGES.

16 (a) The treatment of sections 165.76 (1) (am) and 938.34 (15) (a) 1. and 3. of the
17 statutes first applies to delinquency adjudications that occur on the effective date of
18 this paragraph.

19 (b) The treatment of section 165.77 (4) (intro.), (a), (am) 1., 2., and 3., and (b)
20 of the statutes first applies to requests for expungement received on the effective date
21 of this paragraph.

22 (c) The treatment of section 165.84 (7) of the statutes first applies to individuals
23 arrested or taken into custody on the effective date of this paragraph.

24 (d) The treatment of sections 938.21 (1m) and 938.30 (2m) of the statutes first
25 applies to hearings commenced on the effective date of this paragraph.

(e) The treatment of section 970.02 (8) of the statutes first applies to offenses charged on the effective date of this paragraph.

(f) The treatment of section 971.17 (1m) (a) of the statutes first applies to findings made on the effective date of this paragraph.

(g) The treatment of section 973.046 (1g) of the statutes, the renumbering and amendment of section 973.046 (1r) of the statutes, and the creation of section 973.046 (1r) (a) and (b) of the statutes first apply to sentences imposed or probations placements made on the effective date of this paragraph.

(h) The treatment of section 973.047 (1f) of the statutes first applies to sentences imposed or probations placements made on the effective date of this paragraph.

20.455 (2) (jb),

SECTION 9426. Effective dates: Justice.

(1) DEOXYRIBONUCLEIC ACID SPECIMEN SUBMISSIONS AND SURCHARGES. The treatment of sections 51.20 (13) (cr), 165.76 (1) (am), (as), (av), (aw), (b), (bg), (br), (cr), and (g), (1m), (2m), (2r), (3), and (4), 165.765 (title), (1), (1g), (1m), and (2) (a), (b), and (bm), 165.77 (1) (am), (2) (a) 2. and (b), (2m) (c), (3), (4) (intro.), (a), (am) 1., 2., and 3., and (b), and (7m), 165.84 (7), 938.21 (1m), 938.30 (2m), 938.34 (15) (a) 1., 2., and 3. and (b), 970.02 (8), 971.17 (1m) (a), 973.047 (1f), (1m), and (2), and 980.063 (1) (b) and (2) of the statutes and SECTIONS 9126 (1) and 9326 (1) (a), (b), (c), (d), (e), (f), of this act and (h) take effect on the first day of the 15th month beginning after publication.

(END)

I find it a little disturbing that this went out like this --

1 Insert 3–1

2 **SECTION 1.** 20.455 (2) (jb) of the statutes is amended to read:

3 20.455 **(2)** (jb) *Crime laboratory equipment and supplies.* The amounts in the
4 schedule for the maintenance, repair, upgrading, and replacement costs of the
5 laboratory equipment, ~~and~~ for supplies used to maintain, repair, upgrade, and
6 replace that equipment, <u>and for operating costs,</u> in the state and regional crime
7 laboratories. All moneys transferred from par. (i) for the purpose of this
8 appropriation shall be credited to this appropriation. Notwithstanding s. 20.001 (3)
9 (a), the unencumbered balance on June 30 of each year shall be transferred to the
10 appropriation account under par. (i).

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415v, 415w, 416g, 416h; 2005 a. 60, 254, 433; 2007 a. 1; 2007 a. 20 ss. 482 to 500, 9121 (6) (a); 2007 a. 200; 2009 a. 28, 179, 358; 2011 a. 32, 35.

Hanaman, Cathlene

From: Kirby, Peter W - DOA <Peter.Kirby@wisconsin.gov>
Sent: Thursday, January 31, 2013 2:25 PM
To: Hanaman, Cathlene
Subject: RE: DNA Test at Arrest

Right now there is a gentlemen's agreement between the county sheriffs and DOJ for the DNA testing we currently do that is $20. I believe the draft should codify it at $10 and allow all LEAs that collect the reimbursement. DOJ is building a database on whether the person has been swabbed or not that can be used by a LEO upon arrest.

From: Hanaman, Cathlene [mailto:Cathlene.Hanaman@legis.wisconsin.gov]
Sent: Thursday, January 31, 2013 2:20 PM
To: Kirby, Peter W - DOA
Subject: RE: DNA Test at Arrest

Reimbursement to law enforcement is new, right? $10 per required swab, unless already provided? What if person already swabbed by another law enforcement agency—the lea would not know about that, but still no reimbursement?

From: Kirby, Peter W - DOA [mailto:Peter.Kirby@wisconsin.gov]
Sent: Thursday, January 31, 2013 1:59 PM
To: Hanaman, Cathlene
Subject: RE: DNA Test at Arrest

A few more changes from DOJ, hopefully it hasn't been sent to editing.

In section 2, DOJ would the to remove the county sheriffs an add the same language describing law enforcement officials as in section 34. Additionally, in section 21 (1m) DOJ would like 938.34(15) added.

Thanks,

Peter

From: Hanaman, Cathlene [mailto:Cathlene.Hanaman@legis.wisconsin.gov]
Sent: Thursday, January 31, 2013 10:23 AM
To: Kirby, Peter W - DOA
Subject: RE: DNA Test at Arrest

They are not in the version you received. Still to come.....

From: Kirby, Peter W - DOA [mailto:Peter.Kirby@wisconsin.gov]
Sent: Thursday, January 31, 2013 10:19 AM
To: Hanaman, Cathlene
Subject: RE: DNA Test at Arrest

Hi Cathlene,

I don't think these were included in the draft sent over yesterday. I assume I sent these too late?

Thanks,

Peter

From: Kirby, Peter W - DOA
Sent: Wednesday, January 30, 2013 10:38 AM
To: Hanaman, Cathlene - LEGIS (Cathlene.Hanaman@legis.wisconsin.gov)
Subject: RE: DNA Test at Arrest

Cathlene,

A few more requests from DOJ. I'm sorry these keep coming in piecemeal.

1.) The misdemeanor surcharge should be $200 instead of $150
2.) The reimbursement to local law enforcement should be $10
3.) Language should be added that if a person has been previously swabbed by law enforcement, law enforcement will not receive a reimbursement.

Please let me know if you have any questions.

Thank you,

Peter

From: Kirby, Peter W - DOA
Sent: Monday, January 28, 2013 11:05 AM
To: Hanaman, Cathlene - LEGIS
Subject: RE: DNA Test at Arrest

Hi Cathlene,

DOJ has another late addition:

They would something like the following for 20.455(2)(jb): The amounts in the schedule for operating costs in the state and regional crime laboratories. (The remaining language in this section can remain intact.).

This should provide enough flexibility to allow ongoing operating costs to be charged to this appropriation.

Thanks,

Peter

From: Hanaman, Cathlene [mailto:Cathlene.Hanaman@legis.wisconsin.gov]
Sent: Friday, January 25, 2013 3:38 PM
To: Kirby, Peter W - DOA
Subject: RE: DNA Test at Arrest

We generally do not do findings or intent statements—unless you think the statement will help the provision survive a constitutional challenge and the finding directly addresses the issue. Some reasons being that findings are not substantive law, findings can be redundant, findings can be lifted out of context for odd purposes and have unforeseen effects, findings may become out of date if the statute changes, and findings have undefined terms that may be inconsistent with the statute.

I will change the surcharge.

From: Kirby, Peter W - DOA [mailto:Peter.Kirby@wisconsin.gov]
Sent: Friday, January 25, 2013 3:26 PM
To: Hanaman, Cathlene
Subject: DNA Test at Arrest

Hi (again) Cathlene,

I apologize for the barrage of emails over the past couple of days. A few more things for DNA at arrest, I believe there was a legislative finding on the original suggested language. Can that be included on the draft that you are working on? Also, can the surcharge be on each convicting event, not each count/offense?

Thanks,

Peter

Peter Kirby
State Budget Office
Phone: 608.267:0370