



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2013 Senate Bill 373

**Assembly
Amendment 2**

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Background

Starting April 1, 2015, when a law enforcement or tribal law enforcement agency obtains fingerprints or other identifying data from an individual arrested for a felony, it must also obtain a biological specimen for deoxyribonucleic acid (DNA) analysis. It must also do so for each individual taken into custody for a juvenile offense that would be a felony if committed by an adult in Wisconsin. The court will also be required to notify the law enforcement or tribal law enforcement agency if any of the following applies to the individual:

- The individual was arrested, or the juvenile was taken into custody, under a warrant.
- The court has made a finding that there is probable cause that the individual committed a felony or that the juvenile committed an offense that would be a felony if committed by an adult in this state.
- The individual fails to appear at the initial appearance or preliminary examination or the person waives the preliminary examination.
- The individual fails to appear for a delinquency proceeding under the Juvenile Justice Code.

The law enforcement or tribal law enforcement agency will also be required to submit the biological specimen to the state crime laboratories for DNA analysis and inclusion of the individual's DNA profile in the state crime laboratories' DNA data bank, but only if the court provides notification that one of the four items listed above applies to the individual within one year after the sample was obtained. If the court has not provided such notification within one year after the biological sample was obtained, the law enforcement or tribal law enforcement agency must destroy the biological sample.

2013 Senate Bill 373, as Amended by the Senate

Senate Bill 373 (the bill) amends current law relating to the standards for the training and certification of law enforcement officers, tribal law enforcement officers, jail officers, juvenile detention officers, and constables. The bill, as amended by Senate Amendment 4, also amends current law related to when a law enforcement or tribal law enforcement agency submits to the state crime laboratories a human biological specimen for DNA analysis that it collected from an individual arrested for a felony, or taken into custody for a juvenile offense that would be a felony, if committed by an adult, and when such samples must be subsequently analyzed. Specifically, the amendment provides the following:

- The law enforcement or tribal law enforcement agency must submit the biological specimen in a manner specified in DOJ rules.
- The court must notify the crime laboratories if any of the following applies:
 - The individual was arrested, or the juvenile was taken into custody, under a warrant.
 - The court has made a finding that there is probable cause that the individual committed a felony or that the juvenile committed an offense that would be a felony if committed by an adult in this state.
 - The individual failed to appear at the initial appearance or preliminary examination or the person waived the preliminary examination.
 - The individual failed to appear for a delinquency proceeding under the Juvenile Justice Code.
- The crime laboratories must analyze the DNA in the specimen and include the DNA profile under the state's DNA data bank if the court notifies the crime laboratories within one year after the sample was submitted that any of the following listed above apply to the individual.
- The crime laboratories must destroy the biological sample if one year after the date the biological sample was submitted, the court has not notified the crime laboratories that one of the four items listed above applies to the individual.

The bill, as amended by Senate Amendment 4, also provides that these changes related to when biological specimens are submitted to the state crime laboratories takes effect on April 1, 2015 and first applies to offenses committed on April 1, 2015.

Assembly Amendment 2

Assembly Amendment 2 includes all of the changes that Senate Amendment 4 makes to current law related to the collection of biological specimens and submission to state crime laboratories for DNA analysis. However, it also limits the type of crime for which a biological specimen must be collected at the time that an individual is arrested or taken into custody. Instead of collecting biological specimens at the time an individual is arrested or taken into

custody for a **felony**, law enforcement and tribal law enforcement must do so for a **violent crime**. Assembly Amendment 2 defines a “violent crime” to mean any of the following:

- A violation or the solicitation, conspiracy, or attempt to commit a violation of any of the following:
 - First- or second-degree intentional homicide.
 - Mayhem.
 - First-, second-, or third-degree sexual assault.
 - Strangulation and suffocation.
 - False imprisonment.
 - Human trafficking.
 - Taking hostages.
 - Kidnapping.
 - Stalking.
 - Felony intimidation of witnesses.
 - Endangering safety by use of dangerous weapon.
 - Disarming a police officer.
 - Tampering with household products.
 - Arson of buildings/ damage of property by explosives.
 - Injury caused by arson.
 - Burglary.
 - Carjacking and car theft.
 - Robbery.
 - First- or second-degree sexual assault of a child.
 - Engaging in repeated acts of sexual assault of the same child.
 - Intentional physical abuse of a child causing either: (1) great bodily harm; or (2) bodily harm with a high probability of great bodily harm.
 - Sexual exploitation of a child.
 - Trafficking of a child.
 - Causing a child to view or listen to sexual activity.
 - Child enticement.

- Soliciting a child for prostitution.
- Sexual assault of a child placed in substitute care.
- Sexual assault of a child by a school staff person or a person who works or volunteers with children.
- Abduction of another's child by force or threat of imminent force.
- A violation of any of the following:
 - First-degree reckless homicide.
 - Felony murder.
 - Second-degree reckless homicide.
 - Homicide resulting from negligent control of a vicious animal.
 - Homicide by negligent handling of dangerous weapon, explosives, or fire.
 - Homicide by intoxicated use of vehicle.
 - Homicide by negligent operation of vehicle.
 - Substantial and aggravated battery.
 - Substantial battery or aggravated battery to an unborn child.
 - Battery, special circumstances:
 - Battery by: (1) prisoners; (2) certain committed persons; or (3) persons subject to certain injunctions.
 - Battery to: (1) law enforcement officers, firefighters, or commission wardens; (2) extended supervision agents, parole agents, or aftercare agents; (3) jurors; (4) public officers; (5) technical college district or school district officers or employees; (6) public transit vehicle operators, drivers, or passengers; or (7) emergency medical care providers.
 - Battery or threat to witnesses.
 - Battery or threat to a judge.
 - Battery or threat to Department of Revenue employees.
 - Battery or threat to Department of Safety and Professional Services or Department of Workforce Development employees.
 - Battery to certain employees of counties, cities, villages, or towns.
 - Reckless injury.
 - Recklessly endangering safety.

- Reckless physical abuse of a child causing bodily harm.
- Any felony if the domestic abuse penalty enhancer could be imposed.

Assembly Amendment 2 also provides that the bill first applies to individuals arrested or taken into custody on April 1, 2015.

Assembly Action

On March 21, 2014, Representatives Knudson, Bies, and Craig introduced Assembly Amendment 2. The Assembly then adopted Assembly Amendment 2 and passed the bill, as amended, on voice votes.

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