

2011 DRAFTING REQUEST

Bill

Received: 11/10/2010

Received By: **chanaman**

Wanted: **As time permits**

Companion to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Matt**

May Contact:

Drafter: **chanaman**

Subject: **Criminal Law - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Collecting DNA from persons arrested for a felony

Instructions:

See attached--SB-336 with 09a1162/4

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>
/?	chanaman 07/21/2011	kfollett 07/26/2011		_____			S&L Crime
/1			phenry 07/27/2011	_____	lparisi 07/27/2011	sbasford 10/04/2011	

FE Sent For:

<END>

↳ At Intro.

↓
per Brittany
in Harsdorf's
office

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Requested
10/4/11 by
Brittany in
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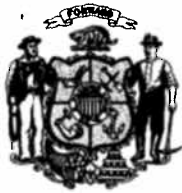
See attached--SB-336 with 09a1162/4

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1/?	chanaman	1/15/11 7/26	7 be ph	7 be ph/le			

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<END>



WED OR THURS please

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{general} relating to: requiring a person arrested for or charged with certain
 2 offenses, or a juvenile taken into custody for certain offenses to provide a
 3 biological specimen for deoxyribonucleic acid analysis; inclusion of the analysis
 4 results in the deoxyribonucleic acid data bank, requiring the exercise of
 5 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 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 specimen. ^{biological}

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

deoxyribonucleic acid analysis and inclusion of the adult or minor's deoxyribonucleic acid 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).

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.

9 **SECTION 2.** 165.76 (1) (av) of the statutes is amended to read:
 10 165.76 (1) (av) Is or was found guilty on or after January 1, 2000, of any felony
 11 or any violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20, 946.52,
 12 or 948.10 (1) (b).

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.

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

1 165.76 (1) (br) Has been found not guilty or not responsible by reason of mental
2 disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17,
3 for any felony or a violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20,
4 946.52, or 948.10 (1) (b).

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

6 165.76 (1) (cr) Is or was in institutional care on or after January 1, 2000, for
7 a felony or any violation of s. 165.765 (1), 2009 stats., or of s. 940.225 (3m), 944.20,
8 946.52, or 948.10 (1) (b).

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.

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

10 165.76 (1) (g) Has been required by a court under s. 51.20 (13) (cr), 165.84 (7),
11 938.34 (15m) (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to provide a
12 biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

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.

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

14 165.76 (1m) If a person is required to provide a biological specimen under sub.
15 (1) (a) to (g) and the department of justice does not have the data obtained from
16 analysis of a biological specimen from the person that the department is required to
17 maintain in the data bank under s. 165.77 (3), the department may require the
18 person to provide a biological specimen, regardless of whether the person previously
19 provided a biological specimen under this section or s. 51.20 (13) (cr), 165.84 (7),
20 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or ~~980.63~~ [s. 980.063]. The
21 department of justice, the department of corrections, a district attorney, or a county
22 sheriff, shall notify any person whom the department of justice requires to provide
23 a biological specimen under this subsection.

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

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.

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

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

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

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.

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

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

11 165.76 (4) The department of justice may shall promulgate rules to implement
12 establishing procedures and time limits for obtaining and submitting biological
13 specimens under this section and ss. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02
14 (8), 971.17 (1m) (a), 973.047, and 980.063, and for carrying out the department's
15 duties under this section. The rules shall specify whether a person who is required
16 under this section or s. 51.20 (13) (cr), 165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m)
17 (a), 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
18 analysis must provide a new biological specimen if the crime laboratories already
19 have a biological specimen from the person or if data obtained from deoxyribonucleic
20 acid analysis of the person's biological specimen are already included in the data
21 bank under s. 165.77 (3).

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.

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

23 165.765 (title) Biological specimen; penalty and immunity.

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

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.

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

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).

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

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.

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

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

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

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

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

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

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

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

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

23 (b) If the conditions under par. (a) are satisfied, the laboratories shall purge all
24 records and identifiable information in the data bank pertaining to the person and

(am)

LRB-0430/?
CMH:.....
SECTION 17

Section 165.77 (4) (a) and (b)
RP: 165.77

1 destroy all samples from the person if it receives all of the following: upon receiving
 2 the person's written request for expungement and any documentation required by
 3 the department of justice under rules promulgated under sub. (8).

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

4 **SECTION 18.** 165.77 (4) (am) 1., 2. and 3. of the statutes are created to read:

5 165.77 (4) (am) 1. All convictions or adjudications for which the person was
 6 required to submit a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15),
 7 971.17 (1m) (a), 973.047, or 980.063 have been reversed, set aside, or vacated.

8 2. If the person was required to provide a biological specimen under s. 165.84
 9 (7) in connection with an arrest or under s. 970.02 (8), one of the following applies:

10 a. All charges filed in connection with the arrest and all charges for which the
 11 person was required to provide a biological specimen under s. 970.02 (8) have been
 12 dismissed.

13 b. The trial court reached final disposition for all charges in connection with
 14 the arrest and for any charges for which the person was required to provide a
 15 biological specimen under s. 970.02 (8), and the person was not adjudged guilty of a
 16 crime in connection with the arrest or any charge for which the person was required
 17 to provide a biological specimen under s. 970.02 (8).

18 c. At least one year has passed since the arrest and the person has not been
 19 charged with a crime in connection with the arrest, and the person was not required
 20 to provide a biological specimen under s. 970.02 (8).

21 d. The person was adjudged guilty of a crime in connection with the arrest or
 22 any charge for which the person was required to provide a biological specimen under
 23 s. 970.02 (8), and all such convictions have been reversed, set aside, or vacated.

1 3. If the person was required to provide a biological specimen under s. 165.84
2 (7) in connection with being taken into custody under s. 938.19, one of the following
3 applies:

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

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

12 c. At least one year has passed since the person was taken into custody and no
13 criminal complaint or delinquency petition alleging a violation of s. 940.225, 946.52,
14 948.02 (1) or (2), 948.025, or 948.085 (2) has been filed against the person in
15 connection with the taking into custody.

16 d. The person was convicted or adjudged delinquent for a violation of s. 940.225,
17 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
18 custody and the conviction or delinquency adjudication has been reversed, set aside,
19 or vacated.

20 **SECTION 19.** 165.84 (7) of the statutes is created to read:

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

1 948.025, or 948.085 (2). The person in charge of the law enforcement or tribal law
2 enforcement agency shall submit the specimen to the crime laboratories for
3 deoxyribonucleic acid analysis and inclusion of the adult or minor's deoxyribonucleic
4 acid profile in the data bank under s. 165.77 (3).

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

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

9 **SECTION 20.** 938.34 (15) (b) of the statutes is amended to read:

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

15 ~~Cross-reference: Cross-reference: Cross-reference: See also ch. Jus 9, Wis. adm. code. Cross-reference:~~
~~History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321; 2005 a. 14, 253,~~
~~277, 344; 2007 a. 97, 116; 2009 a. 8, 28, 103, 137, 185, 302, 334; s. 13.92 (2) (i).~~

16 **SECTION 21.** 970.02 (8) of the statutes is created to read:

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

23 **SECTION 22.** 971.17 (1m) (a) of the statutes is amended to read:

24 971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of
25 mental disease or defect for a felony or a violation of s. 165.765 (1), 2009 stats., or of

1 s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b), the court shall require the person
2 to provide a biological specimen to the state crime laboratories for deoxyribonucleic
3 acid analysis. Biological specimens required under this paragraph shall be obtained
4 and submitted as specified in rules promulgated by the department of justice under
5 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, 431; 2007 a. 20 ss. 3875, 9121 (6) (a); 2007 a. 116; 2009 a. 26, 28, 137, 261.

6 **SECTION 23.** 973.047 (1f) of the statutes is amended to read:

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

NOTE: NOTE: The treatment of sub. (1f) by 2009 Wis. Act 202 was not shown in the printed volumes. The correct cross-reference, as affected by Act 202, is shown in brackets. Corrective legislation is pending. **NOTE:**

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275; 2009 a. 202, 261.

12 **SECTION 24.** 973.047 (2) of the statutes is amended to read:

13 973.047 (2) ~~The department of justice shall promulgate rules providing for~~
14 ~~procedures for defendants to provide specimens when Biological samples required~~
15 ~~to do so under this section and for the transportation of those specimens to the state~~
16 ~~crime laboratories for analysis under s. 165.77 sub. (1f) shall be obtained and~~
17 ~~submitted as specified in rules promulgated by the department of justice under s.~~
18 165.76 (4).

History: 1993 a. 16, 98, 227; 1995 a. 440; 1999 a. 9; 2005 a. 275; 2009 a. 202, 261.

19 **SECTION 25.** 980.063 (2) of the statutes is amended to read:

20 980.063 (2) ~~The department of justice shall promulgate rules providing for~~
21 ~~procedures for defendants to provide specimens Biological samples required under~~
22 ~~sub. (1) and for the transportation of those specimens to the state crime laboratories~~

1 ~~for analysis under s. 165.77 (a)~~ shall be obtained and submitted as specified in rules
2 ~~promulgated by the department of justice under s. 165.76 (4).~~

3 History: 1995 a. 440.

3 **SECTION 26. Nonstatutory provisions.**

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

6 *Create sub part* (a) Beginning on the effective date of this paragraph, a law enforcement agency
7 or a tribal law enforcement agency may obtain a biological specimen from an adult
8 arrested for a felony or for a violation of section 165.765 (1), 940.225 (3m), 944.20, or
9 948.10 (1) (b) of the statutes or from a minor taken into custody for an offense under
10 section 165.765 (1), 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) of the statutes,
11 and submit the specimen to the state crime laboratories for deoxyribonucleic acid
12 analysis.

13 (b) If a law enforcement or tribal law enforcement agency submits a biological
14 specimen to the state crime laboratories under paragraph (a), the crime laboratories
15 shall analyze the deoxyribonucleic acid in the biological specimen and include the
16 deoxyribonucleic acid profile from the biological specimen in the data bank under
17 section 165.77 (3) of the statutes.

18 (c) Paragraph (b) does not apply after the effective date of this paragraph.

19 **SECTION 27. Initial applicability.**

20 (1) The treatment of section 165.84 (7) (a) of the statutes first applies to persons
21 arrested or taken into custody on the effective date of this subsection.

22 (2) The treatment of section 970.02 (8) of the statutes first applies to initial
23 appearances held on the effective date of this subsection.

1 **SECTION 28. Effective dates.** This act takes effect on the first day of the 13th
2 month beginning after publications, except as follows:

3 (1) ^(CS) Section ~~(26)~~ (1) (a) and (b) of this act take ^s effect on the day after publication.

4

(END)

Barman, Mike

From: Hanaman, Cathlene
Sent: Friday, October 07, 2011 11:41 AM
To: Barman, Mike

Can we do a corrected copy of SB-214, without the history notes?



10-07-2009
Before Changes Made

2011 SENATE BILL 214

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

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 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.

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).

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

History: 1977 c. 28, 29; 1977 c. 187, s. 42, 43, 134, 135; 1977 c. 428, s. 29 to 35, 115; 1977 c. 417, 418; Sup. Ct. Order 83 Wis. 2d 296, 1978 (132) Sup. Ct. Order 84 Wis. 2d 1, 1979 (177) Sup. Ct. Order 85 Wis. 2d 1, 1980 (197) Sup. Ct. Order 86 Wis. 2d 1, 1981 (217) Sup. Ct. Order 87 Wis. 2d 1, 1982 (237) Sup. Ct. Order 88 Wis. 2d 1, 1983 (257) Sup. Ct. Order 89 Wis. 2d 1, 1984 (277) Sup. Ct. Order 90 Wis. 2d 1, 1985 (297) Sup. Ct. Order 91 Wis. 2d 1, 1986 (317) Sup. Ct. Order 92 Wis. 2d 1, 1987 (337) Sup. Ct. Order 93 Wis. 2d 1, 1988 (357) Sup. Ct. Order 94 Wis. 2d 1, 1989 (377) Sup. Ct. Order 95 Wis. 2d 1, 1990 (397) Sup. Ct. Order 96 Wis. 2d 1, 1991 (417) Sup. Ct. Order 97 Wis. 2d 1, 1992 (437) Sup. Ct. Order 98 Wis. 2d 1, 1993 (457) Sup. Ct. Order 99 Wis. 2d 1, 2000 (477) Sup. Ct. Order 01 Wis. 2d 1, 2002 (497) Sup. Ct. Order 02 Wis. 2d 1, 2003 (517) Sup. Ct. Order 03 Wis. 2d 1, 2004 (537) Sup. Ct. Order 04 Wis. 2d 1, 2005 (557) Sup. Ct. Order 05 Wis. 2d 1, 2006 (577) Sup. Ct. Order 06 Wis. 2d 1, 2007 (597) Sup. Ct. Order 07 Wis. 2d 1, 2008 (617) Sup. Ct. Order 08 Wis. 2d 1, 2009 (637) Sup. Ct. Order 09 Wis. 2d 1, 2010 (657) Sup. Ct. Order 10 Wis. 2d 1, 2011 (677) Sup. Ct. Order 11 Wis. 2d 1, 2012 (697) Sup. Ct. Order 12 Wis. 2d 1, 2013 (717) Sup. Ct. Order 13 Wis. 2d 1, 2014 (737) Sup. Ct. Order 14 Wis. 2d 1, 2015 (757) Sup. Ct. Order 15 Wis. 2d 1, 2016 (777) Sup. Ct. Order 16 Wis. 2d 1, 2017 (797) Sup. Ct. Order 17 Wis. 2d 1, 2018 (817) Sup. Ct. Order 18 Wis. 2d 1, 2019 (837) Sup. Ct. Order 19 Wis. 2d 1, 2020 (857) Sup. Ct. Order 20 Wis. 2d 1, 2021 (877) Sup. Ct. Order 21 Wis. 2d 1, 2022 (897) Sup. Ct. Order 22 Wis. 2d 1, 2023 (917) Sup. Ct. Order 23 Wis. 2d 1, 2024 (937) Sup. Ct. Order 24 Wis. 2d 1, 2025 (957) Sup. Ct. Order 25 Wis. 2d 1, 2026 (977) Sup. Ct. Order 26 Wis. 2d 1, 2027 (997) Sup. Ct. Order 27 Wis. 2d 1, 2028 (1017) Sup. Ct. Order 28 Wis. 2d 1, 2029 (1037) Sup. Ct. Order 29 Wis. 2d 1, 2030 (1057) Sup. Ct. Order 30 Wis. 2d 1, 2031 (1077) Sup. 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Order 356 Wis. 2d 1, 2357 (7597) Sup. Ct. Order 357 Wis. 2d 1, 2358 (7617)

1 have a biological specimen from the person or if data obtained from deoxyribonucleic
2 acid analysis of the person's biological specimen are already included in the data
3 bank under s. 165.77 (3).

4 ~~History: 1983 s. 16, 18, 27, 1985 s. 47 s. 91/28, 1988 s. 71, 140, 1989 s. 25, 283, 1999 s. 2001 s. 36, 2005 s. 277, 346, 2007 s. 20 s. 91/21, 2008 s. 1997 s. 67, 2009 s. 36.~~
SECTION 11. 165.765 (title) of the statutes is amended to read:

5 **165.765 (title) Biological specimen; penalty and immunity.**

6 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140.~~
SECTION 12. 165.765 (1) of the statutes is renumbered 946.52 and amended to
7 read:

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

12 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140.~~
SECTION 13. 165.765 (2) (a) and (b) of the statutes are renumbered 165.765 (1m)
13 and (2m) and amended to read:

14 **165.765 (1m)** Any physician, registered nurse, medical technologist, physician
15 assistant or person acting under the direction of a physician who obtains a biological
16 specimen under s. 165.76, **165.84 (7), 938.34 (15), 970.02 (8), 973.047, or 980.063 is**
17 **immune from any civil or criminal liability for the act, except for civil liability for**
18 **negligence in the performance of the act.**

19 **(2m)** Any employer of the physician, nurse, technologist, assistant, or person
20 under ~~par. (a) sub. (1m)~~ or any hospital where blood is withdrawn by that physician,
21 nurse, technologist, assistant, or person has the same immunity from liability under
22 ~~par. (a) sub. (1m).~~

23 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140.~~
SECTION 14. 165.77 (2) (b) of the statutes is amended to read:

1 grounds that ~~his or her conviction or adjudication has been reversed, set aside or~~
2 ~~vacated. The all of the following conditions are satisfied:~~

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

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

9 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140, 2001 s. 36, 2005 s. 277, 346, 2007 s. 20 s. 91/21, 2008 s. 1997 s. 67, 2009 s. 36.~~
SECTION 19. 165.77 (4) (am) 1., 2. and 3. of the statutes are created to read:

10 **165.77 (4) (am) 1.** All convictions or adjudications for which the person was
11 required to submit a biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15),
12 971.17 (1m) (a), 973.047, or 980.063 have been reversed, set aside, or vacated.

13 **2.** If the person was required to provide a biological specimen under s. 165.84
14 (7) in connection with an arrest or under s. 970.02 (8), one of the following applies:

15 **a.** All charges filed in connection with the arrest and all charges for which the
16 person was required to provide a biological specimen under s. 970.02 (8) have been
17 dismissed.

18 **b.** The trial court reached final disposition for all charges in connection with
19 the arrest and for any charges for which the person was required to provide a
20 biological specimen under s. 970.02 (8), and the person was not adjudged guilty of a
21 crime in connection with the arrest or any charge for which the person was required
22 to provide a biological specimen under s. 970.02 (8).

1 165.77 (2) (b) Paragraph (a) does not apply to specimens received under s. 51.20
2 (13) (cr), 165.76, **165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or**
3 **980.063.**

4 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140, 2001 s. 36, 2005 s. 277, 346, 2007 s. 20 s. 91/21, 2008 s. 1997 s. 67, 2009 s. 36.~~
SECTION 15. 165.77 (2m) (c) of the statutes is amended to read:

5 **165.77 (2m) (c)** Paragraph (b) does not apply to specimens received under s.
6 51.20 (13) (cr), 165.76, **165.84 (7), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047,**
7 **or 980.063.**

8 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140, 2001 s. 36, 2005 s. 277, 346, 2007 s. 20 s. 91/21, 2008 s. 1997 s. 67, 2009 s. 36.~~
SECTION 16. 165.77 (3) of the statutes is amended to read:

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

21 ~~History: 1983 s. 16, 18, 1985 s. 47, 1988 s. 71, 140, 2001 s. 36, 2005 s. 277, 346, 2007 s. 20 s. 91/21, 2008 s. 1997 s. 67, 2009 s. 36.~~
SECTION 17. 165.77 (4) (Intro.) of the statutes is renumbered 165.77 (4) (am)
22 (Intro.) and amended to read:

23 **165.77 (4) (am) (Intro.)** A person whose deoxyribonucleic acid analysis data ~~has~~
24 ~~have~~ been included in the data bank under sub. (3) may request expungement on the

1 **c.** At least one year has passed since the arrest and the person has not been
2 charged with a crime in connection with the arrest, and the person was not required
3 to provide a biological specimen under s. 970.02 (8).

4 **d.** The person was adjudged guilty of a crime in connection with the arrest or
5 any charge for which the person was required to provide a biological specimen under
6 s. 970.02 (8), and all such convictions have been reversed, set aside, or vacated.

7 **3.** If the person was required to provide a biological specimen under s. 165.84
8 (7) in connection with being taken into custody under s. 938.19, one of the following
9 applies:

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

13 **b.** The trial court reached final disposition for all allegations of a violation of
14 s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the
15 taking into custody and the person was not convicted or adjudged delinquent for a
16 violation of s. 940.225, 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection
17 with the taking into custody.

18 **c.** At least one year has passed since the person was taken into custody and no
19 criminal complaint or delinquency petition alleging a violation of s. 940.225, 946.52,
20 948.02 (1) or (2), 948.025, or 948.085 (2) has been filed against the person in
21 connection with the taking into custody.

22 **d.** The person was convicted or adjudged delinquent for a violation of s. 940.225,
23 946.52, 948.02 (1) or (2), 948.025, or 948.085 (2) in connection with the taking into
24 custody and the conviction or delinquency adjudication has been reversed, set aside,
25 or vacated.

1 SECTION 20. 165.84 (7) of the statutes is created to read:
2 165.84 (7) (a) Subject to rules promulgated under s. 165.76 (4), all persons in
3 charge of law enforcement and tribal law enforcement agencies shall obtain a
4 biological specimen for deoxyribonucleic acid analysis from each adult arrested for
5 a felony or for an offense under s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b) and
6 each minor taken into custody for an offense under 940.225, 946.52, 948.02 (1) or (2),
7 948.025, or 948.085 (2). The person in charge of the law enforcement or tribal law
8 enforcement agency shall submit the specimen to the crime laboratories for
9 deoxyribonucleic acid analysis and inclusion of the adult or minor's deoxyribonucleic
10 acid profile in the data bank under s. 165.77 (3).

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

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

15 SECTION 21. 938.34 (15) (b) of the statutes is amended to read:
16 938.34 (15) (b) ~~The department of justice shall promulgate rules providing~~
17 ~~procedures for juveniles to provide specimens~~ Biological samples required under par.
18 (a) ~~and for the transportation of the specimens to the state crime laboratories under~~
19 ~~s. 165.77 shall be obtained and submitted as specified in rules promulgated by the~~
20 ~~department of justice under s. 165.76 (4).~~

21 SECTION 22. 970.02 (8) of the statutes is created to read:
22 970.02 (8) If the offense charged is a felony or an offense under s. 940.225 (3m),
23 944.20, 946.52, or 948.10 (1) (b), the judge shall determine if a biological specimen
24 has been obtained from the defendant under s. 165.84 (7), and, if not, the judge shall

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

3 SECTION 26. 980.063 (2) of the statutes is amended to read:
4 980.063 (2) ~~The department of justice shall promulgate rules providing for~~
5 ~~procedures for defendants to provide specimens~~ Biological samples required under
6 sub. (1) ~~and for the transportation of those specimens to the state crime laboratories~~
7 ~~for analysis under s. 165.77 (a) shall be obtained and submitted as specified in rules~~
8 ~~promulgated by the department of justice under s. 165.76 (4).~~

9 SECTION 27. Nonstatutory provisions.

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

12 (a) Beginning on the effective date of this paragraph, a law enforcement agency
13 or a tribal law enforcement agency may obtain a biological specimen from an adult
14 arrested for a felony or for a violation of section 165.765 (1), 940.225 (3m), 944.20, or
15 948.10 (1) (b) of the statutes or from a minor taken into custody for an offense under
16 section 165.765 (1), 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) of the statutes,
17 and submit the specimen to the state crime laboratories for deoxyribonucleic acid
18 analysis.

19 (b) If a law enforcement or tribal law enforcement agency submits a biological
20 specimen to the state crime laboratories under paragraph (a), the crime laboratories
21 shall analyze the deoxyribonucleic acid in the biological specimen and include the
22 deoxyribonucleic acid profile from the biological specimen in the data bank under
23 section 165.77 (3) of the statutes.

24 (c) Paragraph (a) does not apply after the effective date of this paragraph.

1 direct that a law enforcement agency or tribal law enforcement agency obtain a
2 biological specimen from the defendant and submit it to the state crime laboratories
3 as specified in rules promulgated by the department of justice under s. 165.76 (4).

4 SECTION 23. 971.17 (1m) (a) of the statutes is amended to read:
5 971.17 (1m) (a) If the defendant under sub. (1) is found not guilty by reason of
6 mental disease or defect for a felony or a violation of s. 165.765 (1), ~~2009 stats., or of~~
7 ~~s. 940.225 (3m), 944.20, 946.52, or 948.10 (1) (b)~~, the court shall require the person
8 to provide a biological specimen to the state crime laboratories for deoxyribonucleic
9 acid analysis. Biological specimens required under this paragraph shall be obtained
10 and submitted as specified in rules promulgated by the department of justice under
11 s. 165.76 (4).

12 SECTION 24. 973.047 (1f) of the statutes is amended to read:
13 973.047 (1f) If a court imposes a sentence or places a person on probation for
14 a felony conviction or for a conviction for a violation of s. 165.765 (1), ~~2009 stats., or~~
15 ~~of s. 940.225 (3m), 944.20, or 948.10 (1) (b)~~, the court shall require the person to
16 provide a biological specimen to the state crime laboratories for deoxyribonucleic
17 acid analysis.

18 SECTION 25. 973.047 (2) of the statutes is amended to read:
19 973.047 (2) ~~The department of justice shall promulgate rules providing for~~
20 ~~procedures for defendants to provide specimens when~~ Biological samples required
21 to do so under this section and for the transportation of those specimens to the state
22 crime laboratories for analysis under s. 165.77 sub. (1) shall be obtained and

1 SECTION 28. Initial applicability.
2 (1) The treatment of section 165.84 (7) (a) of the statutes first applies to persons
3 arrested or taken into custody on the effective date of this subsection.
4 (2) The treatment of section 970.02 (8) of the statutes first applies to initial
5 appearances held on the effective date of this subsection.

6 SECTION 29. Effective dates. This act takes effect on the first day of the 13th
7 month beginning after publication, except as follows:

8 (1) SECTION 27 (1) (a) and (b) of this act takes effect on the day after publication.

9 (END)



10-07-2011
After changes
Made By
JLD

2011 SENATE BILL 214

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

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 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

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:

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

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. (3m) 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.**

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

3 ~~946.53 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.

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:

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.

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

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~~

1 (a) Beginning on the effective date of this paragraph, a law enforcement agency
2 or a tribal law enforcement agency may obtain a biological specimen from an adult
3 arrested for a felony or for a violation of section 165.765 (1), 940.225 (3m), 944.20, or
4 948.10 (1) (b) of the statutes or from a minor taken into custody for an offense under
5 section 165.765 (1), 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2) of the statutes,
6 and submit the specimen to the state crime laboratories for deoxyribonucleic acid
7 analysis.

8 (b) If a law enforcement or tribal law enforcement agency submits a biological
9 specimen to the state crime laboratories under paragraph (a), the crime laboratories
10 shall analyze the deoxyribonucleic acid in the biological specimen and include the
11 deoxyribonucleic acid profile from the biological specimen in the data bank under
12 section 165.77 (3) of the statutes.

13 (c) Paragraph (a) does not apply after the effective date of this paragraph.

14 SECTION 28. Initial applicability.

15 (1) The treatment of section 165.84 (7) (a) of the statutes first applies to persons
16 arrested or taken into custody on the effective date of this subsection.

17 (2) The treatment of section 970.02 (8) of the statutes first applies to initial
18 appearances held on the effective date of this subsection.

19 SECTION 29. Effective dates. This act takes effect on the first day of the 13th
20 month beginning after publication, except as follows:

21 (1) SECTION 27 (1) (a) and (b) of this act takes effect on the day after publication.

22 (END)

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.

Barman, Mike

From: Barman, Mike
Sent: Friday, October 07, 2011 1:33 PM
To: Fitch, Dan; Martin, Dick
Subject: Also a "Corrected Copy" version of SB 214 published

From: Barman, Mike
Sent: Friday, October 07, 2011 10:07 AM
To: Fitch, Dan; Martin, Dick
Subject: "Corrected Copy" version of SB 216 published

"Corrected Copy" version of SB 214 published.

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