

Chapter Jus 9

DEOXYRIBONUCLEIC ACID (DNA) DATA BANK

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Note: Corrections made under s. 13.93 (2m) (b) 7., Stats., Register, July, 1997, No. 499.

Jus 9.01 Purpose. This chapter is promulgated under ss. 165.76 (4), 165.77 (8), 938.34 (15), 973.047 (2), and 980.063 (2), Stats., to specify the procedures for carrying out the submission of human biological specimens under s. 165.76, Stats., the DNA analysis and data bank under s. 165.77, Stats., and the DNA analysis under ss. 938.34 (15) and 973.047 (2), Stats.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97.

Jus 9.02 Applicability. This chapter applies to any person who meets any of the criteria listed in ss. 165.76 (1), 938.34 (15), and 973.047 (1f), Stats.

Note: **Section 165.76 (1), 2011 Stats., reads:**

(1) A person shall provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis if he or she meets any of the following criteria:

(a) Is or was in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), or on probation, extended supervision, parole, supervision, or aftercare supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(ag) Is or was in prison on or after August 12, 1993, and before January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

(ar) Is or was in prison on or after January 1, 2000, for a felony committed in this state.

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

(b) Has been found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under s. 51.20 or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(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), 940.225 (3m), 944.20, or 948.10.

(c) Is or was in institutional care on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

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

(d) Has been found to be a sexually violent person under ch. 980 on or after June 2, 1994.

(e) Is or was released on parole or extended supervision or placed on probation in another state before January 1, 2000, and is or was on parole, extended supervision, or probation in this state from the other state under s. 304.13 (1m), 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state that the department of corrections determines, under s. 304.137 (1), is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(f) Is or was released on parole or extended supervision or placed on probation in another state on or after January 1, 2000, and is or was on parole, extended supervision, or probation in this state from the other state under s. 304.13 (1m), 304.135, or 304.16 for a violation of the law of the other state that the department of corrections determines, under s. 304.137 (2), would constitute a felony if committed by an adult in this state.

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

Note: The correct cross-reference is shown in brackets.

(h) Is notified by the department of justice, the department of corrections, a district attorney, or a county sheriff under sub. (1m) that the person is required to provide a biological specimen.

Note: **Section 938.34 (15), 2011 Stats., reads:**

(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), the court shall require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may

require the juvenile to provide 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. 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).

(b) The department of justice shall promulgate rules providing procedures for juveniles to provide specimens under par. (a) and for the transportation of the specimens to the state crime laboratories under s. 165.77.

Note: **Section 973.047 (1), 2011 Stats., reads:**

(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 [s. 948.10 (1) (b)], the court shall require the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

Note: The correct cross-reference is shown in brackets.

(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).

(2) The department of justice shall promulgate rules providing for procedures for defendants to provide specimens when 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.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97; correction made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549.

Jus 9.03 Definitions. In this chapter:

(1) "Department" means the Wisconsin department of justice.

(2) "DNA" means deoxyribonucleic acid.

(3) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the federal government, a state or a political subdivision of a state for the purpose of preventing and detecting crime, enforcing federal or state laws or local ordinances, and making arrests for crimes.

(4) "Offender" means any person who meets any of the criteria in ss. 165.76 (1), 938.34 (15), and 973.047 (1f), Stats.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549.

Jus 9.04 Submission of human biological specimen for DNA data bank. (1) PERSONS REQUIRED TO SUBMIT HUMAN BIOLOGICAL SPECIMEN.

(a) An offender, whether or not he or she is a resident of the state, who meets any of the following conditions shall provide a biological specimen to the state crime laboratories for DNA analysis:

1. Is in prison or a secured correctional facility or on probation, parole, supervision, aftercare supervision or corrective sanctions supervision or in institutional care on or after August 12, 1993 under circumstances provided for in s. 165.76 (1) (a), (c), and (e), Stats.

2. Is found guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under circumstances provided for in s. 165.76 (1) (b), Stats.

3. Is adjudicated delinquent under circumstances provided for in s. 938.34 (15) (a), Stats.

4. Is subject to a court imposed sentence or probation under circumstances provided for in s. 973.047 (1f), Stats.

5. Is found to be a sexually violent person under ch. 980, Stats., on or after June 2, 1994.

6. Receives a disposition as provided for under s. 938.34 (15) (b) or 973.047 (1f), Stats., in which the court orders the offender

to provide a biological specimen to the state crime laboratories for DNA analysis.

(b) An offender subject to par. (a) 1. to 5. shall provide a specimen to the state crime laboratories whether or not the court orders such submission on the offender's commitment, judgment of conviction or adjudication of delinquency. An offender subject to par. (a) 6. shall provide a specimen to the state crime laboratories if the court orders such a submission on the offender's judgment of conviction or adjudication of delinquency.

(2) PLACE FOR SUBMISSION OF HUMAN BIOLOGICAL SPECIMEN. Each offender shall provide a human biological specimen at the place specified in this subsection as follows:

(a) If the offender has been placed on probation, or if the offender is on parole or probation in this state from another state and the department of corrections directs the probationer or parolee to provide a biological specimen, he or she shall provide the specimen at the office of a county sheriff as soon after the placement as practicable, or as directed by his or her probation and parole agent.

(b) If the offender has been placed on supervision as a child [juvenile], he or she shall provide the specimen as soon after the placement as practicable at a location as directed by the agency providing supervision for the child [juvenile].

(c) If the offender has been sentenced to prison, he or she shall provide the specimen while in prison as directed by the department of corrections. If the specimen has not been provided while in prison, the offender shall provide the specimen at the office of a county sheriff or as directed by his or her parole agent.

(d) If the offender has been placed in a secured correctional facility as a child [juvenile], he or she shall provide the specimen while in the secured correctional facility as directed by the department of corrections. If the specimen has not been provided in the secured correctional facility, the offender shall provide the specimen as directed by the agency providing supervision.

(e) If the offender has been sentenced to a county jail or county house of corrections, the offender shall provide the specimen as directed by the office of a county sheriff.

(f) If the offender has been committed to the department of health services under s. 51.20 or 971.17, Stats., or found to be a sexually violent person under ch. 980, Stats., he or she shall provide the specimen as directed by the department of health services.

(g) If pars. (a) to (f) do not apply, the offender shall provide the specimen as directed by the office of a county sheriff or as directed by the agent or agency providing supervision or having legal or physical custody of the offender.

Note: 1995 Wis. Act 77 substituted juvenile for child.

(3) PROCEDURE FOR SUBMISSION OF HUMAN BIOLOGICAL SPECIMEN. Human biological specimens shall be collected and sent to the state crime laboratories in accordance with the following procedures:

(a) The collection of a human biological specimen by oral swab or pin prick to the finger may be done by any person and does not require special medical training. Licensed or certified medical staff shall perform all procedures requiring medical expertise.

(b) The collection of a human biological specimen includes the collection of any source of DNA approved by the state crime laboratories.

(c) The collection of a human biological specimen shall be performed in accordance with department procedures and with methods approved by the state crime laboratories.

(d) The human biological specimen shall be sent to a state crime laboratory in accordance with department procedures approved by the state crime laboratories.

Note: Offenders sometime move to other states through the Interstate Corrections Compact or for other reasons. Offenders who are subject to Wisconsin sentences or commitments under s. 165.76 (1), 938.34 (15), or 973.047 (1f), Stats., but who subsequently reside out-of-state are required to provide a specimen to the state crime laboratories for DNA analysis under this chapter. The department will cooperate with the out-of-state agent or agency providing supervision or having legal or physical custody of the offender to facilitate the submission of the specimen. If a person is on parole or probation in this state from another state and the department of corrections directs the probationer or parolee to provide a biological specimen under s. 165.76, Stats., that person shall provide the specimen as directed by his or her probation and parole agent as soon as practicable after entering this state.

The *Physical Evidence Handbook* published by the Wisconsin Department of Justice State Crime Laboratories and any updated amendments to the handbook issued in the form of department procedures constitute methods for collection of human biological specimens approved by the state crime laboratories. Pursuant to s. 165.77 (7), Stats., whenever a Wisconsin law enforcement agency or a health care professional collects evidence in a case of alleged or suspected sexual assault, the agency or professional shall follow the procedures specified in the department's *Physical Evidence Handbook* or any updated amendments issued in the form of department procedures.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97; corrections in (1) (a) 4. and 6. made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549; **corrections in (2) (f) made under s. 13.92 (4) (b) 6., Stats., Register March 2013 No. 687.**

Jus 9.05 Use of human biological specimens for DNA data bank. If the state crime laboratories receive a specimen under this chapter, the laboratories shall analyze the DNA in the specimen. The laboratories shall maintain a data bank based on the data obtained from the DNA analysis of those specimens.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97.

Jus 9.06 Use of DNA data bank. (1) USE. 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 and the combined DNA identification system 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, subject to s. 972.11 (5), Stats.

Note: 2001 Wis. Act 16 repealed s. 972.11 (5), Stats., and created new language addressing the same issue in s. 971.23 (9), Stats.

Note: **Section 971.23 (9), 2011 Stats., reads:**

(9) DEOXYRIBONUCLEIC ACID EVIDENCE. (a) In this subsection "deoxyribonucleic acid profile" has the meaning given in s. 939.74 (2d) (a).

(b) Notwithstanding sub. (1) (e) or (2m) (am), if either party intends to submit deoxyribonucleic acid profile evidence at a trial to prove or disprove the identity of a person, the party seeking to introduce the evidence shall notify the other party of the intent to introduce the evidence in writing by mail at least 45 days before the date set for trial; and shall provide the other party, within 15 days of request, the material identified under sub. (1) (e) or (2m) (am), whichever is appropriate, that relates to the evidence.

(c) The court shall exclude deoxyribonucleic acid profile evidence at trial, if the notice and production deadlines under par. (b) are not met, except the court may waive the 45 day notice requirement or may extend the 15 day production requirement upon stipulation of the parties, or for good cause, if the court finds that no party will be prejudiced by the waiver or extension. The court may in appropriate cases grant the opposing party a recess or continuance.

(2) DESTRUCTION OF THE SPECIMEN. The state crime laboratories shall destroy specimens obtained for the DNA data bank under this chapter after analysis has been completed.

(3) EXPUNGEMENT OF DNA ANALYSIS DATA. (a) An offender may request expungement of his or her DNA analysis data submitted under this chapter on the grounds that his or her conviction or adjudication has been reversed, set aside or vacated, or that the governor has granted a pardon. The state crime laboratories shall expunge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person if it receives both of the following:

1. The person's written request for expungement on a form provided by the Milwaukee crime laboratory.

2. A certified copy of the court order reversing, setting aside or vacating the conviction or adjudication, or a certified copy of the governor's grant of pardon.

(b) If the administrator of the department's division of law enforcement services determines that a human biological specimen was collected from a person by mistake and that the person is not subject to the submission requirements of this chapter, the state crime laboratories shall expunge all records and identifiable

information in the data bank pertaining to the person and destroy all specimens from the person.

(4) CONFIDENTIALITY. Except for the uses listed in this chapter and s. 165.77, Stats., DNA analysis data collected under this chapter for the DNA data bank shall remain confidential. Information concerning the fact that a person has submitted a human biological specimen for the DNA data bank is not confidential and may be released.

Note: Forms for requesting expungement of DNA analysis data are available from the Milwaukee Crime Laboratory at 1578 S. 11th Street, Milwaukee, Wisconsin 53204-2860.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97.

Jus 9.07 Compliance and penalties. Failure to provide a biological specimen under this chapter constitutes a criminal offense under s. 165.765, Stats. Failure to provide a human biological specimen under this chapter may also constitute a disciplinary offense or probation or parole violation.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97.

Jus 9.08 DNA analysis surcharge. (1) If a court imposes a sentence or places a person on probation on or after August 12, 1993, under any of the following circumstances, the

court shall impose a DNA analysis surcharge of \$250 under s. 973.046, Stats.:

(a) The person violated s. 940.225 or 948.02 (1) or (2), Stats.; or

(b) The court ordered the person to provide a biological specimen under s. 973.047 (1f), Stats.

(2) If a court imposes a DNA surcharge under sub. (1) and the person in a state prison has not paid the surcharge, the department of corrections shall collect the amount owed from the income earned by or received for the benefit of the inmate. The department of corrections shall transmit any amount collected to the state treasurer.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549.

Jus 9.09 Cooperation. The department of corrections, department of health services, county departments under ss. 46.215, 46.22 and 46.23, Stats., and county sheriffs shall cooperate fully with the department to meet the requirements of this chapter.

History: Cr. Register, July, 1997, No. 499, eff. 8-1-97; correction made under s. 13.92 (4) (b) 6., Stats., Register March 2013 No. 687.