



2013 ASSEMBLY BILL 314

August 23, 2013 – Introduced by Representatives GOYKE, KESSLER, HEBL, BERCEAU, KOLSTE, DANOU, SHANKLAND, SINICKI, ZEPNICK, RICHARDS, WRIGHT, YOUNG, JORGENSEN, OHNSTAD and MILROY. Referred to Joint Committee on Finance.

1 **AN ACT to repeal** 165.76 (1) (gm), 165.77 (4) (am) 2. c., 165.77 (4) (am) 3. c. and
2 165.84 (7); and **to amend** 165.76 (1m), 165.76 (4) (a), (b) and (c), 165.765 (1m),
3 165.765 (2) (a) 1., 165.77 (2) (b), 165.77 (2m) (c), 165.77 (3), 165.77 (4) (am) 2.
4 (intro.), a., b. and d., 165.77 (4) (am) 3. (intro.), a., b. and d., 165.77 (7m), 938.21
5 (1m), 938.30 (2m), 946.52 and 970.02 (8) of the statutes; **relating to:**
6 eliminating the collection of deoxyribonucleic acid at arrest.

Analysis by the Legislative Reference Bureau

Under current law, certain individuals are required to submit biological specimens to the crime laboratories in the Department of Justice (DOJ) for deoxyribonucleic acid (DNA) analysis. These individuals include a juvenile who has been adjudicated delinquent for certain offenses and an individual who has been found guilty of a felony, fourth-degree sexual assault, lewd and lascivious behavior, or exposing genitals to a child for sexual gratification. In addition, beginning on April 1, 2015, law enforcement agencies must obtain a biological specimen from each individual arrested for a felony or taken into custody for a juvenile offense that would be a felony if committed by an adult. The law enforcement agency must submit the specimen to the crime laboratories if the individual was arrested or taken into custody under a warrant, the court finds probable cause that the individual committed the offense, or the individual fails to appear at the initial appearance, preliminary examination, or delinquency proceeding, whichever is appropriate;

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otherwise, the law enforcement agency must destroy the specimen within one year of obtaining it.

This bill eliminates the requirement beginning on April 1, 2015, that law enforcement agencies obtain a biological specimen from each individual arrested for a felony or taken into custody for a juvenile offense that would be a felony if committed by an adult.

For further information see the *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.** 165.76 (1) (gm) of the statutes, as created by 2013 Wisconsin Act
2 20, is repealed.

3 **SECTION 2.** 165.76 (1m) of the statutes, as affected by 2013 Wisconsin Act 20,
4 is amended to read:

5 165.76 **(1m)** If a person is required to provide a biological specimen under sub.
6 (1) (a) to ~~(gm)~~ (g) and the department of justice does not have the data obtained from
7 analysis of a biological specimen from the person that the department is required to
8 maintain in the data bank under s. 165.77 (3), the department may require the
9 person to provide a biological specimen, regardless of whether the person previously
10 provided a biological specimen under this section or s. 51.20 (13) (cr), ~~165.84 (7)~~,
11 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or
12 980.063. The department of justice, the department of corrections, a district
13 attorney, or a county sheriff, shall notify any person whom the department of justice
14 requires to provide a biological specimen under this subsection.

15 **SECTION 3.** 165.76 (4) (a), (b) and (c) of the statutes, as created by 2013
16 Wisconsin Act 20, are amended to read:

17 165.76 **(4)** (a) Establish procedures and time limits for obtaining and
18 submitting biological specimens under this section and ss. 51.20 (13) (cr), ~~165.84 (7)~~,

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1 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, and
2 980.063.

3 (b) Specify whether an individual who is required under this section or s. 51.20
4 (13) (cr), ~~165.84 (7)~~, 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a),
5 973.047, or 980.063 to provide a biological specimen for deoxyribonucleic acid
6 analysis must provide a new biological specimen if the crime laboratories already
7 have a biological specimen from the individual or if data obtained from
8 deoxyribonucleic acid analysis of the individual's biological specimen are already
9 included in the data bank under s. 165.77 (3).

10 (c) Allow a biological specimen, or data obtained from analysis of a biological
11 specimen, obtained under this section or s. 51.20 (13) (cr), ~~165.84 (7)~~, 938.21 (1m),
12 938.30 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 to be
13 submitted for inclusion in an index established under 42 USC 14132 (a) or in another
14 national index system.

15 **SECTION 4.** 165.765 (1m) of the statutes, as created by 2013 Wisconsin Act 20,
16 is amended to read:

17 165.765 (1m) A law enforcement officer; a jail officer; a tribal officer; a
18 correctional officer; a probation, extended supervision, or parole officer; or an
19 employee of the department of health services may use reasonable force to obtain a
20 biological specimen from a person who intentionally refuses to provide a biological
21 specimen that is required under s. 165.76 (1), ~~165.84 (7)~~, 938.21 (1m), 938.30 (2m),
22 938.34 (15), or 970.02 (8).

23 **SECTION 5.** 165.765 (2) (a) 1. of the statutes, as affected by 2013 Wisconsin Act
24 20, is amended to read:

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1 165.765 (2) (a) 1. Any physician, registered nurse, medical technologist,
2 physician assistant, or person acting under the direction of a physician who obtains
3 a biological specimen under s. 51.20 (13) (cr), 165.76, ~~165.84 (7)~~, 938.21 (1m), 938.30
4 (2m), 938.34 (15), 970.02 (8), 971.17 (1m) (a), 973.047, or 980.063 is immune from any
5 civil or criminal liability for the act, except for civil liability for negligence in the
6 performance of the act.

7 **SECTION 6.** 165.77 (2) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
8 is amended to read:

9 165.77 (2) (b) Paragraph (a) does not apply to specimens received under s. 51.20
10 (13) (cr), 165.76, ~~165.84 (7)~~, 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 971.17
11 (1m) (a), 973.047, or 980.063.

12 **SECTION 7.** 165.77 (2m) (c) of the statutes, as affected by 2013 Wisconsin Act
13 20, is amended to read:

14 165.77 (2m) (c) Paragraph (b) does not apply to specimens received under s.
15 51.20 (13) (cr), 165.76, ~~165.84 (7)~~, 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8),
16 971.17 (1m) (a), 973.047, or 980.063.

17 **SECTION 8.** 165.77 (3) of the statutes, as affected by 2013 Wisconsin Act 20, is
18 amended to read:

19 165.77 (3) If the laboratories receive a human biological specimen under s.
20 51.20 (13) (cr), 165.76, ~~165.84 (7) (am)~~, 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02
21 (8), 971.17 (1m) (a), 973.047, or 980.063, the laboratories shall analyze the
22 deoxyribonucleic acid in the specimen. The laboratories shall maintain a data bank
23 based on data obtained from deoxyribonucleic acid analysis of those specimens. The
24 laboratories may compare the data obtained from one specimen with the data
25 obtained from other specimens. The laboratories may make data obtained from any

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1 analysis and comparison available to law enforcement agencies in connection with
2 criminal or delinquency investigations and, upon request, to any prosecutor, defense
3 attorney or subject of the data. The data may be used in criminal and delinquency
4 actions and proceedings.

5 **SECTION 9.** 165.77 (4) (am) 2. (intro.), a., b. and d. of the statutes, as created by
6 2013 Wisconsin Act 20, are amended to read:

7 165.77 (4) (am) 2. (intro.) If the person was required to provide a biological
8 specimen ~~under s. 165.84 (7) in connection with an arrest or~~ under s. 970.02 (8), one
9 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 d. The person was adjudged guilty of a ~~crime in connection with either the~~
19 ~~arrest or any charge~~ for which the person was required to provide a biological
20 specimen under s. 970.02 (8), and all such convictions have been reversed, set aside,
21 or vacated.

22 **SECTION 10.** 165.77 (4) (am) 2. c. of the statutes, as created by 2013 Wisconsin
23 Act 20, is repealed.

24 **SECTION 11.** 165.77 (4) (am) 3. (intro.), a., b. and d. of the statutes, as created
25 by 2013 Wisconsin Act 20, are amended to read:

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1 165.77 (4) (am) 3. (intro.) If the person was required to provide a biological
2 specimen under ~~s. 165.84 (7) in connection with being taken into custody under s.~~
3 ~~938.19 or~~ under s. 938.21 (1m) or 938.30 (2m), one of the following applies:

4 a. All criminal complaints or delinquency petitions that allege that the person
5 committed a violation that would be a felony if committed by an adult in this state
6 ~~and that are in connection with the taking into custody~~ have been dismissed.

7 b. The trial court reached final disposition for all allegations that the person
8 committed a violation that would be a felony if committed by an adult in this state
9 ~~that are in connection with the taking into custody~~ and the person was not convicted
10 or adjudged delinquent for an offense that would be a felony if committed by an adult
11 in this state ~~that is in connection with the taking into custody~~.

12 d. The person was convicted or adjudged delinquent for a violation that would
13 be a felony if committed by an adult in this state ~~and that is in connection with the~~
14 ~~taking into custody~~ and the conviction or delinquency adjudication has been
15 reversed, set aside, or vacated.

16 **SECTION 12.** 165.77 (4) (am) 3. c. of the statutes, as created by 2013 Wisconsin
17 Act 20, is repealed.

18 **SECTION 13.** 165.77 (7m) of the statutes, as created by 2013 Wisconsin Act 20,
19 is amended to read:

20 165.77 (7m) An entry in the data bank that is found to be erroneous does not
21 prohibit the legitimate use of the entry to further a criminal investigation or
22 prosecution. The failure of a law enforcement agency or the laboratories to comply
23 with this section, s. 165.76, or 165.765, ~~or 165.84~~, or any rules or procedures adopted
24 to administer those sections, is not grounds for challenging the validity of the data

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1 collection, for challenging the use of the sample as provided in those sections, or for
2 the suppression of evidence based upon or derived from any entry in the data bank.

3 **SECTION 14.** 165.84 (7) of the statutes, as created by 2013 Wisconsin Act 20, is
4 repealed.

5 **SECTION 15.** 938.21 (1m) of the statutes, as created by 2013 Wisconsin Act 20,
6 is amended to read:

7 938.21 (1m) BIOLOGICAL SPECIMEN. If the juvenile has been taken into custody
8 on the basis of a violation that would be a felony if committed by an adult in this state,
9 ~~the court shall determine if a biological specimen has been obtained from the juvenile~~
10 ~~under s. 165.84 (7), and if not, the court shall direct that a law enforcement agency~~
11 ~~or tribal law enforcement agency obtain a biological specimen from the juvenile and~~
12 ~~submit it to the state crime laboratories as specified in rules promulgated by the~~
13 ~~department of justice under s. 165.76 (4). If the court requires the juvenile to provide~~
14 ~~a specimen under this subsection or if a biological specimen has already been~~
15 ~~obtained from the juvenile, the~~ The court shall inform the juvenile that he or she may
16 request expungement under s. 165.77 (4).

17 **SECTION 16.** 938.30 (2m) of the statutes, as created by 2013 Wisconsin Act 20,
18 is amended to read:

19 938.30 (2m) BIOLOGICAL SPECIMEN. If the juvenile is before the court on the basis
20 of a violation that would be a felony if committed by an adult in this state, ~~the court~~
21 ~~shall determine if a biological specimen has been obtained from the juvenile under~~
22 ~~s. 165.84 (7), and if not, the court shall direct that a law enforcement agency or tribal~~
23 ~~law enforcement agency obtain a biological specimen from the juvenile and submit~~
24 ~~it to the state crime laboratories as specified in rules promulgated by the department~~
25 ~~of justice under s. 165.76 (4). If the court requires the juvenile to provide a specimen~~

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1 ~~under this subsection or if a biological specimen has already been obtained from the~~
2 ~~juvenile, the~~ The court shall inform the juvenile that he or she may request
3 expungement under s. 165.77 (4).

4 **SECTION 17.** 946.52 of the statutes, as affected by 2013 Wisconsin Act 20,
5 section 1922, is amended to read:

6 **946.52 Failure to submit biological specimen.** Whoever intentionally fails
7 to comply with a requirement to submit a biological specimen under s. 165.76, ~~165.84~~
8 ~~(7)~~, 938.21 (1m), 938.30 (2m), 938.34 (15), 970.02 (8), 973.047, or 980.063 is guilty of
9 a Class A misdemeanor.

10 **SECTION 18.** 970.02 (8) of the statutes, as created by 2013 Wisconsin Act 20, is
11 amended to read:

12 970.02 (8) If the offense charged is a felony, ~~the judge shall determine if a~~
13 ~~biological specimen has been obtained from the defendant under s. 165.84 (7), and,~~
14 ~~if not,~~ the judge shall direct that a law enforcement agency or tribal law enforcement
15 agency obtain a biological specimen from the defendant and submit it to the state
16 crime laboratories as specified in rules promulgated by the department of justice
17 under s. 165.76 (4). ~~If the judge requires the defendant to provide a specimen under~~
18 ~~this subsection or if a biological specimen has already been obtained from the~~
19 ~~defendant, the~~ The judge shall inform the defendant that he or she may request
20 expungement under s. 165.77 (4).

21 **SECTION 19. Initial applicability.**

22 (1) This act first applies to individuals arrested or taken into custody on the
23 effective date of this subsection.

24 **SECTION 20. Effective date.**

