




State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRBs0174/1 (For: Rep. Kessler)


has been copied/added to the drafting file for

2009 LRBs0419 (For: Rep. Kessler)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 04/08/2010 (Per: RLR)

 The attached 2009 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as a appendix, to the new 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB511)

Received: 10/23/2009

Received By: rryan

Wanted: As time permits

Identical to LRB:

For: Frederick Kessler (608) 266-5813

By/Representing: Andy

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.Kessler@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

DNA sampling at conviction

Instructions:

See attached

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>
/?							
/P1	rryan 11/02/2009	kfollett 11/04/2009	rschluet 11/04/2009	_____	cduerst 11/04/2009		
/1	rryan 11/06/2009	kfollett 11/10/2009	rschluet 11/10/2009	_____	lparisi 11/10/2009	lparisi 11/10/2009	

FE Sent For:

<END>

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/?							
/P1	rryan 11/02/2009	kfollett 11/04/2009	rschluet 11/04/2009	_____	cduerst 11/04/2009		

FE Sent For:

11/5/09
11/10/09

<END>

2009 DRAFTING REQUEST

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Received: 10/23/2009

Received By: rryan

Wanted: As time permits

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For: Frederick Kessler (608) 266-5813

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This file may be shown to any legislator: NO

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1/?	rryan	1/11/09 KGF	1/14/09 KGF	1/14/09 KGF			

FE Sent For:

<END>

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

Andy, Rep. Resnik

10/23/09

Amend AB 511

Require JNF sentencing upon conviction

Ward Court

Call to Andy

Delinquencies - treat the same as adult convictions? - yes

Persons in custody of DHS - leave as under current law



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs01742

RLR:...

P1
gf

Soon please
in 11/2/09

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2009 ASSEMBLY BILL 511

RMR
D-N

Gen Cat

- 1 **AN ACT** ...; **relating to:** collection of biological samples for deoxyribonucleic acid
- 2 analysis from persons convicted or adjudicated delinquent for certain offenses.

Analysis by the Legislative Reference Bureau

Under current law, a person who is sentenced or placed on probation for a felony or certain specified misdemeanors must provide a deoxyribonucleic acid (DNA) sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A person who is placed on probation must provide the DNA sample at the sheriff's office as soon as practicable after being placed on probation or as directed by his or her probation agent. A person who is sentenced to prison generally must provide the sample while in prison. A person who is sentenced to jail must provide the sample as directed by the sheriff.

law,

Also under current law, a juvenile who is adjudicated delinquent for certain offenses must provide a DNA sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A juvenile placed in a secured correctional institution must provide the DNA sample while in the facility, and a juvenile who is not placed in such a facility must provide the DNA sample as directed by the agency supervising the juvenile.

+

This substitute ~~bill~~ ^{amendment} requires a court, upon convicting a person for a felony or a specified misdemeanor, to place the person in the physical custody of the sheriff for

a time sufficient for the sheriff to collect a DNA sample. The substitute amendment also requires that if a juvenile is required to provide a DNA sample in connection with a delinquency finding, the court must, at the end of the proceeding in which the court makes the delinquency finding, place the juvenile in the custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment requires the sheriff to submit the DNA samples to the state crime laboratories.

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.
3 ~~938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 938.34 (15) 938.31~~
4 ~~(5), 971.17 (1m) (a), 973.047 972.133,~~ or 980.063, he or she shall comply with that
5 requirement and is not required to comply with this section.

6 History: 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 77, 440; 1997 a. 35, 283; 1999 a. 9; 2001 a. 96; 2005 a. 277, 344; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97.

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

7 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
8 a biological specimen under s. ~~938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.~~
9 ~~165.76, 938.34 (15) 938.31 (5) (a) or (b), 973.047 972.133 (1),~~ or 980.063 may be fined
10 not more than \$10,000 or imprisoned for not more than 9 months or both.

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

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

12 165.765 (2) (a) Any physician, registered nurse, medical technologist,
13 physician assistant or person acting under the direction of a physician who obtains
14 a biological specimen under s. ~~938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.~~
15 ~~165.76, 938.34 (15), 973.047 938.31 (5), 972.133,~~ or 980.063 is immune from any civil
16 or criminal liability for the act, except for civil liability for negligence in the
17 performance of the act.

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

1 **SECTION 4.** 165.77 (2) (b) of the statutes is amended to read:

2 165.77 (2) (b) Paragraph (a) does not apply to specimens received under s.
3 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
4 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

5 History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60.

5 **SECTION 5.** 165.77 (2m) (c) of the statutes is amended to read:

6 165.77 (2m) (c) Paragraph (b) does not apply to specimens received under s.
7 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
8 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

9 History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60.

9 **SECTION 6.** 165.77 (3) of the statutes is amended to read:

10 165.77 (3) If the laboratories receive a human biological specimen under s.
11 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
12 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063, the laboratories shall
13 analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain
14 a data bank based on data obtained from deoxyribonucleic acid analysis of those
15 specimens. The laboratories may compare the data obtained from one specimen with
16 the data obtained from other specimens. The laboratories may make data obtained
17 from any analysis and comparison available to law enforcement agencies in
18 connection with criminal or delinquency investigations and, upon request, to any
19 prosecutor, defense attorney or subject of the data. The data may be used in criminal
20 and delinquency actions and proceedings. The laboratories shall destroy specimens
21 obtained under this subsection after analysis has been completed and the applicable
22 court proceedings have concluded.

23 History: 1993 a. 16, 98; 1995 a. 77, 440; 2001 a. 16; 2005 a. 60.

23 **SECTION 7.** 938.31 (5) (c) of the statutes is created to read:

1 938.31 (5) (c) If a court requires a juvenile to provide a biological specimen
2 under par. (a) or (b), the court shall, at the end of the proceeding in which the juvenile
3 is adjudicated delinquent, place the juvenile in the physical custody of the sheriff for
4 a time sufficient for the juvenile to provide the biological specimen. The sheriff shall
5 collect a biological specimen from a juvenile required to provide ^aspecimen under par.
6 (a) or (b) and shall submit the biological specimen to the state crime laboratories.

7 **SECTION 8.** 938.34 (15) (title) of the statutes is renumbered 938.31 (5) (title).

8 **SECTION 9.** 938.34 (15) (a) 1. of the statutes is renumbered 938.31 (5) (a) and
9 amended to read:

10 938.31 (5) (a) If ~~the a~~ juvenile is adjudicated delinquent on the basis of a
11 violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall
12 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
13 for deoxyribonucleic acid analysis by the state crime laboratories.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28.

14 **SECTION 10.** 938.34 (15) (a) 2. of the statutes is renumbered 938.31 (5) (b) and
15 amended to read:

16 938.31 (5) (b) Except as provided in ~~subd. 1.~~ par. (a), if the ^ajuvenile is
17 adjudicated delinquent on the basis of any violation under ch. 940, 944, or 948 or ss.
18 943.01 to 943.15, the court may require the juvenile to provide a biological specimen
19 ~~to the state crime laboratories~~ for deoxyribonucleic acid analysis by the state crime
20 laboratories.

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253, 277, 344; 2007 a. 97, 116; 2009 a. 8, 28.

21 **SECTION 11.** 938.34 (15) (a) 3. of the statutes is renumbered 938.31 (5) (d) and
22 amended to read:

1 938.31 (5) (d) The results from deoxyribonucleic acid analysis of a specimen
2 under subd. 1. or 2. par. (a) or (b) may be used only as authorized under s. 165.77 (3).
3 The state crime laboratories shall destroy any such specimen in accordance with s.
4 165.77 (3).

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253,
277, 344; 2007 a. 97, 116; 2009 a. 8, 28.

5 SECTION 12. 938.34 (15) (b) of the statutes is repealed.

6 SECTION 13. 972.133 (2) of the statutes is created to read:

7 972.133 (2) The sheriff shall collect a biological specimen from a person ordered
8 to provide a specimen under sub. (1) and shall submit the biological specimen to the
9 state crime laboratories.

10 SECTION 14. 973.047 (title), (1f) and (1m) of the statutes are renumbered
11 972.133 (title), (1) and (3), and 972.133 (1), as renumbered, is amended to read:

12 972.133 (1) If a court imposes a sentence or places a person on probation for
13 a felony conviction or for a enters a judgment of conviction for a felony violation of
14 s. 940.225 (3m), 944.20, or 948.10, the court shall require the convicted person to
15 provide a biological specimen to the state crime laboratories for deoxyribonucleic
16 acid analysis by the state crime laboratories. At the end of the proceeding in which
17 the judgment of conviction is entered, the court shall place the person in the physical
18 custody of the sheriff for a time sufficient for the person to provide the biological
19 specimen.

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275.

20 SECTION 15. 973.047 (2) of the statutes is repealed.

21 SECTION 16. Effective date.

22 (1) This act takes effect on January 1, 2011.

23 (END)

D-Note

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

LRBs0174/P1dn

RLR...*ef*

Date

Representative Kessler:

Section 165.765 (2) (a) [✓] provides immunity to health care practitioners who collect DNA samples. Do you want to update the immunity provision to include sheriffs and their staff?

The draft repeals the requirements under ss. 938.34 (15) (b) and 973.047 [✓] (2) that DOJ promulgate rules on collection of DNA samples from persons who are convicted or adjudicated delinquent and for transportation of the samples to the crime laboratories. Would you prefer to amend the requirements for rule making?

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

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

LRBs0174/P1dn
RLR:kjf:rs

November 4, 2009

Representative Kessler:

Section 165.765 (2) (a) provides immunity to health care practitioners who collect DNA samples. Do you want to update the immunity provision to include sheriffs and their staff?

The draft repeals the requirements under ss. 938.34 (15) (b) and 973.047 (2) that DOJ promulgate rules on collection of DNA samples from persons who are convicted or adjudicated delinquent and for transportation of the samples to the crime laboratories. Would you prefer to amend the requirements for rule making?

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

Ryan, Robin

From: Hinkel, Andy
Sent: Friday, November 06, 2009 10:13 AM
To: Ryan, Robin
Subject: RE: DNA collection

Fine by me – thanks!

Andy

From: Ryan, Robin
Sent: Friday, November 06, 2009 10:12 AM
To: Hinkel, Andy
Subject: DNA collection

Andy,

I think I should make a change to s0174/P1. Section 14 of the sub. says that at the end of the proceeding in which the judgment of conviction is entered, the court shall place the person in the custody of the sheriff to provide the DNA sample. The problem is that the judgment of conviction may not be entered until sentencing. I think I should instead require the court to send the person to the sheriff upon the verdict or finding of guilt or acceptance of a plea of guilty or no contest. Let me know if this is ok.

Robin

*Andy - I note response
① Don't hold us immediately
in sub
② or to delete submaking*



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0174/P1
RLR:kjf:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2009 ASSEMBLY BILL 511

KMP

Regen

1 **AN ACT to repeal** 938.34 (15) (b) and 973.047 (2); **to renumber** 938.34 (15) (title);
2 **to renumber and amend** 938.34 (15) (a) 1., 938.34 (15) (a) 2., 938.34 (15) (a)
3 3. and 973.047 (title), (1f) and (1m); **to amend** 165.76 (3), 165.765 (1), 165.765
4 (2) (a), 165.77 (2) (b), 165.77 (2m) (c) and 165.77 (3); and **to create** 938.31 (5)
5 (c) and 972.133 (2) of the statutes; **relating to:** collection of biological samples
6 for deoxyribonucleic acid analysis from persons convicted or adjudicated
7 delinquent for certain offenses.

Analysis by the Legislative Reference Bureau

Under current law, a person who is sentenced or placed on probation for a felony or certain specified misdemeanors must provide a deoxyribonucleic acid (DNA) sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A person who is placed on probation must provide the DNA sample at the sheriff's office as soon as practicable after being placed on probation or as directed by his or her probation agent. A person who is sentenced to prison generally must provide the sample while in prison. A person who is sentenced to jail must provide the sample as directed by the sheriff.

Also under current law, a juvenile who is adjudicated delinquent for certain offenses must provide a DNA sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A juvenile placed in a secured correctional institution must provide the DNA sample while in the facility, and a juvenile who is not placed in such a facility must provide the DNA sample as directed by the agency supervising the juvenile.

This substitute amendment requires a court, upon convicting a person for a felony or a specified misdemeanor, to place the person in the physical custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment also requires that if a juvenile is required to provide a DNA sample in connection with a delinquency finding, the court must, at the end of the proceeding in which the court makes the delinquency finding, place the juvenile in the custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment requires the sheriff to submit the DNA samples to the state crime laboratories.

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.
3 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 938.34 (15) 938.31
4 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063, he or she shall comply with that
5 requirement and is not required to comply with this section.

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

7 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
8 a biological specimen under s. 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.
9 165.76, 938.34 (15), 973.047 938.31 (5) (a) or (b), 972.133 (1), or 980.063 may be fined
10 not more than \$10,000 or imprisoned for not more than 9 months or both.

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

12 165.765 (2) (a) Any physician, registered nurse, medical technologist,
13 physician assistant or person acting under the direction of a physician who obtains
14 a biological specimen under s. 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.

1 165.76, ~~938.34 (15), 973.047 938.31 (5), 972.133~~, or 980.063 is immune from any civil
2 or criminal liability for the act, except for civil liability for negligence in the
3 performance of the act.

4 **SECTION 4.** 165.77 (2) (b) of the statutes is amended to read:

5 165.77 (2) (b) Paragraph (a) does not apply to specimens received under s.
6 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
7 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

8 **SECTION 5.** 165.77 (2m) (c) of the statutes is amended to read:

9 165.77 (2m) (c) Paragraph (b) does not apply to specimens received under s.
10 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
11 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

12 **SECTION 6.** 165.77 (3) of the statutes is amended to read:

13 165.77 (3) If the laboratories receive a human biological specimen under s.
14 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
15 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063, the laboratories shall
16 analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain
17 a data bank based on data obtained from deoxyribonucleic acid analysis of those
18 specimens. The laboratories may compare the data obtained from one specimen with
19 the data obtained from other specimens. The laboratories may make data obtained
20 from any analysis and comparison available to law enforcement agencies in
21 connection with criminal or delinquency investigations and, upon request, to any
22 prosecutor, defense attorney or subject of the data. The data may be used in criminal
23 and delinquency actions and proceedings. The laboratories shall destroy specimens
24 obtained under this subsection after analysis has been completed and the applicable
25 court proceedings have concluded.

1 **SECTION 7.** 938.31 (5) (c) of the statutes is created to read:

2 938.31 (5) (c) If a court requires a juvenile to provide a biological specimen
3 under par. (a) or (b), the court shall, at the end of the proceeding in which the juvenile
4 is adjudicated delinquent, place the juvenile in the physical custody of the sheriff for
5 a time sufficient for the juvenile to provide the biological specimen. The sheriff shall
6 collect a biological specimen from a juvenile required to provide a specimen under
7 par. (a) or (b) and shall submit the biological specimen to the state crime laboratories.

8 **SECTION 8.** 938.34 (15) (title) of the statutes is renumbered 938.31 (5) (title).

9 **SECTION 9.** 938.34 (15) (a) 1. of the statutes is renumbered 938.31 (5) (a) and
10 amended to read:

11 938.31 (5) (a) If ~~the a~~ juvenile is adjudicated delinquent on the basis of a
12 violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall
13 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
14 for deoxyribonucleic acid analysis by the state crime laboratories.

15 **SECTION 10.** 938.34 (15) (a) 2. of the statutes is renumbered 938.31 (5) (b) and
16 amended to read:

17 938.31 (5) (b) Except as provided in ~~subd. 1. par. (a)~~, if ~~the a~~ juvenile is
18 adjudicated delinquent on the basis of any violation under ch. 940, 944, or 948 or ss.
19 943.01 to 943.15, the court may require the juvenile to provide a biological specimen
20 ~~to the state crime laboratories~~ for deoxyribonucleic acid analysis by the state crime
21 laboratories.

22 **SECTION 11.** 938.34 (15) (a) 3. of the statutes is renumbered 938.31 (5) (d) and
23 amended to read:

24 938.31 (5) (d) The results from deoxyribonucleic acid analysis of a specimen
25 under ~~subd. 1. or 2. par. (a) or (b)~~ may be used only as authorized under s. 165.77 (3).

1 The state crime laboratories shall destroy any such specimen in accordance with s.
2 165.77 (3).

3 SECTION 12. 938.34 (15) (b) of the statutes is repealed.

4 SECTION 13. 972.133 (2) of the statutes is created to read:

5 972.133 (2) The sheriff shall collect a biological specimen from a person ordered
6 to provide a specimen under sub. (1) and shall submit the biological specimen to the
7 state crime laboratories.

8 SECTION 14. 973.047 (title), (1f) and (1m) of the statutes are renumbered
9 972.133 (title), (1) and (3), and 972.133 (1), as renumbered, is amended to read:

10 972.133 (1) If a court ~~imposes a sentence or places a person on probation for~~
11 ~~a felony conviction or for a~~ enters a judgment of conviction for a felony violation of
12 s. 940.225 (3m), 944.20, or 948.10, the court shall require the convicted person to
13 provide a biological specimen to the state crime laboratories for deoxyribonucleic
14 acid analysis by the state crime laboratories. At the end of the proceeding in which
15 the judgment of conviction is entered, the court shall place the person in the physical
16 custody of the sheriff for a time sufficient for the person to provide the biological
17 specimen.

18 SECTION 15. 973.047 (2) of the statutes is repealed.

19 SECTION 16. Effective date.

20 (1) This act takes effect on January 1, 2011.

21 (END)

JMS
5-9

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0174/lins
RLR:.....

1

Ins 5-9:

2

3

4

5

6

7

8

9

972.133 (1) If a court imposes a sentence or places a person on probation is
convicted for a felony conviction or for a conviction for a violation of s. 940.225 (3m),
944.20, or 948.10, the court shall require the person to provide a biological specimen
to the state crime laboratories for deoxyribonucleic acid analysis by the state crime
laboratories. At the end of the proceeding in which the person is adjudged guilty of
the violation or the court accepts the person's plea of guilty or no contest for the
violation, the court shall place the person in the physical custody of the sheriff for a
time sufficient for the person to provide the biological specimen.

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBs0174/1
RLR:kjf:rs

ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2009 ASSEMBLY BILL 511

1 **AN ACT to repeal** 938.34 (15) (b) and 973.047 (2); **to renumber** 938.34 (15) (title);
2 **to renumber and amend** 938.34 (15) (a) 1., 938.34 (15) (a) 2., 938.34 (15) (a)
3 3. and 973.047 (title), (1f) and (1m); **to amend** 165.76 (3), 165.765 (1), 165.765
4 (2) (a), 165.77 (2) (b), 165.77 (2m) (c) and 165.77 (3); and **to create** 938.31 (5)
5 (c) and 972.133 (2) of the statutes; **relating to:** collection of biological samples
6 for deoxyribonucleic acid analysis from persons convicted or adjudicated
7 delinquent for certain offenses.

Analysis by the Legislative Reference Bureau

Under current law, a person who is sentenced or placed on probation for a felony or certain specified misdemeanors must provide a deoxyribonucleic acid (DNA) sample to the crime laboratories for analysis and inclusion in the Department of Justice DNA database. A person who is placed on probation must provide the DNA sample at the sheriff's office as soon as practicable after being placed on probation or as directed by his or her probation agent. A person who is sentenced to prison generally must provide the sample while in prison. A person who is sentenced to jail must provide the sample as directed by the sheriff.

Also under current law, a juvenile who is adjudicated delinquent for certain offenses must provide a DNA sample to the crime laboratories for analysis and

inclusion in the Department of Justice DNA database. A juvenile placed in a secured correctional institution must provide the DNA sample while in the facility, and a juvenile who is not placed in such a facility must provide the DNA sample as directed by the agency supervising the juvenile.

This substitute amendment requires a court, upon convicting a person for a felony or a specified misdemeanor, to place the person in the physical custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment also requires that if a juvenile is required to provide a DNA sample in connection with a delinquency finding, the court must, at the end of the proceeding in which the court makes the delinquency finding, place the juvenile in the custody of the sheriff for a time sufficient for the sheriff to collect a DNA sample. The substitute amendment requires the sheriff to submit the DNA samples to the state crime laboratories.

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.
3 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), ~~938.34 (15)~~ 938.31
4 (5), 971.17 (1m) (a), ~~973.047~~ 972.133, or 980.063, he or she shall comply with that
5 requirement and is not required to comply with this section.

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

7 165.765 (1) Whoever intentionally fails to comply with a requirement to submit
8 a biological specimen under s. 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.
9 165.76, ~~938.34 (15), 973.047~~ 938.31 (5) (a) or (b), 972.133 (1), or 980.063 may be fined
10 not more than \$10,000 or imprisoned for not more than 9 months or both.

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

12 165.765 (2) (a) Any physician, registered nurse, medical technologist,
13 physician assistant or person acting under the direction of a physician who obtains
14 a biological specimen under s. 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s.
15 165.76, ~~938.34 (15), 973.047~~ 938.31 (5), 972.133, or 980.063 is immune from any civil

1 or criminal liability for the act, except for civil liability for negligence in the
2 performance of the act.

3 **SECTION 4.** 165.77 (2) (b) of the statutes is amended to read:

4 165.77 (2) (b) Paragraph (a) does not apply to specimens received under s.
5 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
6 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

7 **SECTION 5.** 165.77 (2m) (c) of the statutes is amended to read:

8 165.77 (2m) (c) Paragraph (b) does not apply to specimens received under s.
9 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
10 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063.

11 **SECTION 6.** 165.77 (3) of the statutes is amended to read:

12 165.77 (3) If the laboratories receive a human biological specimen under s.
13 938.34 (15), 2007 stats., s. 973.047, 2007 stats., s. 51.20 (13) (cr), 165.76, 938.34 (15)
14 938.31 (5), 971.17 (1m) (a), 973.047 972.133, or 980.063, the laboratories shall
15 analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain
16 a data bank based on data obtained from deoxyribonucleic acid analysis of those
17 specimens. The laboratories may compare the data obtained from one specimen with
18 the data obtained from other specimens. The laboratories may make data obtained
19 from any analysis and comparison available to law enforcement agencies in
20 connection with criminal or delinquency investigations and, upon request, to any
21 prosecutor, defense attorney or subject of the data. The data may be used in criminal
22 and delinquency actions and proceedings. The laboratories shall destroy specimens
23 obtained under this subsection after analysis has been completed and the applicable
24 court proceedings have concluded.

25 **SECTION 7.** 938.31 (5) (c) of the statutes is created to read:

1 938.31 (5) (c) If a court requires a juvenile to provide a biological specimen
2 under par. (a) or (b), the court shall, at the end of the proceeding in which the juvenile
3 is adjudicated delinquent, place the juvenile in the physical custody of the sheriff for
4 a time sufficient for the juvenile to provide the biological specimen. The sheriff shall
5 collect a biological specimen from a juvenile required to provide a specimen under
6 par. (a) or (b) and shall submit the biological specimen to the state crime laboratories.

7 **SECTION 8.** 938.34 (15) (title) of the statutes is renumbered 938.31 (5) (title).

8 **SECTION 9.** 938.34 (15) (a) 1. of the statutes is renumbered 938.31 (5) (a) and
9 amended to read:

10 938.31 (5) (a) If ~~the a~~ juvenile is adjudicated delinquent on the basis of a
11 violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall
12 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
13 for deoxyribonucleic acid analysis by the state crime laboratories.

14 **SECTION 10.** 938.34 (15) (a) 2. of the statutes is renumbered 938.31 (5) (b) and
15 amended to read:

16 938.31 (5) (b) Except as provided in ~~subd. 1. par. (a), if the a~~ juvenile is
17 adjudicated delinquent on the basis of any violation under ch. 940, 944, or 948 or ss.
18 943.01 to 943.15, the court may require the juvenile to provide a biological specimen
19 ~~to the state crime laboratories~~ for deoxyribonucleic acid analysis by the state crime
20 laboratories.

21 **SECTION 11.** 938.34 (15) (a) 3. of the statutes is renumbered 938.31 (5) (d) and
22 amended to read:

23 938.31 (5) (d) The results from deoxyribonucleic acid analysis of a specimen
24 under ~~subd. 1. or 2. par. (a) or (b)~~ may be used only as authorized under s. 165.77 (3).

1 The state crime laboratories shall destroy any such specimen in accordance with s.
2 165.77 (3).

3 **SECTION 12.** 938.34 (15) (b) of the statutes is repealed.

4 **SECTION 13.** 972.133 (2) of the statutes is created to read:

5 972.133 (2) The sheriff shall collect a biological specimen from a person ordered
6 to provide a specimen under sub. (1) and shall submit the biological specimen to the
7 state crime laboratories.

8 **SECTION 14.** 973.047 (title), (1f) and (1m) of the statutes are renumbered
9 972.133 (title), (1) and (3), and 972.133 (1), as renumbered, is amended to read:

10 972.133 (1) ~~If a court imposes a sentence or places a person on probation is~~
11 convicted for a felony conviction or for a conviction for a violation of s. 940.225 (3m),
12 944.20, or 948.10, the court shall require the person to provide a biological specimen
13 to the state crime laboratories for deoxyribonucleic acid analysis by the state crime
14 laboratories. At the end of the proceeding in which the person is adjudged guilty of
15 the violation or the court accepts the person's plea of guilty or no contest for the
16 violation, the court shall place the person in the physical custody of the sheriff for a
17 time sufficient for the person to provide the biological specimen.

18 **SECTION 15.** 973.047 (2) of the statutes is repealed.

19 **SECTION 16. Effective date.**

20 (1) This act takes effect on January 1, 2011.

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(END)