



2011 SENATE BILL 169

August 11, 2011 - Introduced by Senators S. COGGS and WANGGAARD, cosponsored by Representatives BARCA, YOUNG, HEBL, STASKUNAS, BERCEAU and FIELDS. Referred to Committee on Labor, Public Safety, and Urban Affairs.

1 **AN ACT** *to repeal* 938.34 (15) (b); *to renumber and amend* 980.063 (1) (a) and
2 (b); *to amend* 51.20 (13) (cr), 165.76 (2m) (intro.), 165.76 (3), 165.76 (4), 165.765
3 (1), 165.765 (2) (a), 938.34 (15) (a) 1. and 2., 971.17 (1m) (a) and 973.047 (1f);
4 and *to create* 938.34 (15) (c) of the statutes; **relating to:** collecting a
5 deoxyribonucleic acid sample and requiring the exercise of rule-making
6 authority.

Analysis by the Legislative Reference Bureau

Under current law, a person convicted of, found delinquent for, institutionalized for, or declared registered sex offenders due to committing, felonies or certain other misdemeanors are generally required to provide a deoxyribonucleic acid (DNA) sample to the state crime laboratories for analysis and inclusion in the Department of Justice (DOJ) DNA database. Under current law, a person who is required to provide a DNA sample must provide it as follows:

1. A person sentenced to prison or a juvenile correctional facility must provide the DNA sample while in prison or the facility, as directed by the Department of Corrections (DOC). If the person does not provide the DNA sample while in prison or the facility, then he or she must provide the DNA sample as soon as practicable after release at a sheriff's office, except if directed otherwise by the person's supervising agent.

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2. A person placed on probation by a court in this state must provide the DNA sample as soon as practicable after placement at the sheriff's office, except if directed otherwise by the person's supervising agent.

3. A person placed on parole or probation in this state from another state, if directed by DOC to provide a DNA sample, must provide the DNA sample, as soon as practicable after release at the office of the county sheriff, except if directed otherwise by the person's supervising agent.

4. A juvenile placed on supervision shall provide the DNA sample as soon as practicable after placement at the sheriff's office, except if directed otherwise by the agency providing supervision.

5. A person sentenced to jail or a county house of corrections must provide the DNA sample as directed by the sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in jail or the house of corrections, as soon as practicable after release at a sheriff's office.

6. A person committed to the Department of Health Services must provide the DNA sample as directed by that department.

7. If none of the above applies, the person must provide the DNA sample as soon as practicable after the obligation to provide a DNA sample arises at the sheriff's office, except if directed otherwise by the agency providing supervision or having custody of the person.

Under this bill, when a person is found delinquent or found not guilty by reason of mental disease or defect, sentenced, declared a sexual predator, or placed into custody or on probation for a crime that requires the person to submit a DNA sample, the court must place the person in the custody of the sheriff immediately after the sentencing or placement hearing for a time sufficient to provide the sample. The bill requires DOJ to promulgate rules for the collecting of samples by sheriffs.

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, on or after the effective date of this
4 paragraph [LRB inserts date], is found to have committed a violation of s. 940.225
5 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085, the court shall ~~require the individual~~
6 place the person in the physical custody of the sheriff for a time sufficient for the
7 person to provide a biological specimen. The sheriff shall collect the biological

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1 specimen and submit it to the state crime laboratories for deoxyribonucleic acid
2 analysis as provided in rules promulgated under s. 165.76 (4).

3 **SECTION 2.** 165.76 (2m) (intro.) of the statutes is amended to read:

4 165.76 (2m) (intro.) ~~Unless~~ Except as provided under ss. 51.20 (13) (cr), 938.34
5 (15), 971.17 (1m) (a), 973.047, or 980.063, or as otherwise provided by rule under sub.
6 (4), a person who is required to provide a biological specimen under sub. (1) shall
7 provide the biological specimen at the following time and place:

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

9 165.76 (3) Notwithstanding sub. (1), if a county sheriff, the department of
10 corrections, or the department of health services determines that a person who is
11 required to ~~submit~~ provide a biological specimen under sub. (1) has ~~submitted~~
12 provided a biological specimen and that data obtained from analysis of the person's
13 biological specimen is included in the data bank under s. 165.77 (3), the person is not
14 required to ~~submit~~ provide another biological specimen.

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

16 165.76 (4) The department of justice ~~may~~ shall promulgate rules ~~to implement~~
17 ~~this section for providing and collecting biological specimens and submitting~~
18 ~~specimens to the crime laboratories under this section and~~ 51.20 (13) (cr), 938.34
19 (15), 971.17 (1m) (a), 973.047, and 980.063.

20 **SECTION 5.** 165.765 (1) of the statutes is amended to read:

21 165.765 (1) Whoever intentionally fails to comply with a requirement to ~~submit~~
22 provide a biological specimen as ordered under s. 51.20 (13) (cr), 165.76, 938.34 (15),
23 971.17 (1m) (a), 973.047, or 980.063 may be fined not more than \$10,000 or
24 imprisoned for not more than 9 months or both.

25 **SECTION 6.** 165.765 (2) (a) of the statutes is amended to read:

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1 165.765 (2) (a) Any physician, registered nurse, medical technologist,
2 physician assistant or person acting under the direction of a physician, sheriff, or
3 person acting under the direction of a sheriff who obtains a biological specimen as
4 ordered under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047, or
5 980.063 is immune from any civil or criminal liability for the act, except for civil
6 liability for negligence in the performance of the act.

7 **SECTION 7.** 938.34 (15) (a) 1. and 2. of the statutes are amended to read:

8 938.34 (15) (a) 1. If, on or after the effective date of this subdivision [LRB
9 inserts date], the juvenile is adjudicated delinquent on the basis of a violation of s.
10 940.225, 948.02 (1) or (2), 948.025, or 948.085 (2), the court shall require the juvenile
11 to provide a biological specimen ~~to the state crime laboratories~~ for deoxyribonucleic
12 acid analysis by the state crime laboratories.

13 2. Except as provided in subd. 1., if, on or after the effective date of this
14 subdivision [LRB inserts date], the juvenile is adjudicated delinquent on the basis
15 of any violation under ch. 940, 944 or 948 or ss. 943.01 to 943.15, the court may
16 require the juvenile to provide a biological specimen ~~to the state crime laboratories~~
17 for deoxyribonucleic acid analysis by the state crime laboratories.

18 **SECTION 8.** 938.34 (15) (b) of the statutes is repealed.

19 **SECTION 9.** 938.34 (15) (c) of the statutes is created to read:

20 938.34 (15) (c) If a court requires a juvenile to provide a biological specimen
21 under par. (a), the court shall, at the end of the hearing in which a disposition is
22 imposed under this section, place the juvenile in the physical custody of the sheriff
23 for a time sufficient for the juvenile to provide the biological specimen. The sheriff
24 shall collect the biological specimen and submit it to the state crime laboratories as
25 provided in rules promulgated by the department of justice under s. 165.76 (4).

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1 **SECTION 10.** 971.17 (1m) (a) of the statutes is amended to read:

2 971.17 **(1m)** (a) If, on or after the effective date of this paragraph [LRB
3 inserts date], the defendant under sub. (1) is found not guilty by reason of mental
4 disease or defect for a felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or
5 948.10, the court shall require place the person in the physical custody of the sheriff
6 for a time sufficient for the person to provide a biological specimen. The sheriff shall
7 collect the biological specimen and submit it to the state crime laboratories for
8 deoxyribonucleic acid analysis as provided in rules promulgated under s. 165.76 (4).

9 **SECTION 11.** 973.047 (1f) of the statutes is amended to read:

10 973.047 **(1f)** If, on or after the effective date of this subsection [LRB inserts
11 date], a court imposes a sentence or places a person on probation for a felony
12 conviction or for a conviction for a violation of s. 165.765 (1), 940.225 (3m), 944.20,
13 or 948.10 (1) (b), the court shall require the person to provide a biological specimen
14 to the state crime laboratories for deoxyribonucleic acid analysis by the state crime
15 laboratories. At the end of the hearing in which the sentence is imposed or the person
16 is placed on probation, the court shall place the person in the physical custody of the
17 sheriff for a time sufficient for the person to provide the biological specimen. The
18 sheriff shall collect the biological specimen and submit it to the state crime
19 laboratories as provided in rules promulgated by the department of justice under s.
20 165.76 (4).

21 **SECTION 12.** 980.063 (1) (a) and (b) of the statutes are renumbered 980.063 (1)
22 and (3) and amended to read:

23 980.063 **(1)** If, on or after the effective date of this subsection [LRB inserts
24 date], a person is found to be a sexually violent person under this chapter, the court
25 shall require place the person in the physical custody of the sheriff for a time

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1 sufficient for the person to provide a biological specimen. The sheriff shall collect the
2 biological specimen and submit it to the state crime laboratories for deoxyribonucleic
3 acid analysis as provided in rules promulgated under s. 165.76 (4).

4 (3) The results from deoxyribonucleic acid analysis of a specimen under par.
5 (a) sub. (1) may be used only as authorized under s. 165.77 (3). The state crime
6 laboratories shall destroy any such specimen in accordance with s. 165.77 (3).

7 **SECTION 13. Initial applicability.**

8 (1) This act first applies to biological specimens provided on the effective date
9 of this subsection.

10 **SECTION 14. Effective date.**

11 (1) This act takes effect on the first day of the 13th month beginning after
12 publication.

13 (END)