



# 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 2 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.



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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

Date Transfer Requested: 03/02/2006 (Per: RLR)



☞ The 2003 drafting file for LRB 03-2294

has been transferred to the drafting file for

# **2005 LRB 05-4679**

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2003 DRAFTING REQUEST**

**Bill**

Received: **03/13/2003**

Received By: **rryan**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Joe**

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

Drafter: **rryan**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **MGD**

Submit via email: **YES**

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

Carbon copy (CC:) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

DNA testing of persons charged with a felony

**Instructions:**

Require DNA testing for all persons charged with a felony

**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 05/15/2003			_____			S&L
/1		kfollett 05/21/2003	pgreensl 05/28/2003	_____	mbarman 05/28/2003		
		kfollett 05/27/2003		_____			

Vers.    Drafted    Reviewed    Typed    Proofed    Submitted    Jacketed    Required

FE Sent For:

**<END>**

**2003 DRAFTING REQUEST**

**Bill**

Received: **03/13/2003**

Received By: **rryan**

Wanted: **As time permits**

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

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Addl. Drafters:

Subject: **Criminal Law - miscellaneous**

Extra Copies: **MGD**

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Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

DNA testing of persons <sup>charged with</sup> ~~arrested for~~ a felony

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**Instructions:**

Require DNA testing for all persons <sup>charged with</sup> ~~arrested for~~ a felony

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**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	1/1 kjf 5/27		_____			

FE Sent For:

<END>

Phone Call to Joe 5/5/03

2294

(1) Take specimen after person charged  
vs. needed

(2) Require that (a) person give specimen  
b) that DOT analyze specimen  
c) that results be included  
in databank

(3) Expungement:  
- person must request  
- can be expunged if person not  
convicted of a felony

(4) Do require new specimen for each  
new charge - so can verify  
~~that~~ catch persons using alib

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§ 19.2-310.2:1. (Effective January 1, 2003) Saliva or tissue sample required for DNA analysis after arrest for a violent felony.

Every person arrested for a violent felony as defined in § [19.2-297.1](#) or a violation of §§ [18.2-89](#), [18.2-90](#), [18.2-91](#), or § [18.2-92](#), shall have a sample of his saliva or tissue taken for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. After a determination by a magistrate that probable cause exists for the arrest, a sample shall be taken prior to the person's release from custody. The analysis shall be performed by the Division of Forensic Science or other entity designated by the Division. The identification characteristics of the profile resulting from the DNA analysis shall be stored and maintained by the Division in a DNA data bank and shall be made available as provided in § [19.2-310.5](#).

The clerk of the court shall notify the Division of final disposition of the criminal proceedings. If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the Division shall destroy the sample and all records thereof.

(2002, cc. 753, 773.)

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§ 19.2-310.3:1. (Effective January 1, 2003) Procedures for taking saliva or tissue sample for DNA analysis.

A. Each sample required pursuant to § [19.2-310.2:1](#) from persons arrested shall be taken before release from custody at such place as is designated by the magistrate. Samples shall be taken in accordance with procedures adopted by the Division of Forensic Science. The sample shall be sealed and labeled with the subject's name, social security number, date of birth, race and gender; the name of the person collecting the sample; the date and place of collection; information identifying the arresting or accompanying officer; and the offense for which the person was arrested. The sample shall be secured to prevent tampering with the contents and be accompanied by a copy of the arrest warrant. The steps herein set forth relating to the taking, handling, identification, and disposition of saliva or tissue samples are procedural and not substantive. The sample shall be transported to the Division of Forensic Science not more than fifteen days following withdrawal and shall be analyzed and stored in the DNA data bank in accordance with §§ [19.2-310.4](#) and [19.2-310.5](#).

B. Substantial compliance therewith shall be deemed to be sufficient. If a sample has been previously taken from the individual as indicated by the Local Inmate Data System (LIDS), no additional sample shall be taken. No civil liability shall attach to any person authorized to take saliva or tissue as provided herein as a result of the act of taking saliva or tissue from any person submitting thereto, provided the saliva or tissue was taken according to recognized medical procedures. However, no person shall be relieved from liability for negligence in the taking of any saliva or tissue sample.

(2002, cc. 753, 773.)

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§ 19.2-310.4. (Effective until January 1, 2003) Procedures for conducting DNA analysis of blood, saliva or tissue sample.

Whether or not the results of an analysis are to be included in the data bank, the Division shall conduct the DNA analysis in accordance with procedures adopted by the Division to determine identification characteristics specific to the individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood, saliva or tissue sample was received and examined, and a statement that the seal on the tube containing the sample had not been broken or otherwise tampered with. The remainder of a blood, saliva or tissue sample submitted for analysis and inclusion in the data bank pursuant to § 19.2-310.2 may be divided, labeled as provided for the original sample, and securely stored by the Division in accordance with specific procedures adopted by regulation of the Division to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the Division to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the Division as authorized, including the profile and identifying information, shall be made and maintained at the Division. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and § 19.2-310.5, the results of the analysis shall be securely stored and shall remain confidential.

(1990, c. 669; 1998, c. 280; 2002, c. 773.)

§ 19.2-310.4. (Effective January 1, 2003) Procedures for conducting DNA analysis of blood, saliva or tissue sample.

Whether or not the results of an analysis are to be included in the data bank, the Division shall conduct the DNA analysis in accordance with procedures adopted by the Division to determine identification characteristics specific to the individual whose sample is being analyzed. The Director or his designated representative shall complete and maintain on file a form indicating the name of the person whose sample is to be analyzed, the date and by whom the blood, saliva or tissue sample was received and examined, and a statement that the seal on the tube containing the sample had not been broken or otherwise tampered with. The remainder of a blood, saliva or tissue sample submitted for analysis and inclusion in the data bank pursuant to § 19.2-310.2 or § 19.2-310.2:1 may be divided, labeled as provided for the original sample, and securely stored by the Division in accordance with specific procedures adopted by regulation of the Division to ensure the integrity and confidentiality of the samples. All or part of the remainder of that sample may be used only (i) to create a statistical data base provided no identifying information on the individual whose sample is being analyzed is included or (ii) for retesting by the Division to validate or update the original analysis.

A report of the results of a DNA analysis conducted by the Division as authorized, including the profile and identifying information, shall be made and maintained at the Division. A certificate and the results of the analysis shall be admissible in any court as evidence of the facts therein stated. Except as specifically provided in this section and § 19.2-310.5, the results of the analysis shall be securely stored and shall remain confidential.

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§ 19.2-310.5. (Effective until January 1, 2003) DNA data bank exchange.

It shall be the duty of the Division to receive blood, saliva or tissue samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood, saliva or tissue samples submitted pursuant to § [19.2-310.2](#) and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood, saliva or tissue samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense. The Division shall confirm whether or not there is a DNA profile on file for a specific individual if a federal, state or local law-enforcement officer requests that information in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the Division.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank.

The Division shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Division shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The Division shall create a separate statistical data base comprised of DNA profiles of blood, saliva or tissue samples of persons whose identity is unknown. Nothing in this section or § [19.2-310.6](#) shall prohibit the Division from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The Division may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.

(1990, c. 669; 1998, c. 280; 2000, c. 284.)

§ 19.2-310.5. (Effective January 1, 2003) DNA data bank exchange.

It shall be the duty of the Division to receive blood, saliva or tissue samples and to analyze, classify, and file the results of DNA identification characteristics profiles of blood, saliva or tissue samples submitted pursuant to § [19.2-310.2](#) or § [19.2-310.2:1](#) and to make such information available as provided in this section. The results of an analysis and comparison of the identification characteristics from two or more blood, saliva or tissue samples shall be made available directly to federal, state and local law-enforcement officers upon request made in furtherance of an official investigation of any criminal offense. The Division shall confirm whether or not there is a DNA profile on file for a specific individual if a federal, state or local law-enforcement officer requests that information in furtherance of an official investigation of any criminal offense. A request may be made by personal contact, mail, or electronic means. The name of the requestor and the purpose for which the information is requested shall be maintained on file with the Division.

Upon his request, a copy of the request for search shall be furnished to any person identified and charged with an offense as the result of a search of information in the data bank.

The Division shall adopt regulations governing (i) the methods of obtaining information from the data bank in accordance with this section and (ii) procedures for verification of the identity and authority of the requestor. The Division shall specify the positions in that agency which require regular access to the data bank and samples submitted as a necessary function of the job.

The Division shall create a separate statistical data base comprised of DNA profiles of blood, saliva or tissue samples of persons whose identity is unknown. Nothing in this section or § [19.2-310.6](#) shall prohibit the Division from sharing or otherwise disseminating the information in the statistical data base with law-enforcement or criminal justice agencies within or without the Commonwealth.

The Division may charge a reasonable fee to search and provide a comparative analysis of DNA profiles in the data bank to any authorized law-enforcement agency outside of the Commonwealth.

(1990, c. 669; 1998, c. 280; 2000, c. 284; 2002, cc. 753, 773.)

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§ 19.2-310.7. (Effective until January 1, 2003) Expungement.

A person whose DNA profile has been included in the data bank pursuant to this chapter may request expungement on the grounds that the felony conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. The Division shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

(1990, c. 669; 2002, c. 773.)

§ 19.2-310.7. (Effective January 1, 2003) Expungement when DNA taken for a felony conviction.

A person whose DNA profile has been included in the data bank pursuant to § 19.2-310.2 may request expungement on the grounds that the felony conviction on which the authority for including his DNA profile was based has been reversed and the case dismissed. The Division shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person upon receipt of (i) a written request for expungement pursuant to this section and (ii) a certified copy of the court order reversing and dismissing the conviction.

(1990, c. 669; 2002, cc. 753, 773.)

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

LRB-2294/1dn

RLR: *[Signature]*

May 15, 2003 *Date*

Joe Hoey:

1. We discussed whether this bill should require persons arrested for felonies versus those charged with felonies to provide biological specimens for DNA testing. Virginia requires persons who are arrested for a violent felony to submit a biological specimen for DNA analysis, but provides that the person submit the specimen only after a court makes a determination that there is probable cause for the arrest (see Virginia Code section 19.2-310.2:1). If a person is arrested in Virginia and a court does not find probable cause for the arrest, I presume that the person is not required to submit a specimen. In Wisconsin, if a person is arrested without a warrant, the district attorney first charges the person and then the person is taken before the court for a probable cause determination. So even though the Virginia law refers to persons who are arrested, and this bill refers to persons who are charged, both require the same group of criminal suspects to provide specimens for DNA analysis — persons for whom a court has made a determination that it is probable that the person committed a felony.

If you require a person to provide a biological specimen before a court determines that there is probable cause that he or she committed a crime, courts will likely find that the taking of the specimen and subsequent analysis of the specimen constitute an unconstitutional search. As we discussed, it is too early to know how courts will view the constitutionality of a law such as Virginia's that requires DNA testing of persons who have not been convicted of a crime, but for whom a probable cause determination has been made. X

2. Under current law, it is a Class A misdemeanor for a person to fail to comply with a requirement to submit a biological sample for DNA testing. This bill does not subject a person to criminal liability for failing to comply with the requirement that a person charged with a felony submit a specimen for DNA analysis. Should it?

3. As you requested, this bill requires that a person submit a biological specimen, and that the crime laboratories analyze the specimen, each time the person is charged with a felony, even if the person's DNA profile is already included in the DNA data bank. Under Virginia law, the state is not required to take a specimen from a person charged with a felony if Virginia's Local Inmate Data System indicates that the state already has a specimen from the person (see Virginia Code, section 19.2-310.3:1 A.). Perhaps the bill could allow the department of justice to determine whether it is necessary to X

(005)

analyze each new specimen or whether the department can verify by other means whether a person's DNA profile is already included and correctly identified in the DNA data bank.

4. The bill includes a one-month delayed effective date to allow <sup>005</sup> ~~the department of justice~~ and sheriffs time to prepare to take biological specimens from persons who are charged with committing felonies. Do you want to eliminate the delay or to provide a longer delay?

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



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2294/9

RLR: [Signature]

In 5/15/03

EMR

D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

1 AN ACT ...; relating to: requiring persons charged with a felony to provide a  
2 biological specimen for deoxyribonucleic acid analysis, inclusion of the analysis  
3 results in the department of justice deoxyribonucleic acid data bank, and X  
4 requiring the 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 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. X

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.

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*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 <sup>is</sup> 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. 165.845, 165.76, 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 History: 1993 a. 98; 1995 a. 77, 440.

SECTION 2. 165.77 (3) of the statutes <sup>is</sup> amended to read:

8 165.77 (3) If the laboratories receive a human biological specimen under s.  
9 51.20 (13) (cr), 165.845, 165.76, 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  
15 available to law enforcement agencies in connection with criminal or delinquency  
16 investigations and, upon request, to any prosecutor, defense attorney or subject of



1 the data. The data may be used in criminal and delinquency actions and proceedings.  
2 The laboratories shall destroy specimens obtained under this subsection after  
3 analysis has been completed and the applicable court proceedings have concluded.

4 History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16. ✓

**SECTION 3.** 165.77 (4) of the statutes is repealed and recreated to read:

5 165.77 (4) (a) A person whose deoxyribonucleic acid analysis data has been  
6 included in the data bank under sub. (3) may request expungement on the grounds  
7 that all of the following conditions are satisfied:

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

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

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

19 History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16. ✓

**SECTION 4.** 165.845 of the statutes is created to read:

20 **165.845 Submission of biological specimens by persons charged with**  
21 **felonies.** (1) Whenever a person is charged with committing a felony and a court  
22 makes a determination that there is probable cause to believe that the person  
23 committed the felony, the person shall provide <sup>the</sup> sheriff of the county in which the  
24 person is charged a biological specimen for deoxyribonucleic acid analysis. The

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

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

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

9 **SECTION 5.** 970.03 (7) of the statutes is amended to read:

10 970.03 (7) If the court finds probable cause to believe that a felony has been  
11 committed by the defendant, it shall bind the defendant over for trial and shall  
12 determine whether a biological specimen has been collected from the defendant as  
13 required under s. 165.845. If a specimen has not been collected, the court shall direct  
14 the defendant to provide and the sheriff to collect a biological specimen for  
15 deoxyribonucleic acid analysis.

16 History: 1975 c. 184; 1977 c. 449; 1979 c. 112, 332; 1985 a. 267; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 332 s. 64; 1987 a. 403; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 193, 276; 1993 a. 27, 98, 227, 486; 1995 a. 456; 1997 a. 252; 1999 a. 111; 2001 a. 103.

16 **SECTION 6. Initial applicability.**

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

19 **SECTION 7. Effective date.**

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

22 (END)

D- Note

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

LRB-2294/1dn  
RLR:kjf:pg

May 15, 2003

Joe Hoey:

1. We discussed whether this bill should require persons arrested for felonies versus those charged with felonies to provide biological specimens for DNA testing. Virginia requires persons who are arrested for a violent felony to submit a biological specimen for DNA analysis, but provides that the person submit the specimen only after a court makes a determination that there is probable cause for the arrest (see Virginia Code section 19.2-310.2:1). If a person is arrested in Virginia and a court does not find probable cause for the arrest, I presume that the person is not required to submit a specimen. In Wisconsin, if a person is arrested without a warrant, the district attorney first charges the person and then the person is taken before the court for a probable cause determination. So even though the Virginia law refers to persons who are arrested, and this bill refers to persons who are charged, both require the same group of criminal suspects to provide specimens for DNA analysis — persons for whom a court has made a determination that it is probable that the person committed a felony.

If you require a person to provide a biological specimen before a court determines that there is probable cause that he or she committed a crime, courts will likely find that the taking of the specimen and subsequent analysis of the specimen constitute an unconstitutional search. As we discussed, it is too early to know how courts will view the constitutionality of a law such as Virginia's that requires DNA testing of persons who have not been convicted of a crime, but for whom a probable cause determination has been made.

2. Under current law, it is a Class A misdemeanor for a person to fail to comply with a requirement to submit a biological sample for DNA testing. This bill does not subject a person to criminal liability for failing to comply with the requirement that a person charged with a felony submit a specimen for DNA analysis. Should it?

3. As you requested, this bill requires that a person submit a biological specimen, and that the crime laboratories analyze the specimen, each time the person is charged with a felony, even if the person's DNA profile is already included in the DNA data bank. Under Virginia law, the state is not required to take a specimen from a person charged with a felony if Virginia's Local Inmate Data System indicates that the state already has a specimen from the person (see Virginia Code, section 19.2-310.3:1 A.). Perhaps the bill could allow the Department of Justice (DOJ) to determine whether it is

necessary to analyze each new specimen or whether the department can verify by other means whether a person's DNA profile is already included and correctly identified in the DNA data bank.

4. The bill includes a one-month delayed effective date to allow DOJ and sheriffs time to prepare to take biological specimens from persons who are charged with committing felonies. Do you want to eliminate the delay or to provide a longer delay?

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



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-2294/1  
RLR:kjf:pg

**2003 BILL**

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.

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***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

**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.

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.

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*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

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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)