

**2007 DRAFTING REQUEST**

**Bill**

Received: **09/07/2006**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

For: **Sheldon Wasserman (608) 266-7671**

By/Representing: **Joe Hoey**

This file may be shown to any legislator: **NO**

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wasserman@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

DNA sampling of persons charged with a felony

---

**Instructions:**

Redraft 2005 LRB-4679

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 10/30/2006	jdyer 11/01/2006		_____			S&L Crime
/1	rryan 12/19/2006	jdyer 12/20/2006	rschluet 11/01/2006	_____	lparisi 11/01/2006		S&L Crime
/2			rschluet 12/20/2006	_____	sbasford 12/20/2006	mbarman 01/03/2007	

FE Sent For:

*ad intro*  
*1/12*

<END>

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/?	rryan 10/30/2006	jdyer 11/01/2006		_____			S&L Crime
/1		<i>1/2 12/20 jld</i>	rschluet 11/01/2006	_____	lparisi 11/01/2006		

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*12266* <END>

2007 DRAFTING REQUEST

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DNA sampling of persons charged with felony

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Redraft 2005 LRB-4679

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/?	rryan	1/1 jld					

FE Sent For:

Handwritten notes: 11-1-6 and signature

<END>

## Ryan, Robin

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**From:** Hoey, Joseph  
**Sent:** Thursday, October 26, 2006 2:55 PM  
**To:** Ryan, Robin  
**Subject:** RE: DNA sampling of people charged with felonies

Robin,

Rep. Wasserman would like the penalty to apply.

Thanks.

Joe

---

**From:** Ryan, Robin  
**Sent:** Wednesday, October 25, 2006 12:24 PM  
**To:** Hoey, Joseph  
**Subject:** DNA sampling of people charged with felonies

Hi Joe,

I am redrafting 2005 LRB-4679 as you requested. The bill requires people who are charged with a felony to submit a DNA samples for inclusion in the DOJ database.

Section 165.765 of the statutes provides a penalty for intentionally failing to comply with current DNA submission requirements. Do you want the penalty to apply to persons who are required under the bill to provide a DNA sample and fail to do so? The penalty is a fine not to exceed \$10,000, imprisonment for up to 9 months, or both.

Thanks,  
Robin

# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: RLR) (Date: 10 / 30 / 06)



Please transfer the drafting file for

2005 LRB 46791 to the drafting file

for 2007 LRB 0149

The final version of the 2005 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2005 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2005 draft was incorporated into a 2007 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the 2007 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

**--- OR ---**

Please copy the drafting file for

2007 LRB /                      (include the version) and place it in the

drafting file for 2007 LRB

For research purposes, because the original 2007 draft was incorporated into another 2007 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2007 drafting file. This request form will be inserted into the "guts" of the new 2007 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.



0149/1

In 10/30/06

LJD

2005 BILL

PMNR

7

LPS - PWF please

1 AN ACT *to amend* 165.765 (2) (a), 165.77 (3) and 970.03 (7); *to repeal and*  
 2 *recreate* 165.77 (4); and *to create* 165.845 of the statutes; **relating to:**  
 3 requiring persons charged with a felony to provide a biological specimen for  
 4 deoxyribonucleic acid analysis, inclusion of the analysis results in the  
 5 Department of Justice deoxyribonucleic acid data bank, and 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: people convicted in Wisconsin for a felony (a crime for which a person may be sentenced to prison); people found to be sexually violent persons; people 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 people found not guilty by reason of mental disease or defect or adjudicated delinquent for a first-degree or second-degree sexual assault. 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 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

or one of several specified nucleic acid markers

or sexual assault of a child

a person

JNS A

**BILL**

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. INS B ✓

\* 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. INS C ✓

CRIME ✓ → 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 1-1 → SECTION 1. 165.765 (2) (a) ✓ of the statutes is amended to read:

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

7           SECTION 2. 165.77 (3) ✓ of the statutes is amended to read:

8           165.77 (3) If the laboratories receive a human biological specimen under s.  
9 51.20 (13) (cr), 165.76, 165.845 ✓, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, the  
10 laboratories shall analyze the deoxyribonucleic acid in the specimen. The  
11 laboratories shall maintain a data bank based on data obtained from  
12 deoxyribonucleic acid analysis of those specimens. The laboratories may compare  
13 the data obtained from one specimen with the data obtained from other specimens.  
14 The laboratories may make data obtained from any analysis and comparison

**BILL**

1 available to law enforcement agencies in connection with criminal or delinquency  
2 investigations and, upon request, to any prosecutor, defense attorney or subject of  
3 the data. The data may be used in criminal and delinquency actions and proceedings.  
4 The laboratories shall destroy specimens obtained under this subsection after  
5 analysis has been completed and the applicable court proceedings have concluded.

6 **SECTION 3.** 165.77 (4)<sup>✓</sup> of the statutes is repealed and recreated to read:

7 165.77 (4) (a) A person whose deoxyribonucleic acid analysis data has been  
8 included in the data bank under sub. (3)<sup>✓</sup> may request expungement on the grounds  
9 that all of the following conditions are satisfied:

10 1. All convictions or adjudications for which the person was required to submit  
11 a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a),  
12 973.047, or 980.063 have been reversed, set aside, or vacated.<sup>✓</sup>

13 2. Any felony charge for which the person was required to submit a biological  
14 specimen under s. 165.845<sup>✓</sup> has been dismissed or the person was found innocent of  
15 committing the felony charged.

16 (b) If the conditions under par. (a)<sup>✓</sup> are satisfied, the laboratories shall purge all  
17 records and identifiable information in the data bank pertaining to the person and  
18 destroy all specimens from the person upon receiving the person's written request  
19 for expungement and any documentation required by the department of justice  
20 under rules promulgated under sub. (8)<sup>✓</sup>.

21 **SECTION 4.** 165.845<sup>✓</sup> of the statutes is created to read:

22 **165.845 Submission of biological specimens by persons charged with**  
23 **felonies. (1)** Whenever a person is charged with committing a felony and a court  
24 makes a determination that there is probable cause to believe that the person  
25 committed the felony, the person shall provide the sheriff of the county in which the

**BILL**

1 person is charged a biological specimen for deoxyribonucleic acid analysis.✓ The  
2 sheriff shall submit the specimen to the crime laboratories for deoxyribonucleic acid  
3 analysis and inclusion of the person's deoxyribonucleic acid profile in a data bank  
4 under s. 165.77 (3).✓

5 (2) The department of justice shall promulgate rules establishing procedures  
6 and time limits for providing, collecting, and submitting biological specimens under  
7 this section.✓

8 (3) Biological specimens collected under this section may only be used as  
9 provided under s. 165.77.✓

10 SECTION 5. 970.03 (7) of the statutes is amended to read:✓

11 970.03 (7) If the court finds probable cause to believe that a felony has been  
12 committed by the defendant, it shall bind the defendant over for trial and shall  
13 determine whether a biological specimen has been collected from the defendant as  
14 required under s. 165.845. If a specimen has not been collected, the court shall direct  
15 the defendant to provide and the sheriff to collect a biological specimen for  
16 deoxyribonucleic acid analysis.✓

17 SECTION 6. Initial applicability.

18 (1) This act first applies to persons charged with felonies on the effective date  
19 of this subsection.✓

20 SECTION 7. Effective date.

21 (1) This act takes effect on the first day of the 2nd month beginning after  
22 publication.✓

23 (END)

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0149/lins  
RLR:.....

*92* **Ins A:**  
In addition, a court may order a youth who is adjudicated delinquent for certain offenses other than sexual assault to provide a biological specimen for DNA analysis.

*92* **Ins B:**  
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.

*92* **Ins C:**  
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 a imprisonment not to exceed 9 months or both.

\*

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*enine*

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**Ins 1-1:**

**SECTION 1.** 165.76<sup>x</sup> (3) of the statutes is amended to read:

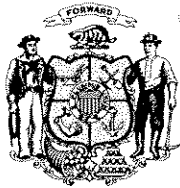
165.76 (3) If a person is required to submit a biological specimen under s. 51.20 (13) (cr), 165.845<sup>✓</sup>, 938.34 (15), 971.17 (1m) (a), 973.047, or 980.063, he or she shall comply with that requirement and is not required to comply with this section.

**History:** 1993 a. 16, 98, 227; 1995 a. 20<sup>x</sup>, 9126 (19); 1995 a. 77, 440; 1997 a. 35, 283; 1999 a. 9; 2001 a. 96; 2005 a. 277, 344; s. 13.93 (2) (c).

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

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

**History:** 1993 a. 98; 1995 a. 77, 440.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0149/1  
RLR:jld:rs

Wanted by Thurs. 12/12/06

2007 BILL

RMN/R  
D-Note

Regen

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 convicted 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 first-degree or second-degree sexual assault or sexual assault of a child. In addition, a court may order a youth who is adjudicated delinquent for certain offenses other than sexual assault 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

sentenced or placed on probation ✓

parent ✓

other ✓

certain felony sexual assaults ✓

**BILL**

analysis of specimens and may share the results of 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:

**BILL**

1           165.765 (1) Whoever intentionally fails to comply with a requirement to submit  
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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.

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11          165.77 (3) If the laboratories receive a human biological specimen under s.  
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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:



**BILL**

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  
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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:

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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).



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0149/2dn

RLR:.....

date

JLD

Joe:

As we discussed, I redrafted this bill to correct the analysis. ✓

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0149/2dn  
RLR:jld:rs

December 20, 2006

Joe:

As we discussed, I redrafted this bill to correct the analysis.

Robin Ryan  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: robin.ryan@legis.wisconsin.gov

**Basford, Sarah**

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**From:** Hoey, Joseph  
**Sent:** Wednesday, January 03, 2007 9:59 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 07-0149/2 Topic: DNA sampling of persons charged with a felony

Please Jacket LRB 07-0149/2 for the ASSEMBLY.