



2011 SENATE BILL 214

October 5, 2011 – Introduced by Senators HARSDORF, OLSEN and SCHULTZ, cosponsored by Representatives VOS, KERKMAN, BALLWEG, KAUFERT, NERISON, BROOKS, ENDSLEY, MARKLEIN and A. OTT. Referred to Committee on Judiciary, Utilities, Commerce, and Government Operations.

1 **AN ACT** *to repeal* 165.76 (2m), 165.76 (3) and 165.77 (4) (a) and (b); *to renumber*
2 *and amend* 165.765 (1), 165.765 (2) (a) and (b) and 165.77 (4) (intro.); *to*
3 *amend* 51.20 (13) (cr), 165.76 (1) (av), 165.76 (1) (br), 165.76 (1) (cr), 165.76 (1)
4 (g), 165.76 (1m), 165.76 (2r), 165.76 (4), 165.765 (title), 165.77 (2) (b), 165.77
5 (2m) (c), 165.77 (3), 938.34 (15) (b), 971.17 (1m) (a), 973.047 (1f), 973.047 (2) and
6 980.063 (2); and *to create* 165.77 (4) (am) 1., 2. and 3., 165.84 (7) and 970.02
7 (8) of the statutes; **relating to:** requiring a person arrested for or charged with
8 certain offenses, or a juvenile taken into custody for certain offenses, to provide
9 a biological specimen for deoxyribonucleic acid analysis; inclusion of the
10 analysis results in the deoxyribonucleic acid data bank; requiring the exercise
11 of rule-making authority; and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, certain persons are required to submit biological specimens to the crime laboratories for deoxyribonucleic acid (DNA) analysis. These persons include: a juvenile who has been adjudicated delinquent for certain offenses; a person who is or was in prison for a felony or found guilty of a felony; a person who

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was found guilty of fourth-degree sexual assault, lewd and lascivious behavior, or exposing genitals to a child for sexual gratification; a person who has been found not guilty by reason of mental disease or defect for certain sexual assaults; a person who has been found to be a sexually violent person; and a person who is required by a court to provide a biological specimen.

This bill requires law enforcement agencies to collect a biological specimen for DNA analysis from every adult who is arrested for a felony or for fourth-degree sexual assault, lewd and lascivious behavior, failure to submit a required biological specimen, or exposing genitals to a child for sexual gratification and from each juvenile taken into custody for certain sexual assault offenses. The bill requires the law enforcement agency to submit the specimen to the crime laboratories for DNA analysis and inclusion of the adult's or minor's DNA profile in the data bank. The bill provides that the crime laboratories must, at the person's request, expunge information about a person who was required to submit a biological specimen in connection only with an arrest if the person is not charged with a crime within one year of the arrest or, if the person is a juvenile, a delinquency petition is not filed; criminal charges are dismissed; or the person is found not guilty of the crime.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

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 is found to have committed a
4 violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall
5 require the individual to provide a biological specimen to the state crime laboratories
6 for deoxyribonucleic acid analysis. Biological specimens required under this
7 paragraph shall be obtained and submitted as specified in rules promulgated by the
8 department of justice under s. 165.76 (4).

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

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1 165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony
2 or any violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20, 946.52,
3 or 948.10 (1) (b).

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

5 165.76 (1) (br) Has been found not guilty or not responsible by reason of mental
6 disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,
7 for any felony or a violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20,
8 946.52, or 948.10 (1) (b).

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

10 165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for
11 a felony or any violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20,
12 946.52, or 948.10 (1) (b).

13 **SECTION 5.** 165.76 (1) (g) of the statutes is amended to read:

14 165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 165.84 (7),
15 938.34 (15m) (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to provide a
16 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

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

18 165.76 (1m) If a person is required to provide a biological specimen under sub.
19 (1) (a) to (g) and the department of justice does not have the data obtained from
20 analysis of a biological specimen from the person that the department is required to
21 maintain in the data bank under s. 165.77 (3), the department may require the
22 person to provide a biological specimen, regardless of whether the person previously
23 provided a biological specimen under this section or s. 51.20 (13) (cr), 165.84 (7),
24 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or ~~980.63~~ 980.063. The department
25 of justice, the department of corrections, a district attorney, or a county sheriff, shall

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1 notify any person whom the department of justice requires to provide a biological
2 specimen under this subsection.

3 **SECTION 7.** 165.76 (2m) of the statutes is repealed.

4 **SECTION 8.** 165.76 (2r) of the statutes is amended to read:

5 165.76 (2r) Failure by a person who is required to provide a biological specimen
6 under sub. (1) to provide the biological specimen at the time and place provided under
7 sub. (2m) in accordance with the rules promulgated under sub. (4) does not relieve
8 the person of the obligation to provide a biological specimen to the state crime
9 laboratories for deoxyribonucleic acid analysis.

10 **SECTION 9.** 165.76 (3) of the statutes is repealed.

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

12 165.76 (4) The department of justice ~~may~~ shall promulgate rules to implement
13 establishing procedures and time limits for obtaining and submitting biological
14 specimens under this section and ss. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02
15 (8), 971.17 (1m) (a), 973.047, and 980.063, and for carrying out the department's
16 duties under this section. The rules shall specify whether a person who is required
17 under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m)
18 (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
19 analysis must provide a new biological specimen if the crime laboratories already
20 have a biological specimen from the person or if data obtained from deoxyribonucleic
21 acid analysis of the person's biological specimen are already included in the data
22 bank under s. 165.77 (3).

23 **SECTION 11.** 165.765 (title) of the statutes is amended to read:

24 **165.765 (title) Biological specimen; penalty and immunity.**

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1 **SECTION 12.** 165.765 (1) of the statutes is renumbered 946.52 and amended to
2 read:

3 **946.52 Failure to submit biological specimen.** Whoever intentionally fails
4 to comply with a requirement to submit a biological specimen under s. 165.76, 165.84
5 (7), 938.34 (15), 970.02 (8), 973.047, or 980.063 ~~may be fined not more than \$10,000~~
6 ~~or imprisoned for not more than 9 months or both~~ is guilty of a Class A misdemeanor.

7 **SECTION 13.** 165.765 (2) (a) and (b) of the statutes are renumbered 165.765 (1m)
8 and (2m) and amended to read:

9 165.765 **(1m)** Any physician, registered nurse, medical technologist, physician
10 assistant or person acting under the direction of a physician who obtains a biological
11 specimen under s. 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 973.047, or 980.063 is
12 immune from any civil or criminal liability for the act, except for civil liability for
13 negligence in the performance of the act.

14 **(2m)** Any employer of the physician, nurse, technologist, assistant, or person
15 under ~~par. (a) sub. (1m)~~ or any hospital where blood is withdrawn by that physician,
16 nurse, technologist, assistant, or person has the same immunity from liability under
17 ~~par. (a) sub. (1m)~~.

18 **SECTION 14.** 165.77 (2) (b) of the statutes is amended to read:

19 165.77 **(2)** (b) Paragraph (a) does not apply to specimens received under s. 51.20
20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or
21 980.063.

22 **SECTION 15.** 165.77 (2m) (c) of the statutes is amended to read:

23 165.77 **(2m)** (c) Paragraph (b) does not apply to specimens received under s.
24 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047,
25 or 980.063.

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1 **SECTION 16.** 165.77 (3) of the statutes is amended to read:

2 165.77 **(3)** If the laboratories receive a human biological specimen under s.
3 51.20 (13) (cr), 165.76, 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047,
4 or 980.063, the laboratories shall analyze the deoxyribonucleic acid in the specimen.
5 The laboratories shall maintain a data bank based on data obtained from
6 deoxyribonucleic acid analysis of those specimens. The laboratories may compare
7 the data obtained from one specimen with the data obtained from other specimens.
8 The laboratories may make data obtained from any analysis and comparison
9 available to law enforcement agencies in connection with criminal or delinquency
10 investigations and, upon request, to any prosecutor, defense attorney or subject of
11 the data. The data may be used in criminal and delinquency actions and proceedings.
12 The laboratories shall destroy specimens obtained under this subsection after
13 analysis has been completed and the applicable court proceedings have concluded.

14 **SECTION 17.** 165.77 (4) (intro.) of the statutes is renumbered 165.77 (4) (am)
15 (intro.) and amended to read:

16 165.77 **(4)** (am) (intro.) A person whose deoxyribonucleic acid analysis data ~~has~~
17 have been included in the data bank under sub. (3) may request expungement on the
18 grounds that ~~his or her conviction or adjudication has been reversed, set aside or~~
19 ~~vacated.~~ The all of the following conditions are satisfied:

20 (bm) If the conditions under par. (am) are satisfied, the laboratories shall purge
21 all records and identifiable information in the data bank pertaining to the person and
22 destroy all samples from the person if it receives all of the following: upon receiving
23 the person's written request for expungement and any documentation required by
24 the department of justice under rules promulgated under sub. (8).

25 **SECTION 18.** 165.77 (4) (a) and (b) of the statutes are repealed.

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- 1 **SECTION 19.** 165.77 (4) (am) 1., 2. and 3. of the statutes are created to read:
- 2 165.77 **(4)** (am) 1. All convictions or adjudications for which the person was
- 3 required to submit a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15),
- 4 971.17 (1m) (a), 973.047, or 980.063 have been reversed, set aside, or vacated.
- 5 2. If the person was required to provide a biological specimen under s. 165.84
- 6 (7) in connection with an arrest or under s. 970.02 (8), one of the following applies:
- 7 a. All charges filed in connection with the arrest and all charges for which the
- 8 person was required to provide a biological specimen under s. 970.02 (8) have been
- 9 dismissed.
- 10 b. The trial court reached final disposition for all charges in connection with
- 11 the arrest and for any charges for which the person was required to provide a
- 12 biological specimen under s. 970.02 (8), and the person was not adjudged guilty of a
- 13 crime in connection with the arrest or any charge for which the person was required
- 14 to provide a biological specimen under s. 970.02 (8).
- 15 c. At least one year has passed since the arrest and the person has not been
- 16 charged with a crime in connection with the arrest, and the person was not required
- 17 to provide a biological specimen under s. 970.02 (8).
- 18 d. The person was adjudged guilty of a crime in connection with the arrest or
- 19 any charge for which the person was required to provide a biological specimen under
- 20 s. 970.02 (8), and all such convictions have been reversed, set aside, or vacated.
- 21 3. If the person was required to provide a biological specimen under s. 165.84
- 22 (7) in connection with being taken into custody under s. 938.19, one of the following
- 23 applies:

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1 a. All criminal complaints or delinquency petitions alleging that the person
2 violated s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection
3 with the taking into custody have been dismissed.

4 b. The trial court reached final disposition for all allegations of a violation of
5 s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the
6 taking into custody and the person was not convicted or adjudged delinquent for a
7 violation of s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection
8 with the taking into custody.

9 c. At least one year has passed since the person was taken into custody and no
10 criminal complaint or delinquency petition alleging a violation of s. 940.225, 946.52,
11 948.02 (1) or (2), 948.025, or 948.085 (2) has been filed against the person in
12 connection with the taking into custody.

13 d. The person was convicted or adjudged delinquent for a violation of s. 940.225,
14 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
15 custody and the conviction or delinquency adjudication has been reversed, set aside,
16 or vacated.

17 **SECTION 20.** 165.84 (7) of the statutes is created to read:

18 165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in
19 charge of law enforcement and tribal law enforcement agencies shall obtain a
20 biological specimen for deoxyribonucleic acid analysis from each adult arrested for
21 a felony or for an offense under s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b) and
22 each minor taken into custody for an offense under 940.225, 946.52, 948.02 (1) or (2),
23 948.025, or 948.085 (2). The person in charge of the law enforcement or tribal law
24 enforcement agency shall submit the specimen to the crime laboratories for

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1 deoxyribonucleic acid analysis and inclusion of the adult or minor's deoxyribonucleic
2 acid profile in the data bank under s. 165.77 (3).

3 (b) Biological samples required under par. (a) shall be obtained and submitted
4 as specified in rules promulgated by the department of justice under s. 165.76 (4).

5 (c) Biological specimens obtained under this section may be used only as
6 provided under s. 165.77.

7 **SECTION 21.** 938.34 (15) (b) of the statutes is amended to read:

8 938.34 (15) (b) ~~The department of justice shall promulgate rules providing~~
9 ~~procedures for juveniles to provide specimens~~ Biological samples required under par.
10 (a) ~~and for the transportation of the specimens to the state crime laboratories under~~
11 ~~s. 165.77 shall be obtained and submitted as specified in rules promulgated by the~~
12 department of justice under s. 165.76 (4).

13 **SECTION 22.** 970.02 (8) of the statutes is created to read:

14 970.02 (8) If the offense charged is a felony or an offense under s. 940.225 (3m),
15 944.20, 946.52, or 948.10 (1) (b), the judge shall determine if a biological specimen
16 has been obtained from the defendant under s. 165.84 (7), and, if not, the judge shall
17 direct that a law enforcement agency or tribal law enforcement agency obtain a
18 biological specimen from the defendant and submit it to the state crime laboratories
19 as specified in rules promulgated by the department of justice under s. 165.76 (4).

20 **SECTION 23.** 971.17 (1m) (a) of the statutes is amended to read:

21 971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of
22 mental disease or defect for a felony or a violation of s. 165.765 (1), 2009 stats., or of
23 s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b), the court shall require the person
24 to provide a biological specimen to the state crime laboratories for deoxyribonucleic
25 acid analysis. Biological specimens required under this paragraph shall be obtained

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1 and submitted as specified in rules promulgated by the department of justice under
2 s. 165.76 (4).

3 **SECTION 24.** 973.047 (1f) of the statutes is amended to read:

4 973.047 **(1f)** If a court imposes a sentence or places a person on probation for
5 a felony conviction or for a conviction for a violation of s. 165.765 (1), 2009 stats., or
6 of s. 940.225 (3m), 944.20, or 948.10 (1) (b), the court shall require the person to
7 provide a biological specimen to the state crime laboratories for deoxyribonucleic
8 acid analysis.

9 **SECTION 25.** 973.047 (2) of the statutes is amended to read:

10 ~~973.047 (2) The department of justice shall promulgate rules providing for~~
11 ~~procedures for defendants to provide specimens when Biological samples required~~
12 ~~to do so under this section and for the transportation of those specimens to the state~~
13 ~~crime laboratories for analysis under s. 165.77 sub. (1f) shall be obtained and~~
14 ~~submitted as specified in rules promulgated by the department of justice under s.~~
15 ~~165.76 (4).~~

16 **SECTION 26.** 980.063 (2) of the statutes is amended to read:

17 ~~980.063 (2) The department of justice shall promulgate rules providing for~~
18 ~~procedures for defendants to provide specimens Biological samples required under~~
19 ~~sub. (1) and for the transportation of those specimens to the state crime laboratories~~
20 ~~for analysis under s. 165.77 (a) shall be obtained and submitted as specified in rules~~
21 ~~promulgated by the department of justice under s. 165.76 (4).~~

22 **SECTION 27. Nonstatutory provisions.**

23 (1) EARLY SUBMISSION OF BIOLOGICAL SPECIMENS FOR PERSONS ARRESTED OR TAKEN
24 INTO CUSTODY.

