



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU


RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 10/30/2006 (Per: RLR)




Appendix A ... Part 1 of 2




 The 2005 drafting file for LRB 05-4679

has been transferred to the drafting file for

2007 LRB 07-0149

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2005 DRAFTING REQUEST

Bill

Received: **02/17/2006**

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 - law enforcement**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Wasserman@legis.state.wi.us**

Carbon copy (CC:) to: **cathlene.hanaman@legis.state.wi.us**

Pre Topic:

No specific pre topic given

Topic:

DNA testing of person charged with a felony

Instructions:

Same as 2003 LRB 2294

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 03/02/2006	kfollett 04/06/2006					S&L
/1			jfrantze 04/06/2006		sbasford 04/06/2006		

FE Sent For:

<END>

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Pre Topic:

No specific pre topic given

Topic:

DNA testing of person charged with a felony

Instructions:

Same as 2003 LRB 2294

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	1/15/06 4/8		J. Self 4/16			

FE Sent For:

<END>

RESEARCH APPENDIX - Draft Transfer/Copy Request Form

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

(Request Made By: RLR) (Date: 3 / 2 / 06)



Please transfer the drafting file for

2003 LRB 2294 to the drafting file

for 2005 LRB 4679

The final version of the 2003 draft and the final Request Sheet will be copied on yellow paper, and returned to the original 2003 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 2003 draft was incorporated into a 2005 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2005 drafting file. This request form will be inserted into the "guts" of the 2005 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

--- OR ---

Please copy the drafting file for

2005 LRB _____ / _____ (include the version) and place it in the

drafting file for 2005 LRB _____

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

The original drafting file will then be 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.

In 3/2/06
5
2003 BILL

RMNR

J-Note

LPS:
PWF
Please

Regen

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.

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

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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.

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.

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.** 165.765 (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

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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) 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) 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.

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

16 (b) If the conditions under par. (a) 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 under rules
20 promulgated under sub. (8).

21 **SECTION 4.** 165.845 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

of justice

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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)

D-Note

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

LRB-4679/1dn

RLR..k.f

Date

Representative Wasserman:

This is a redraft of 2003 LRB-2294/1.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

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

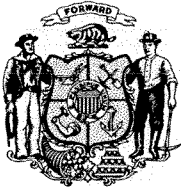
LRB-4679/1dn
RLR:kjfjf

April 6, 2006

Representative Wasserman:

This is a redraft of 2003 LRB-2294/1.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us



2005 BILL

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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)