



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 511**

April 9, 2010 – Offered by Representative KESSLER.

1 **AN ACT** *to repeal* 938.34 (15) (b) and 973.047 (2); *to renumber* 938.34 (15) (title);
2 *to renumber and amend* 938.34 (15) (a) 1., 938.34 (15) (a) 2., 938.34 (15) (a)
3 3. and 973.047 (title), (1f) and (1m); *to amend* 165.76 (3), 165.765 (1), 165.765
4 (2) (a), 165.77 (2) (b), 165.77 (2m) (c) and 165.77 (3); and *to create* 938.31 (5)
5 (c) and 972.133 (2) of the statutes; **relating to:** collection of biological samples
6 for deoxyribonucleic acid analysis from persons convicted or adjudicated
7 delinquent for certain offenses.

Analysis by the Legislative Reference Bureau

Under current law, a person who is sentenced or placed on probation for a felony or certain specified misdemeanors must provide a deoxyribonucleic acid (DNA) sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A person who is placed on probation must provide the DNA sample at the sheriff's office as soon as practicable after being placed on probation or as directed by his or her probation agent. A person who is sentenced to prison generally must provide the sample while in prison. A person who is sentenced to jail must provide the sample as directed by the sheriff.

Also under current law, a juvenile who is adjudicated delinquent for certain offenses must provide a DNA sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A juvenile placed in a secured correctional institution must provide the DNA sample while in the facility, and a juvenile who is not placed in such a facility must provide the DNA sample as directed by the agency supervising the juvenile.

This substitute amendment requires a court, upon convicting a person for a felony or a specified misdemeanor, to place the person in the physical custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment also requires that if a juvenile is required to provide a DNA sample in connection with a delinquency finding, the court must, at the end of the proceeding in which the court makes the delinquency finding, place the juvenile in the custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment requires the sheriff to submit the DNA samples to the state crime laboratories.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

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

2 165.76 (3) If a person is required to submit a biological specimen under s.
3 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), ~~938.34 (15)~~ 938.31
4 (5), 971.17 (1m) (a), ~~973.047~~ 972.133, or 980.063, he or she shall comply with that
5 requirement and is not required to comply with this section.

6 **SECTION 2.** 165.765 (1) of the statutes is amended to read:

7 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
8 a biological specimen under s. 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.
9 165.76, ~~938.34 (15), 973.047~~ 938.31 (5) (a) or (b), 972.133 (1), or 980.063 may be fined
10 not more than \$10,000 or imprisoned for not more than 9 months or both.

11 **SECTION 3.** 165.765 (2) (a) of the statutes is amended to read:

12 165.765 (2) (a) Any physician, registered nurse, medical technologist,
13 physician assistant or person acting under the direction of a physician who obtains
14 a biological specimen under s. 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.

1 165.76, ~~938.34 (15), 973.047~~ 938.31 (5), 972.133, or 980.063 is immune from any civil
2 or criminal liability for the act, except for civil liability for negligence in the
3 performance of the act.

4 **SECTION 4.** 165.77 (2) (b) of the statutes is amended to read:

5 165.77 **(2)** (b) Paragraph (a) does not apply to specimens received under s.
6 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
7 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

8 **SECTION 5.** 165.77 (2m) (c) of the statutes is amended to read:

9 165.77 **(2m)** (c) Paragraph (b) does not apply to specimens received under s.
10 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
11 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

12 **SECTION 6.** 165.77 (3) of the statutes is amended to read:

13 165.77 **(3)** If the laboratories receive a human biological specimen under s.
14 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
15 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063, the laboratories shall
16 analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain
17 a data bank based on data obtained from deoxyribonucleic acid analysis of those
18 specimens. The laboratories may compare the data obtained from one specimen with
19 the data obtained from other specimens. The laboratories may make data obtained
20 from any analysis and comparison available to law enforcement agencies in
21 connection with criminal or delinquency investigations and, upon request, to any
22 prosecutor, defense attorney or subject of the data. The data may be used in criminal
23 and delinquency actions and proceedings. The laboratories shall destroy specimens
24 obtained under this subsection after analysis has been completed and the applicable
25 court proceedings have concluded.

1 **SECTION 7.** 938.31 (5) (c) of the statutes is created to read:

2 938.31 (5) (c) If a court requires a juvenile to provide a biological specimen
3 under par. (a) or (b), the court shall, at the end of the proceeding in which the juvenile
4 is adjudicated delinquent, place the juvenile in the physical custody of the sheriff for
5 a time sufficient for the juvenile to provide the biological specimen. The sheriff shall
6 collect a biological specimen from a juvenile required to provide a specimen under
7 par. (a) or (b) and shall submit the biological specimen to the state crime laboratories.

8 **SECTION 8.** 938.34 (15) (title) of the statutes is renumbered 938.31 (5) (title).

9 **SECTION 9.** 938.34 (15) (a) 1. of the statutes is renumbered 938.31 (5) (a) and
10 amended to read:

11 938.31 (5) (a) If ~~the~~ a juvenile is adjudicated delinquent on the basis of a
12 violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall
13 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
14 for deoxyribonucleic acid analysis by the state crime laboratories.

15 **SECTION 10.** 938.34 (15) (a) 2. of the statutes is renumbered 938.31 (5) (b) and
16 amended to read:

17 938.31 (5) (b) Except as provided in ~~subd. 1.~~ par. (a), if ~~the~~ a juvenile is
18 adjudicated delinquent on the basis of any violation under ch. 940, 944, or 948 or ss.
19 943.01 to 943.15, the court may require the juvenile to provide a biological specimen
20 ~~to the state crime laboratories~~ for deoxyribonucleic acid analysis by the state crime
21 laboratories.

22 **SECTION 11.** 938.34 (15) (a) 3. of the statutes is renumbered 938.31 (5) (d) and
23 amended to read:

24 938.31 (5) (d) The results from deoxyribonucleic acid analysis of a specimen
25 under ~~subd. 1. or 2.~~ par. (a) or (b) may be used only as authorized under s. 165.77 (3).

1 The state crime laboratories shall destroy any such specimen in accordance with s.
2 165.77 (3).

3 **SECTION 12.** 938.34 (15) (b) of the statutes is repealed.

4 **SECTION 13.** 972.133 (2) of the statutes is created to read:

5 972.133 (2) The sheriff shall collect a biological specimen from a person ordered
6 to provide a specimen under sub. (1) and shall submit the biological specimen to the
7 state crime laboratories.

8 **SECTION 14.** 973.047 (title), (1f) and (1m) of the statutes are renumbered
9 972.133 (title), (1) and (3), and 972.133 (1), as renumbered, is amended to read:

10 972.133 (1) ~~If a court imposes a sentence or places a person on probation is~~
11 convicted for a felony conviction or for a conviction for a violation of s. 940.225 (3m),
12 944.20, or 948.10, the court shall require the person to provide a biological specimen
13 to the state crime laboratories for deoxyribonucleic acid analysis by the state crime
14 laboratories. At the end of the proceeding in which the person is adjudged guilty of
15 the violation or the court accepts the person's plea of guilty or no contest for the
16 violation, the court shall place the person in the physical custody of the sheriff for a
17 time sufficient for the person to provide the biological specimen.

18 **SECTION 15.** 973.047 (2) of the statutes is repealed.

19 **SECTION 16. Effective date.**

20 (1) This act takes effect on January 1, 2011.

21 (END)