

State of Wisconsin



2009 Senate Bill 631

Date of enactment: **May 7, 2010**
Date of publication*: **May 21, 2010**

2009 WISCONSIN ACT 261

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

165.76 (1m) If a person is required to provide a biological specimen under sub. (1) (a) to (g) and the department of justice does not have the data obtained from analysis of a biological specimen from the person that the department is required to maintain in the data bank under s. 165.77 (3), the department may require the person to provide a biological specimen, regardless of whether the person previously provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15), 971.17 (1m)

(a), 973.047, or 980.63. The department of justice, the department of corrections, a district attorney, or a county sheriff, shall notify any person whom the department of justice requires to provide a biological specimen under this subsection.

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

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

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

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

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

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

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

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

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

(g) If the person has been committed to the department of health services under s. 51.20 or 971.17 or found

to be a sexually violent person under ch. 980, as directed by the department of health services.

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

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

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

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

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

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

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

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

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

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

STATE OF WISCONSIN	CIRCUIT COURT : COUNTY
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STATE OF WISCONSIN	File No.
--------------------	---------------

vs.

O R D E R

A.B.

Address

City, State, Zip Code

, Respondent

THE STATE OF WISCONSIN, To the Respondent named above:

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

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

[Court information]

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

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

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

Dated:, (year)

By the Court signed:

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

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

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

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

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

(a) The county where the respondent resides.

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

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

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

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

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

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

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

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

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

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