

2009 DRAFTING REQUEST

Bill

Received: **03/17/2010**

Received By: **rryan**

Wanted: **As time permits**

Companion to LRB:

For: **Justice**

By/Representing: **Mark Rinehart**

May Contact:

Drafter: **rryan**

Subject: **Justice - criminal**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **rinehartmw@doj.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Submission of DNA samples to DOJ

Instructions:

Same as 09-4251/3

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 03/17/2010 | kfollett 03/17/2010 | | _____ | | | S&L |
| /1 | | | mduchek 03/17/2010 | _____ | sbasford 03/17/2010 | cduerst 03/17/2010 | |

FE Sent For: "/1" @ intro. 3/24/10

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | rryan | 1/15/17 3/17 | 100 3/17 | | | | |

FE Sent For:

<END>



State of Wisconsin
2009 - 2010 LEGISLATURE

45561

LRB-4251/3

RLR&RPN:wnw&kjf:rs

Today

2009 BILL

KMNR

Regen

1 AN ACT *to repeal* 165.76 (2); *to amend* 165.76 (1) (intro.), 165.76 (1) (a), 165.76
2 (1) (ag), 165.76 (1) (ar), 165.76 (1) (b), 165.76 (1) (c), 165.76 (1) (d), 165.76 (1) (e),
3 165.76 (1) (f), 165.76 (3), 165.76 (4), 911.01 (4) (c), 971.17 (1m) (a) and 973.047
4 (1f); and *to create* 165.76 (1) (av), 165.76 (1) (br), 165.76 (1) (cr), 165.76 (1) (g),
5 165.76 (1) (h), 165.76 (1m), 165.76 (2m), 165.76 (2r), 165.76 (6), 801.50 (5v) and
6 814.61 (1) (c) 7. of the statutes; **relating to:** submission of biological specimens
7 for deoxyribonucleic acid analysis.

Analysis by the Legislative Reference Bureau

Under current law, certain people are required to provide a deoxyribonucleic acid (DNA) sample to the Department of Justice (DOJ), and DOJ is required to analyze the sample and include results of the analysis in a DNA data bank. Since 1993, persons sentenced, or in prison, for certain sexual assaults have been required to provide DNA samples. Since 2000, persons sentenced, or in prison, for any felony and several specified misdemeanors have been required to provide DNA samples. In addition, persons committed as sexually violent persons, persons found not guilty by reason of mental disease or defect for certain sexual assaults, and juveniles adjudicated delinquent for certain sexual assaults or, at the discretion of the court, certain other offenses, are required to provide a DNA sample. A person who intentionally fails to comply with a requirement to provide a DNA sample is guilty of a misdemeanor.

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Current statutes specify when and where each category of people required to provide a DNA sample must provide the DNA sample. Administrative rules also specify when and where people must provide DNA samples, although the rule requirements are somewhat different than the statutory requirements for certain categories. For example, under both the statute and the rule, a person sentenced to prison must provide a DNA sample while in prison if directed to do so by the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison, under the statute, the person must provide the sample at the sheriff's office as soon as practicable after release, as directed by a supervising agent; and under the rule, the person must provide the sample at the sheriff's office or as directed by his or her supervising agent. Under the statutes, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after placement as practicable, as directed by his or her supervising agent. Under the rule, a person placed on probation must provide the DNA sample at the office of a county sheriff as soon after the placement as practicable, or as directed by his or her supervising agent.

This bill specifies that a requirement to provide a DNA sample does not expire when a person completes serving probation, a sentence, or a delinquency disposition or is released from commitment. For example, if a person is required to provide a DNA sample because he or she was in prison for a felony on or after January 1, 2000, and the person does not provide the DNA sample before leaving prison, he or she is still required to provide a DNA sample. In addition, the bill provides that regardless of whether a person already provided a DNA sample, if DOJ does not have DNA analysis results for the person, DOJ may require the person to provide another DNA sample.

The bill establishes a process under which a district attorney may petition the court to compel a person to provide a DNA sample if the person is required to provide a DNA sample but refuses or fails to do so. Under the bill, if the district attorney demonstrates reasonable cause to believe that a person is required to provide a DNA sample and that DOJ does not have DNA analysis results from the person, the court must order the person to appear for a hearing to show cause why he or she is not required to provide a DNA sample or to provide a DNA sample before the hearing date. If the person does not provide a DNA sample before the hearing and, at the hearing, the person does not disprove the district attorney's claim that the person is required to provide a DNA sample, the court must issue an order to facilitate collection of a DNA sample from the person, which may include arrest or detention of the person or use of reasonable force. Under the bill, the rules of evidence, other than rules for admissibility and privileges, do not apply to proceedings on a petition to compel a person to provide a DNA sample.

The bill provides that people who are required to provide a DNA sample must provide it as follows:

1. A person sentenced to prison or a juvenile correctional facility must provide the DNA sample while in prison or the facility, as directed by DOC; and if the person does not provide the DNA sample while in prison or the facility, then as soon as

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practicable after release at a sheriff's office, except if directed otherwise by the person's supervising agent.

2. A person placed on probation by a court in this state must provide the DNA sample as soon as practicable after placement at the sheriff's office, except if directed otherwise by the person's supervising agent.

3. A person placed on parole or probation in this state from another state, if directed by DOC to provide a DNA sample, must provide the DNA sample, as soon as practicable after release at the office of the county sheriff, except if directed otherwise by the person's supervising agent.

4. A juvenile placed on supervision shall provide the DNA sample as soon as practicable after placement at the sheriff's office, except if directed otherwise by the agency providing supervision.

5. A person sentenced to jail or a county house of corrections must provide the DNA sample as directed by the sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in jail or the house of corrections, as soon as practicable after release at a sheriff's office.

6. A person committed to the Department of Health Services (DHS) must provide the DNA sample as directed by DHS.

7. If none of the above applies, the person must provide the DNA sample as soon as practicable after the obligation to provide a DNA sample arises at the sheriff's office, except if directed otherwise by the agency providing supervision or having custody of the person.

Finally, the bill provides that a person found not guilty by reason of mental disease or defect, or in institutional care, on or after January 1, 2000, for a felony or certain specified misdemeanors must provide a DNA sample. In addition a person convicted, found not guilty by reason or mental disease or defect, or placed in institutional care on or after January 1, 2000 for failure to provide a DNA sample must provide a DNA sample as a result of the conviction, finding, or placement.

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 (1) (intro.) of the statutes is amended to read:

2 165.76 (1) (intro.) ~~Except as provided in sub. (3), a~~ A person shall comply with
3 the requirements under this section provide a biological specimen to the state crime
4 laboratories for deoxyribonucleic acid analysis if he or she meets any of the following
5 criteria:

6 **SECTION 2.** 165.76 (1) (a) of the statutes is amended to read:

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1 165.76 (1) (a) Is or was in a juvenile correctional facility, as defined in s. 938.02
2 (10p), or a secured residential care center for children and youth, as defined in s.
3 938.02 (15g), or on probation, extended supervision, parole, supervision, or aftercare
4 supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2),
5 948.02 (1) or (2), 948.025, or 948.085.

6 **SECTION 3.** 165.76 (1) (ag) of the statutes is amended to read:

7 165.76 (1) (ag) Is or was in prison on or after August 12, 1993, and before
8 January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

9 **SECTION 4.** 165.76 (1) (ar) of the statutes is amended to read:

10 165.76 (1) (ar) Is or was in prison on or after January 1, 2000, for a felony
11 committed in this state.

12 **SECTION 5.** 165.76 (1) (av) of the statutes is created to read:

13 165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony
14 or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

15 **SECTION 6.** 165.76 (1) (b) of the statutes is amended to read:

16 165.76 (1) (b) Is Has been found not guilty or not responsible by reason of
17 mental disease or defect on or after August 12, 1993, and committed under s. 51.20
18 or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

19 **SECTION 7.** 165.76 (1) (br) of the statutes is created to read:

20 165.76 (1) (br) Has been found not guilty or not responsible by reason of mental
21 disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,
22 for any felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

23 **SECTION 8.** 165.76 (1) (c) of the statutes is amended to read:

24 165.76 (1) (c) Is or was in institutional care on or after August 12, 1993, for any
25 violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

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1 **SECTION 9.** 165.76 (1) (cr) of the statutes is created to read:

2 165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for
3 a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

4 **SECTION 10.** 165.76 (1) (d) of the statutes is amended to read:

5 165.76 (1) (d) Is Has been found to be a sexually violent person under ch. 980
6 on or after June 2, 1994.

7 **SECTION 11.** 165.76 (1) (e) of the statutes is amended to read:

8 165.76 (1) (e) Is or was released on parole or extended supervision or placed on
9 probation in another state before January 1, 2000, and is or was on parole, extended
10 supervision, or probation in this state from the other state under s. 304.13 (1m),
11 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state
12 that the department of corrections determines, under s. 304.137 (1), is comparable
13 to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

14 **SECTION 12.** 165.76 (1) (f) of the statutes is amended to read:

15 165.76 (1) (f) Is or was released on parole or extended supervision or placed on
16 probation in another state on or after January 1, 2000, and is or was on parole,
17 extended supervision, or probation in this state from the other state under s. 304.13
18 (1m), 304.135, or 304.16 for a violation of the law of the other state that the
19 department of corrections determines, under s. 304.137 (2), would constitute a felony
20 if committed by an adult in this state.

21 **SECTION 13.** 165.76 (1) (g) of the statutes is created to read:

22 165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 938.34
23 (15m), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the
24 state crime laboratories for deoxyribonucleic acid analysis.

25 **SECTION 14.** 165.76 (1) (h) of the statutes is created to read:

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1 165.76 (1) (h) Is notified by the department of justice, the department of
2 corrections, a district attorney, or a county sheriff under sub. (1m) that the person
3 is required to provide a biological specimen.

4 **SECTION 15.** 165.76 (1m) of the statutes is created to read:

5 165.76 (1m) If a person is required to provide a biological specimen under sub.
6 (1) (a) to (g) and the department of justice does not have the data obtained from
7 analysis of a biological specimen from the person that the department is required to
8 maintain in the data bank under s. 165.77 (3), the department may require the
9 person to provide a biological specimen, regardless of whether the person previously
10 provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15),
11 971.17 (1m) (a), 973.047, or 980.63. The department of justice, the department of
12 corrections, a district attorney, or a county sheriff, shall notify any person whom the
13 department of justice requires to provide a biological specimen under this subsection.

14 **SECTION 16.** 165.76 (2) of the statutes is repealed.

15 **SECTION 17.** 165.76 (2m) of the statutes is created to read:

16 165.76 (2m) Unless otherwise provided by rule under sub. (4), a person who is
17 required to provide a biological specimen under sub. (1) shall provide the biological
18 specimen at the following time and place:

19 (a) If the person has been placed on probation by a court in this state, as soon
20 as practicable after placement at the office of a county sheriff, except, if directed
21 otherwise by the person's probation, extended supervision, and parole agent, then as
22 directed by the agent.

23 (b) If the person has been on probation, parole, or extended supervision in this
24 state from another state and the department of corrections directs the person to
25 provide a biological specimen, as soon as practicable after placement at the office of

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1 a county sheriff, except, if directed otherwise by the person's probation, extended
2 supervision, and parole agent, then as directed by the agent.

3 (c) If the person has been placed on supervision as a juvenile, as soon as
4 practicable after placement at the office of a county sheriff, except, if directed
5 otherwise by the agency providing supervision, then as directed by the agency.

6 (d) If the person has been sentenced to prison, while in prison as directed by
7 the department of corrections; and if the person does not provide the biological
8 sample while in prison, then as soon as practicable after release from the prison at
9 the office of a county sheriff, except, if directed otherwise by his or her probation,
10 parole, and extended supervision agent, then as directed by the agent.

11 (e) If the person has been placed in a juvenile correctional facility or a secured
12 residential care center for children and youth, while in the facility or center as
13 directed by the department of corrections; and if the juvenile does not provide the
14 biological specimen while in the facility or center, then as soon as practicable after
15 release from the facility or center, at the office of a county sheriff, except, if directed
16 otherwise by the agency providing supervision, then as directed by the agency.

17 (f) If the person has been sentenced to a county jail or county house of
18 corrections, as directed by the office of the county sheriff as soon as practicable after
19 sentencing; and if the person does not provide the biological specimen while in the
20 county jail or county house of corrections, as soon after release from the county jail
21 or county house of corrections as practicable, at the office of a county sheriff.

22 (g) If the person has been committed to the department of health services under
23 s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, as directed
24 by the department of health services.

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1 (h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to
2 provide a biological specimen accrues at the office of a county sheriff, except, if
3 directed otherwise by the agent or agency providing supervision or having legal or
4 physical custody of the person.

5 **SECTION 18.** 165.76 (2r) of the statutes is created to read:

6 165.76 (2r) Failure by a person who is required to provide a biological specimen
7 under sub. (1) to provide the biological specimen at the time and place provided under
8 sub. (2m) does not relieve the person of the obligation to provide a biological specimen
9 to the state crime laboratories for deoxyribonucleic acid analysis.

10 **SECTION 19.** 165.76 (3) of the statutes is amended to read:

11 165.76 (3) If Notwithstanding sub. (1), if a county sheriff, the department of
12 corrections, or the department of health services determines that a person who is
13 required to submit a biological specimen under s. 51.20 (13) (cr), 938.34 (15), 971.17
14 (1m) (a), 973.047 or 980.063, he or she shall comply with that requirement and is not
15 required to comply with this section sub. (1) has submitted a biological specimen and
16 that data obtained from analysis of the person's biological specimen is included in the
17 data bank under s. 165.77 (3), the person is not required to submit another biological
18 specimen.

19 **SECTION 20.** 165.76 (4) of the statutes is amended to read:

20 165.76 (4) The department of justice ~~shall~~ may promulgate rules ~~necessary to~~
21 ~~carry out its duties under~~ to implement this section.

22 **SECTION 21.** 165.76 (6) of the statutes is created to read:

23 165.76 (6) (a) If a person who is required to provide a biological specimen under
24 sub. (1) refuses or fails to provide a biological specimen, a district attorney may file
25 a petition with the circuit court for an order compelling the person to provide a

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1 Unless you choose to contest this Order, by appearing at the time, date, and
2 place set forth below, you are ordered to present yourself to the county sheriff,
3 [ADDRESS], no later than, between the hours of and, for the collection of
4 a biological specimen, obtained by buccal swab, for deoxyribonucleic acid (DNA)
5 analysis and inclusion of the results of that analysis in the state crime laboratory's
6 DNA database. **YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU**
7 **MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE**
8 **FORM OF GOVERNMENT-ISSUED, PHOTOGRAPHIC IDENTIFICATION.** A
9 copy of the petition submitted to obtain this order is attached.

10 If you wish to contest this order, you may do so by appearing in person at the
11 time, date, and place set forth below, at which time you will have the opportunity to
12 show cause to the court why you should not be required to provide a biological
13 specimen for DNA analysis:

14 [Court information]

15 If you do not appear in person to contest this order at the time, date, and place
16 set forth above, and you do not present yourself for collection of a biological specimen
17 as directed, all of the following apply:

18 1. You may be held in contempt of court and be subject to sanctions as provided
19 in chapter 785 of the Wisconsin Statutes.

20 2. The court will issue an order to facilitate collection of a biological specimen
21 which, in the court's discretion, may authorize arrest or detention or use of
22 reasonable force against you to collect the biological specimen.

23 Dated:, (year)

24 By the Court signed:

BILL

1 This Order is entered under section 165.76 (6) of the Wisconsin Statutes. A copy
2 of that section is attached.

3 (c) At a hearing on a petition under par. (a), the person has the burden of
4 rebutting the matters established in the petition by demonstrating that he or she is
5 not required to submit a biological specimen under sub. (1).

6 (d) If the court determines after the hearing under par. (c) that the person is
7 required to submit a biological specimen under sub. (1) and that the person's
8 specimen is not included in the data bank under s. 165.77 (3), the court shall issue
9 an order to facilitate collection of a biological specimen from the person, which may
10 authorize arrest or detention of the person or use of reasonable force against the
11 person to collect the biological specimen.

12 **SECTION 22.** 801.50 (5v) of the statutes is created to read:

13 801.50 (5v) Venue of an action under s. 165.76 (6) shall be in any of the following
14 counties:

15 (a) The county where the respondent resides.

16 (b) The county in which a court order requiring the respondent to submit a
17 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis
18 was entered.

19 (c) The county in which any court proceeding was held that resulted in a
20 requirement that the respondent submit a biological specimen to the state crime
21 laboratories for deoxyribonucleic acid analysis.

22 **SECTION 23.** 814.61 (1) (c) 7. of the statutes is created to read:

23 814.61 (1) (c) 7. An action under s. 165.76 (6) to compel provision of a biological
24 specimen for deoxyribonucleic acid analysis.

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1 **SECTION 24.** 911.01 (4) (c) of the statutes, as affected by 2009 Wisconsin Act 28,
2 is amended to read:

3 911.01 (4) (c) *Miscellaneous proceedings.* Proceedings for extradition or
4 rendition; sentencing, granting or revoking probation, modification of a sentence
5 under s. 302.1135, adjustment of a bifurcated sentence under s. 973.195 (1r), release
6 to extended supervision under s. 302.113 (2) (b) or 304.06 (1) or discharge under s.
7 973.01 (4m), issuance of arrest warrants, criminal summonses and search warrants;
8 hearings under s. 980.09 (2); proceedings under s. 971.14 (1) (c); proceedings with
9 respect to pretrial release under ch. 969 except where habeas corpus is utilized with
10 respect to release on bail or as otherwise provided in ch. 969; and proceedings under
11 s. 165.76 (6) to compel provision of a biological specimen for deoxyribonucleic acid
12 analysis.

13 **SECTION 25.** 971.17 (1m) (a) of the statutes is amended to read:

14 971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of
15 mental disease or defect for a felony or a violation of s. 940.225 (1) or (2), 948.02 (1)
16 or (2), 948.025, or 948.085 165.765 (1), 940.225 (3m), 944.20, or 948.10, the court shall
17 require the person to provide a biological specimen to the state crime laboratories for
18 deoxyribonucleic acid analysis.

19 **SECTION 26.** 973.047 (1f) of the statutes is amended to read:

20 973.047 (1f) If a court imposes a sentence or places a person on probation for
21 a felony conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m),
22 944.20, or 948.10, the court shall require the person to provide a biological specimen
23 to the state crime laboratories for deoxyribonucleic acid analysis.

24

(END)

Duerst, Christina

From: Rinehart, Mark W. [RinehartMW@DOJ.STATE.WI.US]

Sent: Wednesday, March 17, 2010 2:36 PM

To: LRB.Legal

Subject: Draft Review: LRB 09-4556/1 Topic: Submission of DNA samples to DOJ

Please Jacket LRB 09-4556/1 for the ASSEMBLY.

3/17/2010