

Clearinghouse Rule 96-038

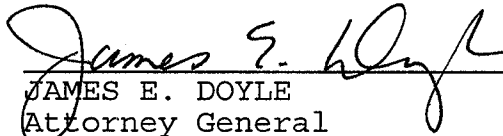
STATE OF WISCONSIN)
) ss.
DEPARTMENT OF JUSTICE)

I, James E. Doyle, Attorney General of the State of Wisconsin and custodian of the official records of the Department of Justice certify that the attached rule, relating to the DNA data bank, was duly adopted and approved by the Department of Justice on June 6, 1997.

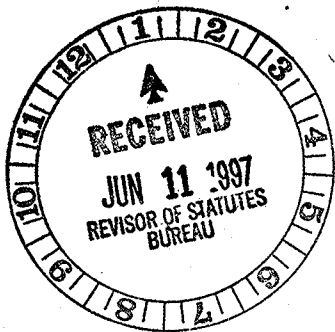
I further certify that the attached copy of the rule has been compared by me with the original on file in this department and that it is a true copy of the original and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Justice at the Capitol in the City of Madison, the 6th day of June, 1997.

(Seal)



JAMES E. DOYLE
Attorney General
Department of Justice



8-1-97

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

A RULE TO CREATE CH. Jus 9, : ORDER OF THE
WIS. ADMIN. CODE, RELATING : DEPARTMENT OF JUSTICE
TO THE DNA DATA BANK : :

ANALYSIS PREPARED BY THE WISCONSIN DEPARTMENT OF JUSTICE

Statutory authority: ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats., created by 1993 Wisconsin Act 16 and 1995 Wisconsin Act 71.

Statute interpreted: ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats., created by 1993 Wisconsin Act 16 and 1995 Wisconsin Act 71.

Summary of the rule: The legislature by enacting ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats., established the DNA data bank, the procedures for carrying out the submission of human biological specimens for the DNA data bank, and the analysis of the DNA for the DNA data bank. Under ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats., the Department of Justice must promulgate rules to administer and carry out its duties for the DNA data bank. This rule meets those statutory requirements.

This rule, like the statute, applies to persons convicted, adjudicated delinquent, or found not guilty because of mental disease or defect of certain sex offenses. Those offenses include sexual assault, first or second degree sexual assault of a child, repeated acts of sexual assault of the same child, and other offenses when a court orders submission of a biological specimen. This rule also applies to persons found to be sexually violent under ch. 980, Stats. This rule requires that such offenders provide a biological specimen to the state crime laboratories for DNA analysis. The rules specify the place for submission of the human biological specimen and the procedures for collection of the specimen.

The state crime laboratories are required to analyze the DNA in any specimen submitted under these rules. A data bank is established based on the data obtained from the DNA analysis of those specimens. The data in the DNA data bank may be used by law

enforcement agencies, prosecutors and defense attorneys for investigations concerning crimes or delinquency proceedings. For example, if DNA evidence is found at a crime scene, the DNA can be compared against the convicted sex offenders in the data bank to develop a suspect. Except for release of the DNA analyses to law enforcement agencies, prosecutors, defense attorneys or the subject of the data, the DNA analyses in the data bank must remain confidential.

Failure to provide a biological specimen may result in criminal penalties under s. 165.765, Stats. It may also constitute a disciplinary offense or probation or parole violation.

A court is required to impose a DNA analysis surcharge of \$250 on persons convicted of sexual assault, sexual assault of a child, and certain other offenses when the court ordered the person to provide a biological specimen.

Fiscal estimate: This rule is to be adopted under ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats. It prescribes the procedures required under ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats. As such, the rule has no independent fiscal effect beyond that of the statute under which it is adopted. A fiscal estimate for the rule is attached.

Initial regulatory flexibility analysis: This rule will not affect small businesses as defined in s. 227.114, Stats., except in an entirely minimal and indirect manner.

TEXT OF RULE

Pursuant to the authority vested in it by ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2), Stats., the Department of Justice creates rules interpreting ss. 165.76, 165.77, 48.34(15), 973.047(2), and 980.063, Stats., as follows:

SECTION 1. Chapter Jus 9 is created to read:

CHAPTER JUS 9

DEOXYRIBONUCLEIC ACID (DNA) DATA BANK

Jus 9.01 PURPOSE. This chapter is promulgated under ss. 165.76(4), 165.77(8), 48.34(15)(b), 973.047(2), and 980.063(2),

Stats., to specify the procedures for carrying out the submission of human biological specimens under s. 165.76, Stats., the DNA analysis and data bank under s. 165.77, Stats., and the DNA analysis under ss. 48.34(15) and 973.047(2), Stats.

Jus 9.02 APPLICABILITY. This chapter applies to any person who meets any of the criteria listed in ss. 165.76(1), 48.34(15)(a), and 973.047(1), Stats.

NOTE: Section 165.76(1), Stats., states that persons who meet the following criteria shall provide a biological specimen to the state crime laboratories for DNA analysis and reads as follows:

(a) Is in prison or a secured correctional facility, as defined in s. 48.02(15m), Stats., or on probation, parole, supervision, aftercare supervision or corrective sanctions supervision on or after August 12, 1993, for any violation of ss. 940.225(1) or (2), 948.02(1) or (2) or 948.025, Stats..

(b) is found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under ss. 51.20 or 971.17, Stats., for any violation of ss. 940.225 (1) or (2), 948.02(1) or (2) or 948.025, Stats..

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

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

(e) Is on parole or probation in this state from another state under ss. 304.13 or 304.135, Stats., . . . for a violation of the law of another state that the department of corrections determines, under s. 304.137, Stats., is comparable to a violation of ss. 940.225(1) or (2), 948.02(1) or (2), or 948.025, Stats.

Section 48.34(15)(a), Stats., states in relevant part:

1. If the child is adjudicated delinquent on the basis of a violation of ss. 940.225, 948.02(1) or (2) or 948.025, Stats., the court shall require the child to provide a

biological specimen to the state crime laboratories for DNA analysis. . . .

2. If the child is adjudicated delinquent on the basis of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, Stats., the court may require the child to provide a biological specimen to the state crime laboratories for DNA analysis. . . .

Section 973.047(1), Stats., states in relevant part:

(a) If a court imposes a sentence or places a person on probation for a violation of ss. 940.225, 948.02 (1) or (2) or 948.025, Stats., the court shall require the person to provide a biological specimen to the state crime laboratories for DNA analysis. . . .

(b) If a court imposes a sentence or places a person on probation for any violation under chs. 940, 944 or 948 or ss. 943.01 to 943.15, Stats., the court may require the person to provide a biological specimen to the state crime laboratories for DNA analysis.

Jus 9.03 DEFINITIONS. In this chapter:

(1) "Department" means the Wisconsin department of justice.

(2) "DNA" means deoxyribonucleic acid.

(3) "law enforcement agency" means a governmental unit of one or more persons employed full time by the federal government, a state or a political subdivision of a state for the purpose of preventing and detecting crime, enforcing federal or state laws or local ordinances, and making arrests for crimes.

(4) "Offender" means any person who meets any of the criteria in ss. 165.76(1), 48.34(15)(a), and 973.047(1), Stats.

Jus 9.04 SUBMISSION OF HUMAN BIOLOGICAL SPECIMEN FOR DNA DATA BANK. (1) PERSONS REQUIRED TO SUBMIT HUMAN BIOLOGICAL SPECIMEN. (a) An offender, whether or not he or she is a resident of the state, who meets any of the following conditions shall

provide a biological specimen to the state crime laboratories for DNA analysis:

1. Is in prison or a secured correctional facility or on probation, parole, supervision, aftercare supervision or corrective sanctions supervision or in institutional care on or after August 12, 1993 under circumstances provided for in ss. 165.76(1)(a), (c), and (e), Stats.

2. Is found guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under circumstances provided for in s. 165.76(1)(b), Stats.

3. Is adjudicated delinquent under circumstances provided for in s. 48.34(15)(a)1., Stats.

4. Is subject to a court imposed sentence or probation under circumstances provided for in s. 973.047(1)(a), Stats.

5. Is found to be a sexually violent person under ch. 980, Stats., on or after June 2, 1994.

6. Receives a disposition as provided for under ss. 48.34(15)(a)2. or 973.047(1)(b), Stats., in which the court orders the offender to provide a biological specimen to the state crime laboratories for DNA analysis.

(b) An offender subject to par. (a) 1. to 5. of this section shall provide a specimen to the state crime laboratories whether or not the court orders such submission on the offender's commitment, judgment of conviction or adjudication of delinquency. An offender subject to par. (a) 6. of this section shall provide a specimen to the state crime laboratories if the court orders such a submission

on the offender's judgment of conviction or adjudication of delinquency.

(2) PLACE FOR SUBMISSION OF HUMAN BIOLOGICAL SPECIMEN. Each offender shall provide a human biological specimen at the place specified in this subsection as follows:

(a) If the offender has been placed on probation, or if the offender is on parole or probation in this state from another state and the department of corrections directs the probationer or parolee to provide a biological specimen, he or she shall provide the specimen at the office of a county sheriff as soon after the placement as practicable, or as directed by his or her probation and parole agent.

(b) If the offender has been placed on supervision as a child, he or she shall provide the specimen as soon after the placement as practicable at a location as directed by the agency providing supervision for the child.

(c) If the offender has been sentenced to prison, he or she shall provide the specimen while in prison as directed by the department of corrections. If the specimen has not been provided while in prison, the offender shall provide the specimen at the office of a county sheriff or as directed by his or her parole agent.

(d) If the offender has been placed in a secured correctional facility as a child, he or she shall provide the specimen while in the secured correctional facility as directed by the department of corrections. If the specimen has not been provided in the secured

correctional facility, the offender shall provide the specimen as directed by the agency providing supervision.

(e) If the offender has been sentenced to a county jail or county house of corrections, the offender shall provide the specimen as directed by the office of a county sheriff.

(f) If the offender has been committed to the department of health and family services under ss. 51.20 or 971.17, Stats., or found to be a sexually violent person under ch. 980, Stats., he or she shall provide the specimen as directed by the department of health and family services.

(g) If pars. (a) to (f) do not apply, the offender shall provide the specimen as directed by the office of a county sheriff or as directed by the agent or agency providing supervision or having legal or physical custody of the offender.

(3) PROCEDURE FOR SUBMISSION OF HUMAN BIOLOGICAL SPECIMEN. Human biological specimens shall be collected and sent to the state crime laboratories in accordance with the following procedures:

(a) The collection of a human biological specimen by oral swab or pin prick to the finger may be done by any person and does not require special medical training. Licensed or certified medical staff shall perform all procedures requiring medical expertise.

(b) The collection of a human biological specimen includes the collection of any source of DNA approved by the state crime laboratories.

(c) The collection of a human biological specimen shall be performed in accordance with department procedures and with methods approved by the state crime laboratories.

(d) The human biological specimen shall be sent to a state crime laboratory in accordance with department procedures approved by the state crime laboratories.

NOTE: Offenders sometime move to other states through the Interstate Corrections Compact or for other reasons. Offenders who are subject to Wisconsin sentences or commitments under ss. 165.76(1), 48.34(15)(a), or 973.047(1), Stats., but who subsequently reside out-of-state are required to provide a specimen to the state crime laboratories for DNA analysis under this chapter. The department will cooperate with the out-of-state agent or agency providing supervision or having legal or physical custody of the offender to facilitate the submission of the specimen. If a person is on parole or probation in this state from another state and the department of corrections directs the probationer or parolee to provide a biological specimen under s. 165.76, Stats., that person shall provide the specimen as directed by his or her probation and parole agent as soon as practicable after entering this state.

The Physical Evidence Handbook published by the Wisconsin Department of Justice State Crime Laboratories and any updated amendments to the handbook issued in the form of department procedures constitute methods for collection of human biological specimens approved by the state crime laboratories. Pursuant to s. 165.77(7), Stats., whenever a Wisconsin law enforcement agency or a health care professional collects evidence in a case of alleged or suspected sexual assault, the agency or professional shall follow the procedures specified in the department's Physical Evidence Handbook or any updated amendments issued in the form of department procedures.

Jus 9.05 USE OF HUMAN BIOLOGICAL SPECIMENS FOR DNA DATA BANK.

If the state crime laboratories receive a specimen under this chapter, the laboratories shall analyze the DNA in the specimen. The laboratories shall maintain a data bank based on the data obtained from the DNA analysis of those specimens.

Jus 9.06 USE OF DNA DATA BANK. (1) USE. The laboratories may compare the data obtained from one specimen with the data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies and the combined DNA identification system in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings, subject to s. 972.11(5), Stats.

(2) DESTRUCTION OF THE SPECIMEN. The state crime laboratories shall destroy specimens obtained for the DNA data bank under this chapter after analysis has been completed.

(3) EXPUNGEMENT OF DNA ANALYSIS DATA. (a) An offender may request expungement of his or her DNA analysis data submitted under this chapter on the grounds that his or her conviction or adjudication has been reversed, set aside or vacated, or that the governor has granted a pardon. The state crime laboratories shall expunge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person if it receives both of the following:

1. The person's written request for expungement on a form provided by the Milwaukee crime laboratory.

2. A certified copy of the court order reversing, setting aside or vacating the conviction or adjudication, or a certified copy of the governor's grant of pardon.

(b) If the administrator of the department's division of law enforcement services determines that a human biological specimen was collected from a person by mistake and that the person is not subject to the submission requirements of this chapter, the state crime laboratories shall expunge all records and identifiable information in the data bank pertaining to the person and destroy all specimens from the person.

(4) CONFIDENTIALITY. Except for the uses listed in this chapter and s. 165.77, Stats., DNA analysis data collected under this chapter for the DNA data bank shall remain confidential. Information concerning the fact that a person has submitted a human biological specimen for the DNA data bank is not confidential and may be released.

NOTE: Forms for requesting expungement of DNA analysis data are available from the Milwaukee Crime Laboratory at 1578 S. 11th Street, Milwaukee, Wisconsin 53204-2860.

Jus 9.07 COMPLIANCE AND PENALTIES. Failure to provide a biological specimen under this chapter constitutes a criminal offense under s. 165.765, Stats. Failure to provide a human biological specimen under this chapter may also constitute a disciplinary offense or probation or parole violation.

Jus 9.08 DNA ANALYSIS SURCHARGE. (1) If a court imposes a sentence or places a person on probation on or after August 12, 1993, under any of the following circumstances, the court shall impose a DNA analysis surcharge of \$250 under s. 973.046, Stats.:

(a) The person violated ss. 940.225 or 948.02(1) or (2), Stats.; or

(b) The court ordered the person to provide a biological specimen under s. 973.047(1), Stats.

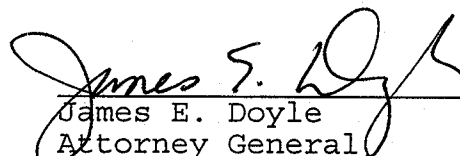
(2) If a court imposes a DNA surcharge under sub. (1) and the person in a state prison has not paid the surcharge, the department of corrections shall collect the amount owed from the income earned by or received for the benefit of the inmate. The department of corrections shall transmit any amount collected to the state treasurer.

Jus 9.09 COOPERATION. The department of corrections, department of health and family services, county departments under ss. 46.215, 46.22 and 46.23, Stats., and county sheriffs shall cooperate fully with the department to meet the requirements of this chapter.

(end of text)

This rule shall take effect on the first day of the month following its publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin, this
6th day of June, 1997.



James E. Doyle
Attorney General
Wisconsin Department of Justice



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL
Burneatta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

Eileen W. Pray
Assistant Attorney General
608/267-2798
Fax 608/267-2223
TTY 608/267-8902

June 11, 1997

Gary Poulson, Deputy Revisor
Revisor of Statutes Bureau
Suite 800
131 West Wilson Street
Madison, WI 53703-3233

Re: Filing of Rule
Ch. Jus 9, Wis. Admin. Code

Dear Mr. Poulson:

The Department of Justice enclosed a certified copy of ch. Jus 9, Wis. Admin. Code, for filing under sec. 227.20, Stats. The department has adopted this rule and requests that it be published as required under sec. 227.21, Stats.

An additional uncertified copy of the rule and a diskette containing the rule are also enclosed for your use.

Sincerely,

Eileen W. Pray
Assistant Attorney General

EWP:ch
Enclosures
c: David Steingraber
Sharon Miemietz
Charles Hoornstra
Matthew Frank



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

JAMES E. DOYLE
ATTORNEY GENERAL

Burneatta L. Bridge
Deputy Attorney General

123 West Washington Avenue
P.O. Box 7857
Madison, WI 53707-7857

Eileen W. Pray
Assistant Attorney General
608/267-2798
Fax 608/267-2223
TTY 608/267-8902

June 11, 1997

The Honorable Douglas La Follette
Office of the Secretary of State
Government Records Division
30 West Mifflin Street
Madison, WI 53707

Re: Filing of Rule
Ch. Jus 9, Wis. Admin. Code

Dear Secretary La Follette:

The Department of Justice enclosed a certified copy of ch. Jus 9, Wis. Admin. Code, for filing under sec. 227.20, Stats. The department has adopted this rule and requests that it be filed as required in the Office of the Secretary of State.

Sincerely,

Eileen W. Pray
Assistant Attorney General

EWP:ch

Enclosure

c: Gary Poulson (w/o enclosure)
Charles Hoornstra (w/o enclosure)
David Steingraber
Sharon Miemietz