

2007 ASSEMBLY BILL 1

January 12, 2007 – Introduced by Representatives WASSERMAN, SUDER, KLEEFISCH, TOWNSEND and ZIEGELBAUER. Referred to Committee on Criminal Justice.

1 **AN ACT** *to amend* 165.76 (3), 165.765 (1), 165.765 (2) (a), 165.77 (3) and 970.03
2 (7); *to repeal and recreate* 165.77 (4); and *to create* 165.845 of the statutes;
3 **relating to:** requiring persons charged with a felony to provide a biological
4 specimen for deoxyribonucleic acid analysis, inclusion of the analysis results in
5 the Department of Justice deoxyribonucleic acid data bank, requiring the
6 exercise of rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, the following people are required to submit biological specimens to the crime laboratories for deoxyribonucleic acid (DNA) analysis: a person sentenced or placed on probation in Wisconsin for a felony (a crime for which a person may be sentenced to prison) or one of the several specified misdemeanors; a person found to be a sexually violent person; 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; and a person found not guilty by reason of mental disease or defect or adjudicated delinquent for certain felony sexual assaults. In addition, a court may order a youth who is adjudicated delinquent for certain other offenses to provide a biological specimen for DNA analysis. The crime laboratories are required to analyze the DNA in the biological specimens and maintain a DNA data bank of information obtained from the analyses. The crime laboratories may compare data obtained from the analysis of specimens and may share the results of

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analyses or comparisons with law enforcement agencies, prosecutors, the person who submitted a specimen, and defense attorneys. The crime laboratories must expunge all data relating to a person from the data bank if the person's conviction or adjudication is reversed, set aside, or vacated and the person requests that the data be expunged. A person who is required to submit a biological specimen for DNA analysis, except a person who is committed for mental health reasons, and intentionally fails to provide a specimen is subject to a criminal penalty.

This bill requires that, whenever a person is charged with committing a felony and a court determines that there is probable cause to believe that the person committed the felony, the person must provide a biological specimen for DNA analysis. The person must provide the specimen to the sheriff in the county in which he or she is charged and the sheriff must submit it to the crime laboratories. The crime laboratories must analyze the sample and include information obtained from the analysis in the DNA data bank. If the person is not convicted of a felony in connection with the charge for which he or she was required to submit a specimen and requests that his or her data be expunged from the DNA data bank, the crime laboratories must expunge it unless the data must be maintained in connection with an unrelated conviction, adjudication, or charge. A person who is required under the bill to provide a biological specimen for DNA analysis and intentionally fails to do so is subject to a fine not to exceed \$10,000 or imprisonment not to exceed nine months or both.

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:

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. 51.20
3 (13) (cr), 165.845, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, he or she shall
4 comply with that requirement and is not required to comply with this section.

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

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1 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
2 a biological specimen under s. 165.76, 165.845, 938.34 (15), 973.047, or 980.063 may
3 be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

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

5 165.765 (2) (a) Any physician, registered nurse, medical technologist,
6 physician assistant or person acting under the direction of a physician who obtains
7 a biological specimen under s. 165.76, 165.845, 938.34 (15), 973.047, or 980.063 is
8 immune from any civil or criminal liability for the act, except for civil liability for
9 negligence in the performance of the act.

10 **SECTION 4.** 165.77 (3) of the statutes is amended to read:

11 165.77 (3) If the laboratories receive a human biological specimen under s.
12 51.20 (13) (cr), 165.76, 165.845, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, the
13 laboratories shall analyze the deoxyribonucleic acid in the specimen. The
14 laboratories shall maintain a data bank based on data obtained from
15 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
16 the data obtained from one specimen with the data obtained from other specimens.
17 The laboratories may make data obtained from any analysis and comparison
18 available to law enforcement agencies in connection with criminal or delinquency
19 investigations and, upon request, to any prosecutor, defense attorney or subject of
20 the data. The data may be used in criminal and delinquency actions and proceedings.
21 The laboratories shall destroy specimens obtained under this subsection after
22 analysis has been completed and the applicable court proceedings have concluded.

23 **SECTION 5.** 165.77 (4) of the statutes is repealed and recreated to read:

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1 165.77 (4) (a) A person whose deoxyribonucleic acid analysis data has been
2 included in the data bank under sub. (3) may request expungement on the grounds
3 that all of the following conditions are satisfied:

4 1. All convictions or adjudications for which the person was required to submit
5 a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a),
6 973.047, or 980.063 have been reversed, set aside, or vacated.

7 2. Any felony charge for which the person was required to submit a biological
8 specimen under s. 165.845 has been dismissed or the person was found innocent of
9 committing the felony charged.

10 (b) If the conditions under par. (a) are satisfied, the laboratories shall purge all
11 records and identifiable information in the data bank pertaining to the person and
12 destroy all specimens from the person upon receiving the person's written request
13 for expungement and any documentation required by the department of justice
14 under rules promulgated under sub. (8).

15 **SECTION 6.** 165.845 of the statutes is created to read:

16 **165.845 Submission of biological specimens by persons charged with**
17 **felonies. (1)** Whenever a person is charged with committing a felony and a court
18 makes a determination that there is probable cause to believe that the person
19 committed the felony, the person shall provide the sheriff of the county in which the
20 person is charged a biological specimen for deoxyribonucleic acid analysis. The
21 sheriff shall submit the specimen to the crime laboratories for deoxyribonucleic acid
22 analysis and inclusion of the person's deoxyribonucleic acid profile in a data bank
23 under s. 165.77 (3).

