

2011 DRAFTING REQUEST

Bill

Received: 03/02/2011

Received By: phurley

Wanted: As time permits

Companion to LRB:

For: Spencer Coggs (608) 266-2500

By/Representing: dave de felice

May Contact:

Drafter: phurley

Subject: Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: YES

Requester's email: Sen.Coggs@legis.wisconsin.gov

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Collecting DNA from convicted persons

Instructions:

redraft 09-3784 (SB 641)

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>
/?				_____			S&L
/P1	phurley 03/15/2011	kfollett 04/08/2011	jfrantze 04/11/2011	_____	lparisi 04/11/2011		S&L
	phurley 04/20/2011	kfollett 04/20/2011		_____			
/1			jfrantze 04/20/2011	_____	mbarman 04/20/2011	ggodwin 08/08/2011	

FE Sent For:

At intro

<END>

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FE Sent For:		11/15/11 4/1/20	864/20				

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1/?	phurley	1/16/11 4/18	26 4/18				S&L

FE Sent For:

<END>

709251

2009 WISCONSIN ACT 261 

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

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

09 Wis. Act 261, s. 1



Section 1. 165.76 (1) (intro.) of the statutes is amended to read:

09 Wis. Act 261, s. 1 - continued



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

09 Wis. Act 261, s. 2



Section 2. 165.76 (1) (a) of the statutes is amended to read:

09 Wis. Act 261, s. 2 - continued



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

09 Wis. Act 261, s. 3



Section 3. 165.76 (1) (ag) of the statutes is amended to read:

09 Wis. Act 261, s. 3 - continued



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

09 Wis. Act 261, s. 4



Section 4. 165.76 (1) (ar) of the statutes is amended to read:

09 Wis. Act 261, s. 4 - continued



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

09 Wis. Act 261, s. 5



Section 5. 165.76 (1) (av) of the statutes is created to read:

09 Wis. Act 261, s. 5 - continued



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

09 Wis. Act 261, s. 6



Section 6. 165.76 (1) (b) of the statutes is amended to read:

09 Wis. Act 261, s. 6 - continued



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

09 Wis. Act 261, s. 7



Section 7. 165.76 (1) (br) of the statutes is created to read:

09 Wis. Act 261, s. 7 - continued



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

09 Wis. Act 261, s. 8



Section 8. 165.76 (1) (c) of the statutes is amended to read:

09 Wis. Act 261, s. 8 - continued



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

09 Wis. Act 261, s. 9



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

09 Wis. Act 261, s. 9 - continued



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

09 Wis. Act 261, s. 10



Section 10. 165.76 (1) (d) of the statutes is amended to read:

09 Wis. Act 261, s. 10 - continued



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

09 Wis. Act 261, s. 11



Section 11. 165.76 (1) (e) of the statutes is amended to read:

09 Wis. Act 261, s. 11 - continued



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

09 Wis. Act 261, s. 12



Section 12. 165.76 (1) (f) of the statutes is amended to read:

09 Wis. Act 261, s. 12 - continued



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

09 Wis. Act 261, s. 13



Section 13. 165.76 (1) (g) of the statutes is created to read:

09 Wis. Act 261, s. 13 - continued



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

09 Wis. Act 261, s. 14



Section 14. 165.76 (1) (h) of the statutes is created to read:

09 Wis. Act 261, s. 14 - continued



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

09 Wis. Act 261, s. 15



Section 15. 165.76 (1m) of the statutes is created to read:

09 Wis. Act 261, s. 15 - continued



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

09 Wis. Act 261, s. 16

Section 16. 165.76 (2) of the statutes is repealed.

09 Wis. Act 261, s. 17

Section 17. 165.76 (2m) of the statutes is created to read:

09 Wis. Act 261, s. 17 - continued

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

09 Wis. Act 261, s. 17 - continued

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

09 Wis. Act 261, s. 17 - continued

(b) If the person has been on probation, parole, or extended supervision in this state from another state and the department of corrections directs the person to provide a biological specimen, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the person's probation, extended supervision, and parole agent, then as directed by the agent.

09 Wis. Act 261, s. 17 - continued

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

09 Wis. Act 261, s. 17 - continued

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



*or as under
[New]*
*NEW People from
this date
forward go
to the
sheriff*

09 Wis. Act 261, s. 17 - continued



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

09 Wis. Act 261, s. 17 - continued



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

09 Wis. Act 261, s. 17 - continued



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

09 Wis. Act 261, s. 17 - continued



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

09 Wis. Act 261, s. 18



Section 18. 165.76 (2r) of the statutes is created to read:

09 Wis. Act 261, s. 18 - continued



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

09 Wis. Act 261, s. 19



Section 19. 165.76 (3) of the statutes is amended to read:

09 Wis. Act 261, s. 19 - continued



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

submit another biological specimen.

09 Wis. Act 261, s. 20



Section 20. 165.76 (4) of the statutes is amended to read:

09 Wis. Act 261, s. 20 - continued



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

09 Wis. Act 261, s. 21



Section 21. 165.76 (6) of the statutes is created to read:

09 Wis. Act 261, s. 21 - continued



165.76 (6) (a) If a person who is required to provide a biological specimen under sub. (1) refuses or fails to provide a biological specimen, a district attorney may file a petition with the circuit court for an order compelling the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. A petition under this paragraph shall establish reasonable cause to believe that the the person is required to provide a biological specimen under sub. (1) and that the person's biological specimen is not included in the data bank under s. 165.77 (3).

09 Wis. Act 261, s. 21 - continued



(b) If the court determines that a district attorney's petition satisfies the conditions under par. (a), the court shall issue an order requiring the person to appear in court at a specified time for a hearing to show cause why he or she is not required to provide a biological specimen under sub. (1) or, instead of appearing at the hearing, to provide a biological specimen at the office of the county sheriff before the time for which the hearing is scheduled. The hearing shall be scheduled for not less than 10 and not more than 45 days after the date the court enters the order. The order, together with a copy of the petition and any supporting material, shall be served upon the person in the manner provided for serving a summons under s. 801.11. The order shall be in substantially the following form:

09 Wis. Act 261, s. 21 - continued



STATE OF WISCONSIN
.... COUNTY

CIRCUIT COURT :

09 Wis. Act 261, s. 21 - continued



STATE OF WISCONSIN File No.

09 Wis. Act 261, s. 21 - continued



vs. ORDER

09 Wis. Act 261, s. 21 - continued
A.B.



09 Wis. Act 261, s. 21 - continued
Address



09 Wis. Act 261, s. 21 - continued
City, State, Zip Code



09 Wis. Act 261, s. 21 - continued
, Respondent



09 Wis. Act 261, s. 21 - continued
THE STATE OF WISCONSIN, To the Respondent named above:



09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 21 - continued
[Court information]



09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 21 - continued



1. You may be held in contempt of court and be subject to sanctions as provided in

chapter 785 of the Wisconsin Statutes.

09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 21 - continued



Dated:, (year)

09 Wis. Act 261, s. 21 - continued



By the Court signed:

09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 21 - continued



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

09 Wis. Act 261, s. 22



Section 22. 801.50 (5v) of the statutes is created to read:

09 Wis. Act 261, s. 22 - continued



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

09 Wis. Act 261, s. 22 - continued



(a) The county where the respondent resides.

09 Wis. Act 261, s. 22 - continued



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

09 Wis. Act 261, s. 22 - continued



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

09 Wis. Act 261, s. 23



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

09 Wis. Act 261, s. 23 - continued



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

09 Wis. Act 261, s. 24



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

09 Wis. Act 261, s. 24 - continued



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

09 Wis. Act 261, s. 25



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

09 Wis. Act 261, s. 25 - continued



971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a felony or a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085 165.765 (1), 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.

09 Wis. Act 261, s. 26



Section 26. 973.047 (1f) of the statutes is amended to read:

09 Wis. Act 261, s. 26 - continued



973.047 (1f) If a court imposes a sentence or places a person on probation for a felony conviction or for a conviction for a violation of s. 165.765 (1), 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.

1095

165.76

165.76 Submission of human biological specimen.

165.76(1)

(1) (intro.) A person shall provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis if he or she meets any of the following criteria:

165.76(1)(a) = Juves after 8-12-93

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

165.76(1)(ag)

(ag) Is or was in prison on or after August 12, 1993, and before January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025. = In prison for after 8-12-93

165.76(1)(ar)

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

165.76(1)(av)

(av) Is or was found guilty on or after January 1, 2000, of any felony or any violation of s.

165.765 (1), 940.225 (3m), 944.20, or 948.10. Committed any felony or

165.76(1)(b)

(b) Has been found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under s. 51.20 or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085. = found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed for sex crimes (see 1(a))

165.76(1)(br)

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

165.76(1)(c)

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

165.76(1)(cr)

(cr) Is or was in institutional care on or after January 1, 2000, for a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10. = Institutionalized for felony or (1)(av) criteria since 8-12-93

165.76(1)(d)

(d) Has been found to be a sexually violent person under ch. 980 on or after June 2, 1994. =

se 950 people

110 or was in IS NEW

ditto

ditto

New

failure to provide DNA

yth sex assault lascivious exposing

New

ditto

New

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

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

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

committed a (a)(a) sex crime
adjudged delinquent sex crimes
not guilty by reason of insanity - some

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

165.76(1m)
(1m) If a person is required to provide a biological specimen under sub. (1) (a) to (g) and the department of justice does not have the data obtained from analysis of a biological specimen from the person that the department is required to maintain in the data bank under s. 165.77 (3), the department may require the person to provide a biological specimen, regardless of whether the person previously provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15), 971.17 (1m) (a), 973.047, or 980.63 [s. 980.063]. The department of justice, the department of corrections, a district attorney, or a county sheriff, shall notify any person whom the department of justice requires to provide a biological specimen under this subsection.

165.76 - ANNOT.

NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending.

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

165.76(2m)(a)

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

165.76(2m)(b)

(b) If the person has been on probation, parole, or extended supervision in this state from another state and the department of corrections directs the person to provide a biological specimen, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the person's probation, extended supervision, and parole agent, then as directed by the agent.

165.76(2m)(c)

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

165.76(2m)(d)

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

165.76(2m)(e)

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

165.76(2m)(f)

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

165.76(2m)(g)

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

165.76(2m)(h)

(h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to provide a

New

biological specimen accrues at the office of a county sheriff, except, if directed otherwise by the agent or agency providing supervision or having legal or physical custody of the person.

165.76(2r)

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

165.76(3)

(3) Notwithstanding sub. (1), if a county sheriff, the department of corrections, or the department of health services determines that a person who is required to submit a biological specimen under sub. (1) has submitted a biological specimen and that data obtained from analysis of the person's biological specimen is included in the data bank under s. 165.77 (3), the person is not required to submit another biological specimen.

165.76(4)

(4) The department of justice may promulgate rules to implement this section.

165.76(5)

(5) The departments of corrections and health services, county departments under ss. 46.215, 46.22 and 46.23 and county sheriffs shall cooperate with the department of justice in obtaining specimens under this section.

165.76(6)

New (6)

165.76(6)(a)

(a) If a person who is required to provide a biological specimen under sub. (1) refuses or fails to provide a biological specimen, a district attorney may file a petition with the circuit court for an order compelling the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. A petition under this paragraph shall establish reasonable cause to believe that the person is required to provide a biological specimen under sub. (1) and that the person's biological specimen is not included in the data bank under s. 165.77 (3).

New 165.76(6)(b)

(b) (intro.) If the court determines that a district attorney's petition satisfies the conditions under par. (a), the court shall issue an order requiring the person to appear in court at a specified time for a hearing to show cause why he or she is not required to provide a biological specimen under sub. (1) or, instead of appearing at the hearing, to provide a biological specimen at the office of the county sheriff before the time for which the hearing is scheduled. The hearing shall be scheduled for not less than 10 and not more than 45 days after the date the court enters the order. The order, together with a copy of the petition and any supporting material, shall be served upon the person in the manner provided for serving a summons under s. 801.11. The order shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: County

STATE OF WISCONSIN
vs.
A.B.
Address
City, State, Zip Code
, Respondent

File No.
ORDER

THE STATE OF WISCONSIN, To the Respondent named above:

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

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

[Court information]

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

165.76(6)(b)1.

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

165.76(6)(b)2.

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

Dated:, (year)

By the Court signed:

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

165.76(6)(c)

(c) At a hearing on a petition under par. (a), the person has the burden of rebutting the matters

established in the petition by demonstrating that he or she is not required to submit a biological specimen under sub. (1).

165.76(6)(d)

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

165.76 - ANNOT.

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; 2009 a. 261.

165.76 - ANNOT.

DNA sampling under this section is constitutional. Shelton v. Grudman, 934 F. Supp. 1048 (1996).



PSM...tgf

by 4/11

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

PAF
where
indicated
OK

3-15-11

Gen

- 1 AN ACT ...; **relating to:** collecting a deoxyribonucleic acid sample and requiring
- 2 the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

X Under current law, the people convicted of, found delinquent for, institutionalized for, or declared registered sex offenders due to committing, felonies or certain other misdemeanors are generally required to provide a deoxyribonucleic acid (DNA) sample to the state crime laboratories for analysis and inclusion in the Department of Justice (DOJ) DNA database. Under current law, people who are required to provide a DNA sample must provide it as follows:

a person
e is

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 the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison or the facility, then as soon as 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.

he or she must provide the DNA sample

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 must provide the DNA sample as directed by that department.

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.

Under this bill, when a person is found delinquent or found not guilty by reason of mental disease or defect, sentenced, declared a sexual predator, or placed into custody or on probation for a crime that requires the person to submit a DNA sample, the court must place the person in the custody of the sheriff immediately after the sentencing or placement hearing for a time sufficient to provide the sample. The bill requires DOJ to promulgate rules for the collecting of samples by sheriffs.

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. 51.20 (13) (cr) of the statutes is amended to read:

2 51.20 (13) (cr) If the subject individual is before the court on a petition filed

3 under a court order under s. 938.30 (5) (c) 1. and, on or after the effective date of this

4 paragraph [LRB inserts date] ² is found to have committed a violation of s. 940.225

5 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall ~~require the individual~~

6 place the person in the physical custody of the sheriff for a time sufficient for the

7 person to provide a biological specimen. The sheriff shall collect the biological

8 specimen and submit it to the state crime laboratories for deoxyribonucleic acid

9 analysis as provided in rules promulgated under s. 165.76 (4).

History: 1975 c. 430; 1977 c. 26, 29; 1977 c. 187 ss. 42, 43, 134, 135; 1977 c. 428 ss. 29 to 65, 115; 1977 c. 447, 449; Sup. Ct. Order, 83 Wis. 2d xiii; 1979 c. 32, 89; Sup. Ct. Order, eff. 1-1-80; 1979 c. 110 s. 60 (1); 1979 c. 175 s. 53; 1979 c. 300, 336, 356; 1981 c. 20, 367; 1981 c. 390 s. 252; 1983 a. 27, 219; 1983 a. 474 ss. 2 to 9m, 14; 1985 a. 29 ss. 1067 to 1071, 3200 (56), 3202 (56); 1985 a. 139, 176, 321, 332; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 366, 394, 403; 1989 a. 31, 334; 1993 a. 98, 196, 227, 316, 451, 474; 1995 a. 77, 201, 268, 292, 440; Sup. Ct. Order No. 96-08, 207 Wis. 2d xv (1997); 1997 a. 35, 130, 237, 283; 1999 a. 83, 89, 162; 2001 a. 16 ss. 1966i to 1966n, 4034ze to 4034zh; 2001 a. 38, 61, 109; 2003 a. 33, 50, 326; 2005 a. 22, 264, 277, 387; 2007 a. 20, 45, 116; 2009 a. 137, 258, 260.

10 SECTION 2. 165.76 (2m) (intro.) of the statutes is amended to read:

1 165.76 (2m) (intro.) ~~Unless Except~~ as provided under ss. 51.20 (13) (cr), 938.34
 2 (15), 971.17 (1m) (a), 973.047, or 980.063, or as otherwise provided by rule under sub.
 3 (4), a person who is required to provide a biological specimen under sub. (1) shall
 4 provide the biological specimen at the following time and place:

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; 2009 a. 261.

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

6 165.76 (3) Notwithstanding sub. (1), if a county sheriff, the department of
 7 corrections, or the department of health services determines that a person who is
 8 required to ~~submit~~ provide a biological specimen under sub. (1) has ~~submitted~~
 9 provided a biological specimen and that data obtained from analysis of the person's
 10 biological specimen is included in the data bank under s. 165.77 (3), the person is not
 11 required to ~~submit~~ provide another biological specimen.

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; 2009 a. 261.

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

13 165.76 (4) The department of justice ~~may~~ shall promulgate rules ~~to implement~~
 14 ~~this section for providing and collecting biological specimens and submitting~~
 15 specimens to the crime laboratories under this section and 51.20 (13) (cr), 938.34
 16 (15), 971.17 (1m) (a), 973.047, and 980.063.

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; 2009 a. 261.

17 **SECTION 5.** 165.765 (1) of the statutes is amended to read:

18 165.765 (1) Whoever intentionally fails to comply with a requirement to ~~submit~~
 19 provide a biological specimen as ordered under s. 51.20 (13) (cr), 165.76, 938.34 (15),
 20 971.17 (1m) (a), 973.047, or 980.063 may be fined not more than \$10,000 or
 21 imprisoned for not more than 9 months or both.

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

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

Insert A

1 165.765 (2) (a) Any physician, registered nurse, medical technologist,
 2 physician assistant or person acting under the direction of a physician, sheriff or
 3 person acting under the direction of a sheriff who obtains a biological specimen as
 4 ordered under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or
 5 980.063 is immune from any civil or criminal liability for the act, except for civil
 6 liability for negligence in the performance of the act.

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

7 SECTION 7. 971.17 (1m) (a) of the statutes is amended to read:

8 971.17 (1m) (a) If, on or after the effective date of this paragraph [LRB
 9 inserts date], the defendant under sub. (1) is found not guilty by reason of mental
 10 disease or defect for a felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or
 11 948.10, the court shall require place the person in the physical custody of the sheriff
 12 for a time sufficient for the person to provide a biological specimen. The sheriff shall
 13 collect the biological specimen and submit it to the state crime laboratories for
 14 deoxyribonucleic acid analysis as provided in rules promulgated under s. 165.76 (4).

History: 1975 c. 430; 1977 c. 353; 1977 c. 428 s. 115; 1983 a. 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 394; 1989 a. 31, 142, 334, 359; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1991 a. 39, 189, 269; 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 417, 425, 440, 448; 1997 a. 35, 130, 181, 252, 275; 1999 a. 89; 2001 a. 95, 109; 2003 a. 50; 2005 a. 277, 331; 2007 a. 20 ss. 3875, 9121 (6) (a); 2007 a. 116; 2009 a. 26, 28, 137, 261.

15 SECTION 8. 980.063 (1) (a) and (b) of the statutes are renumbered 980.063 (1)
 16 and (3) and amended to read:

Subsection

1571B

17 980.063 (1) If, on or after the effective date of this paragraph [LRB inserts
 18 date], a person is found to be a sexually violent person under this chapter, the court
 19 shall require place the person in the physical custody of the sheriff for a time
 20 sufficient for the person to provide a biological specimen. The sheriff shall collect the
 21 biological specimen and submit it to the state crime laboratories for deoxyribonucleic
 22 acid analysis as provided in rules promulgated under s. 165.76 (4).

1

980.063 (3)

The results from deoxyribonucleic acid analysis of a specimen under ~~par. (a)~~ sub. (1) may be used only as authorized under s. 165.77 (3). The state crime laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

History: 1995 a. 440.

4

(END)

Insert C

SENATE BILL 641

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

4 **SECTION 3.** 165.76 (4) of the statutes is amended to read:

5 165.76 (4) The department of justice shall promulgate rules necessary to carry
6 out its duties under this section and rules for providing and collecting biological
7 specimens and submitting them to the crime laboratories under this section and ss.
8 51.20 (13) (cr), 938.34 (15), 971.17 (1m) (a), 973.047, and 980.063.

9 **SECTION 4.** 165.765 (1) of the statutes is amended to read:

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

13 **SECTION 5.** 165.765 (2) (a) of the statutes is amended to read:

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

20 **SECTION 6.** 938.34 (15) (a) 1. and 2. of the statutes are amended to read:

21 938.34 (15) (a) 1. If the juvenile is adjudicated delinquent on the basis of a
22 violation of s. 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall
23 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
24 for deoxyribonucleic acid analysis by the state crime laboratories.

Insert A

on or after the effective date of this subdivision in [LRB insert date]

PLF

SENATE BILL 641

SECTION 6

on or after the effective date of this subdivision

[LRB inserts date]

*Insert A cont
Puff*

2. Except as provided in subd. 1., if the juvenile is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may require the juvenile to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis by the state crime laboratories.

SECTION 7. 938.34 (15) (b) of the statutes is repealed.

SECTION 8. 938.34 (15) (c) of the statutes is created to read:

938.34 (15) (c) If a court requires a juvenile to provide a biological specimen under par. (a), the court shall, at the end of the hearing in which a disposition is imposed under this section, place the juvenile in the physical custody of the sheriff for a time sufficient for the juvenile to provide the biological specimen. The sheriff shall collect the biological specimen and submit it to the state crime laboratories as provided in rules promulgated by the department of justice under s. 165.76 (4).

SECTION 9. 971.17 (1m) (a) of the statutes is amended to read:

971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of mental disease or defect for a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, 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. The person shall provide the sample to the sheriff as provided in rules promulgated under s. 165.76 (4) and the sheriff shall submit the biological specimen to the state crime laboratories as provided in the rules.

SECTION 10. 973.047 (1f) of the statutes is amended to read:

973.047 (1f) If a court imposes a sentence or places a person on probation 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.

on or after the effective date of this

subsection [LRB inserts date]

Insert B

Puff

plain

SENATE BILL 641

Inset
B, 2007

1 At the end of the hearing in which the sentence is imposed or the person is placed on
2 probation, the court shall place the person in the physical custody of the sheriff for
3 a time sufficient for the person to provide the biological specimen. The sheriff shall
4 collect the biological specimen and submit it to the state crime laboratories as
5 provided in rules promulgated by the department of justice under s. 165.76 (4).

6 **SECTION 11.** 973.047 (2) of the statutes is repealed.

7 **SECTION 12.** 980.063 (1) (a) and (b) of the statutes are renumbered 980.063 (1)
8 and (3) and amended to read:

9 980.063 (1) If a person is found to be a sexually violent person under this
10 chapter, the court shall require the person to provide a biological specimen to the
11 state crime laboratories for deoxyribonucleic acid analysis by the state crime
12 laboratories. The person shall provide the sample to the sheriff as provided in rules
13 promulgated under s. 165.76 (4) and the sheriff shall submit the biological specimen
14 to the state crime laboratories as provided in the rules.

15 (3) The results from deoxyribonucleic acid analysis of a specimen under ~~par.~~
16 (a) sub. (1) may be used only as authorized under s. 165.77 (3). The state crime
17 laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

18 **SECTION 13.** 980.063 (2) of the statutes is repealed.

19 **SECTION 14. Initial applicability.**

20 (1) This act first applies to biological specimens provided on the effective date
21 of this subsection.

22 **SECTION 15. Effective date.**

23 (1) This act takes effect on the first day of the 13th month beginning after
24 publication.

25 (END)

Insert C



/mnr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

No changes

4-20-11

Regen

1 AN ACT *to repeal* 938.34 (15) (b); *to renumber and amend* 980.063 (1) (a) and
2 (b); *to amend* 51.20 (13) (cr), 165.76 (2m) (intro.), 165.76 (3), 165.76 (4), 165.765
3 (1), 165.765 (2) (a), 938.34 (15) (a) 1. and 2., 971.17 (1m) (a) and 973.047 (1f);
4 and *to create* 938.34 (15) (c) of the statutes; **relating to:** collecting a
5 deoxyribonucleic acid sample and requiring the exercise of rule-making
6 authority.

Analysis by the Legislative Reference Bureau

Under current law, a person convicted of, found delinquent for, institutionalized for, or declared registered sex offenders due to committing, felonies or certain other misdemeanors are generally required to provide a deoxyribonucleic acid (DNA) sample to the state crime laboratories for analysis and inclusion in the Department of Justice (DOJ) DNA database. Under current law, a person who is 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 the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison or the facility, then he or she must provide the DNA sample as soon as 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 must provide the DNA sample as directed by that department.

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.

Under this bill, when a person is found delinquent or found not guilty by reason of mental disease or defect, sentenced, declared a sexual predator, or placed into custody or on probation for a crime that requires the person to submit a DNA sample, the court must place the person in the custody of the sheriff immediately after the sentencing or placement hearing for a time sufficient to provide the sample. The bill requires DOJ to promulgate rules for the collecting of samples by sheriffs.

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. 51.20 (13) (cr) of the statutes is amended to read:

2 51.20 (13) (cr) If the subject individual is before the court on a petition filed
3 under a court order under s. 938.30 (5) (c) 1. and, on or after the effective date of this
4 paragraph [LRB inserts date], is found to have committed a violation of s. 940.225
5 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall ~~require the individual~~
6 place the person in the physical custody of the sheriff for a time sufficient for the
7 person to provide a biological specimen. The sheriff shall collect the biological

1 specimen and submit it to the state crime laboratories for deoxyribonucleic acid
2 analysis as provided in rules promulgated under s. 165.76 (4).

3 SECTION 2. 165.76 (2m) (intro.)[✓] of the statutes is amended to read:

4 165.76 (2m) (intro.) ~~Unless~~ Except as provided under ss. 51.20 (13) (cr), 938.34
5 (15), 971.17 (1m) (a), 973.047, or 980.063, or as otherwise provided by rule under sub.
6 (4), a person who is required to provide a biological specimen under sub. (1) shall
7 provide the biological specimen at the following time and place:

8 SECTION 3. 165.76 (3) of the statutes[✓] is amended to read:

9 165.76 (3) Notwithstanding sub. (1), if a county sheriff, the department of
10 corrections, or the department of health services determines that a person who is
11 required to ~~submit~~ provide a biological specimen under sub. (1) has ~~submitted~~
12 provided a biological specimen and that data obtained from analysis of the person's
13 biological specimen is included in the data bank under s. 165.77 (3), the person is not
14 required to ~~submit~~ provide another biological specimen.

15 SECTION 4. 165.76 (4) of the statutes[✓] is amended to read:

16 165.76 (4) The department of justice ~~may~~ shall promulgate rules ~~to implement~~
17 ~~this section for providing and collecting biological specimens and submitting~~
18 specimens to the crime laboratories under this section and 51.20 (13) (cr), 938.34
19 (15), 971.17 (1m) (a), 973.047, and 980.063.

20 SECTION 5. 165.765 (1) of the statutes[✓] is amended to read:

21 165.765 (1) Whoever intentionally fails to comply with a requirement to ~~submit~~
22 provide a biological specimen as ordered under s. 51.20 (13) (cr), 165.76, 938.34 (15),
23 971.17 (1m) (a), 973.047, or 980.063 may be fined not more than \$10,000 or
24 imprisoned for not more than 9 months or both.

25 SECTION 6. 165.765 (2) (a) of the statutes[✓] is amended to read:

1 165.765 (2) (a) Any physician, registered nurse, medical technologist,
2 physician assistant or person acting under the direction of a physician, sheriff, or
3 person acting under the direction of a sheriff who obtains a biological specimen as
4 ordered under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or
5 980.063 is immune from any civil or criminal liability for the act, except for civil
6 liability for negligence in the performance of the act.

7 **SECTION 7.** 938.34 (15) (a) 1. and 2. of the statutes are amended to read:

8 938.34 (15) (a) 1. If, on or after the effective date of this subdivision [LRB
9 inserts date], the juvenile is adjudicated delinquent on the basis of a violation of s.
10 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall require the juvenile
11 to provide a biological specimen ~~to the state crime laboratories~~ for deoxyribonucleic
12 acid analysis by the state crime laboratories.

13 2. Except as provided in subd. 1., if, on or after the effective date of this
14 subdivision [LRB inserts date], the juvenile is adjudicated delinquent on the basis
15 of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may
16 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
17 for deoxyribonucleic acid analysis by the state crime laboratories.

18 **SECTION 8.** 938.34 (15) (b) of the statutes is repealed.

19 **SECTION 9.** 938.34 (15) (c) of the statutes is created to read:

20 938.34 (15) (c) If a court requires a juvenile to provide a biological specimen
21 under par. (a), the court shall, at the end of the hearing in which a disposition is
22 imposed under this section, place the juvenile in the physical custody of the sheriff
23 for a time sufficient for the juvenile to provide the biological specimen. The sheriff
24 shall collect the biological specimen and submit it to the state crime laboratories as
25 provided in rules promulgated by the department of justice under s. 165.76 (4).

1 **SECTION 10.** 971.17 (1m) (a) of the statutes is amended to read:

2 971.17 **(1m)** (a) If, on or after the effective date of this paragraph [LRB
3 inserts date], the defendant under sub. (1) is found not guilty by reason of mental
4 disease or defect for a felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or
5 948.10, the court shall ~~require~~ place the person in the physical custody of the sheriff
6 for a time sufficient for the person to provide a biological specimen. The sheriff shall
7 collect the biological specimen and submit it to the state crime laboratories for
8 deoxyribonucleic acid analysis as provided in rules promulgated under s. 165.76 (4).

9 **SECTION 11.** 973.047 (1f) of the statutes is amended to read:

10 973.047 **(1f)** If, on or after the effective date of this subsection [LRB inserts
11 date], a court imposes a sentence or places a person on probation for a felony
12 conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m), 944.20,
13 or 948.10 (1) (b), the court shall require the person to provide a biological specimen
14 ~~to the state crime laboratories~~ for deoxyribonucleic acid analysis by the state crime
15 laboratories. At the end of the hearing in which the sentence is imposed or the person
16 is placed on probation, the court shall place the person in the physical custody of the
17 sheriff for a time sufficient for the person to provide the biological specimen. The
18 sheriff shall collect the biological specimen and submit it to the state crime
19 laboratories as provided in rules promulgated by the department of justice under s.
20 165.76 (4).

21 **SECTION 12.** 980.063 (1) (a) and (b) of the statutes are renumbered 980.063 (1)
22 and (3) and amended to read:

23 980.063 **(1)** If, on or after the effective date of this subsection [LRB inserts
24 date], a person is found to be a sexually violent person under this chapter, the court
25 shall ~~require~~ place the person in the physical custody of the sheriff for a time

1 sufficient for the person to provide a biological specimen. The sheriff shall collect the
2 biological specimen and submit it to the state crime laboratories for deoxyribonucleic
3 acid analysis as provided in rules promulgated under s. 165.76 (4).

4 (3) The results from deoxyribonucleic acid analysis of a specimen under ~~par-~~
5 ~~(a) sub. (1)~~ may be used only as authorized under s. 165.77 (3). The state crime
6 laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

7 **SECTION 13. Initial applicability.**

8 (1) This act first applies to biological specimens provided on the effective date
9 of this subsection.

10 **SECTION 14. Effective date.**

11 (1) This act takes effect on the first day of the 13th month beginning after
12 publication.

13 (END)

Godwin, Gigi

From: Godwin, Gigi
Sent: Monday, August 08, 2011 2:08 PM
To: de Felice, David Patrick
Subject: RE: Request for stripes

I will take care of it. Thanks, Gigi

Gigi Godwin, Program Assistant
State of Wisconsin - Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-3561
Gigi.Godwin@legis.wisconsin.gov

From: de Felice, David Patrick
Sent: Monday, August 08, 2011 2:05 PM
To: Godwin, Gigi
Subject: RE: Request for stripes

Yes, I'd like them jacketed. Today or tomorrow is fine.

Thanks,

Dave de Felice
Office of Sen. Spencer Coggs
608-266-2500

From: Godwin, Gigi
Sent: Monday, August 08, 2011 2:05 PM
To: de Felice, David Patrick
Subject: RE: Request for stripes

Hi Dave. Just to make sure I am on the same page, you'd like these drafts jacketed? And if so, would you like them today.
Thanks much, Gigi

Gigi Godwin, Program Assistant
State of Wisconsin - Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
(608) 266-3561
Gigi.Godwin@legis.wisconsin.gov

From: de Felice, David Patrick
Sent: Monday, August 08, 2011 2:02 PM
To: LRB.Legal
Subject: Request for stripes

Please send the stripes for these LRBs to the office.

Thank you,

Dave de Felice

Office of Sen. Spencer Coggs
608-266-2500

DNA: Enhanced penalties LRB1569

DNA: Sheriff collects LRB 1570

Firearms background checks: LRB 1571

Voting - Challenged ballots: LRB 1572

Minority procurement: LRB 1587

Voter ID - Free birth certificates: LRB 2327