



2009 SENATE BILL 641

March 24, 2010 - Introduced by Senators COGGS, HANSEN, CARPENTER, COWLES, LEHMAN, DARLING and RISSER, cosponsored by Representatives BARCA, PARISI, YOUNG, BERCEAU, POPE-ROBERTS, CULLEN, FIELDS, VRUWINK, TURNER, BIES, A. OTT, STASKUNAS, SCHNEIDER and A. WILLIAMS. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to repeal** 938.34 (15) (b), 973.047 (2) and 980.063 (2); **to renumber and**
2 **amend** 980.063 (1) (a) and (b); **to amend** 51.20 (13) (cr), 165.76 (3), 165.76 (4),
3 165.765 (1), 165.765 (2) (a), 938.34 (15) (a) 1. and 2., 971.17 (1m) (a) and 973.047
4 (1f); and **to create** 938.34 (15) (c) of the statutes; **relating to:** collection of
5 deoxyribonucleic acid samples and requiring the exercise of rule-making
6 authority.

Analysis by the Legislative Reference Bureau

Under current law, the following people are required to provide a deoxyribonucleic acid (DNA) sample to the state crime laboratories for analysis and inclusion in the Department of Justice DNA database: 1) a person who is sentenced or placed on probation in Wisconsin for a felony or certain specified misdemeanors; 2) a person on probation, parole, or extended supervision in Wisconsin for a crime committed in another state that would be a felony if committed in Wisconsin; 3) a person found to be a sexually violent person; 4) a person found not responsible by reason of mental disease or defect for certain sexual assaults; and 5) a juvenile adjudicated delinquent for certain felony sexual assaults. In addition, a court may order a juvenile who is adjudicated delinquent for certain other offenses to provide a biological specimen for DNA analysis.

Currently, a person who is sentenced to prison generally must provide the DNA sample while in prison. A person who is sentenced to jail must provide the DNA

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sample as directed by the sheriff. A person who is placed on probation for a crime committed in this state or who is on probation, parole, or extended supervision for a crime committed in another state must provide the DNA sample at the sheriff's office, as directed by his or her probation, parole, or extended supervision agent. A juvenile placed in a secured correctional facility must generally provide the DNA sample while at the facility. A juvenile on supervision, must provide the DNA sample as directed by the agency supervising him or her. A person found not responsible by reason of mental disease or defect or found to be a sexually violent person must provide the DNA sample as directed by the Department of Health Services.

This bill requires that all persons who are required to provide a DNA sample for analysis by the state crime laboratories and inclusion in the DOJ DNA database provide the sample to the sheriff. The bill requires the sheriff to submit the samples to the state crime laboratories. In addition, the bill specifies that if a person is required to provide a DNA sample in connection with sentencing, the sentencing court must at the end of the sentencing hearing place the person in the physical custody of the sheriff for a time sufficient to provide the sample. Similarly, the bill requires that if a juvenile is required to provide a DNA sample in connection with a delinquency adjudication, the court must at the end of the dispositional hearing place the juvenile in the custody of the sheriff for a time sufficient to provide the sample. Finally, the bill requires DOJ to promulgate rules for providing and collecting DNA samples and submitting them to the state crime laboratories.

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:

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

2 51.20 (13) (cr) If the subject individual is before the court on a petition filed
3 under a court order under s. 938.30 (5) (c) 1. and is found to have committed a
4 violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall
5 require the individual to provide a biological specimen ~~to the state crime laboratories~~
6 for deoxyribonucleic acid analysis by the state crime laboratories. The individual
7 shall provide the sample to the sheriff as provided in rules promulgated under s.
8 165.76 (4) and the sheriff shall submit the biological specimen to the state crime
9 laboratories as provided in the rules.

10 **SECTION 2.** 165.76 (3) of the statutes is amended to read:

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

4 **SECTION 3.** 165.76 (4) of the statutes is amended to read:

5 165.76 (4) The department of justice shall promulgate rules necessary to carry
6 out its duties under this section and rules for providing and collecting biological
7 specimens and submitting them to the crime laboratories under this section and ss.
8 51.20 (13) (cr), 938.34 (15), 971.17 (1m) (a), 973.047, and 980.063.

9 **SECTION 4.** 165.765 (1) of the statutes is amended to read:

10 165.765 (1) Whoever intentionally fails to comply with a requirement to ~~submit~~
11 provide a biological specimen under s. 165.76, 938.34 (15), 973.047, or 980.063 may
12 be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

13 **SECTION 5.** 165.765 (2) (a) of the statutes is amended to read:

14 165.765 (2) (a) Any physician, registered nurse, medical technologist,
15 physician assistant ~~or~~, person acting under the direction of a physician, sheriff, or
16 person acting under the direction of a sheriff who obtains a biological specimen under
17 s. 165.76, 938.34 (15), 973.047 or 980.063 is immune from any civil or criminal
18 liability for the act, except for civil liability for negligence in the performance of the
19 act.

20 **SECTION 6.** 938.34 (15) (a) 1. and 2. of the statutes are amended to read:

21 938.34 (15) (a) 1. If the juvenile is adjudicated delinquent on the basis of a
22 violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall
23 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
24 for deoxyribonucleic acid analysis by the state crime laboratories.

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1 2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on
2 the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court
3 may require the juvenile to provide a biological specimen ~~to the state crime~~
4 ~~laboratories~~ for deoxyribonucleic acid analysis by the state crime laboratories.

5 **SECTION 7.** 938.34 (15) (b) of the statutes is repealed.

6 **SECTION 8.** 938.34 (15) (c) of the statutes is created to read:

7 938.34 **(15)** (c) If a court requires a juvenile to provide a biological specimen
8 under par. (a), the court shall, at the end of the hearing in which a disposition is
9 imposed under this section, place the juvenile in the physical custody of the sheriff
10 for a time sufficient for the juvenile to provide the biological specimen. The sheriff
11 shall collect the biological specimen and submit it to the state crime laboratories as
12 provided in rules promulgated by the department of justice under s. 165.76 (4).

13 **SECTION 9.** 971.17 (1m) (a) of the statutes is amended to read:

14 971.17 **(1m)** (a) If the defendant under sub. (1) is found not guilty by reason of
15 mental disease or defect for a violation of s. 940.225 (1) or (2), 948.02 (1) or (2),
16 948.025, or 948.085, the court shall require the person to provide a biological
17 specimen ~~to the state crime laboratories~~ for deoxyribonucleic acid analysis by the
18 state crime laboratories. The person shall provide the sample to the sheriff as
19 provided in rules promulgated under s. 165.76 (4) and the sheriff shall submit the
20 biological specimen to the state crime laboratories as provided in the rules.

21 **SECTION 10.** 973.047 (1f) of the statutes is amended to read:

22 973.047 **(1f)** If a court imposes a sentence or places a person on probation for
23 a felony conviction or for a conviction for a violation of s. 940.225 (3m), 944.20, or
24 948.10, the court shall require the person to provide a biological specimen ~~to the state~~
25 ~~crime laboratories~~ for deoxyribonucleic acid analysis by the state crime laboratories.

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1 At the end of the hearing in which the sentence is imposed or the person is placed on
2 probation, the court shall place the person in the physical custody of the sheriff for
3 a time sufficient for the person to provide the biological specimen. The sheriff shall
4 collect the biological specimen and submit it to the state crime laboratories as
5 provided in rules promulgated by the department of justice under s. 165.76 (4).

6 **SECTION 11.** 973.047 (2) of the statutes is repealed.

7 **SECTION 12.** 980.063 (1) (a) and (b) of the statutes are renumbered 980.063 (1)
8 and (3) and amended to read:

9 980.063 (1) If a person is found to be a sexually violent person under this
10 chapter, the court shall require the person to provide a biological specimen to the
11 ~~state crime laboratories~~ for deoxyribonucleic acid analysis by the state crime
12 laboratories. The person shall provide the sample to the sheriff as provided in rules
13 promulgated under s. 165.76 (4) and the sheriff shall submit the biological specimen
14 to the state crime laboratories as provided in the rules.

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

18 **SECTION 13.** 980.063 (2) of the statutes is repealed.

19 **SECTION 14. Initial applicability.**

20 (1) This act first applies to biological specimens provided on the effective date
21 of this subsection.

22 **SECTION 15. Effective date.**

23 (1) This act takes effect on the first day of the 13th month beginning after
24 publication.

25

(END)