



STATE OF WISCONSIN
Department of Justice

PROPOSED ORDER ADOPTING PERMANENT RULES

INTRODUCTORY CLAUSE

The State of Wisconsin Department of Justice (“DOJ”) proposes an order to repeal and re-create chapter Jus 9 relating to procedures and standards for the submission of human biological specimens, the analysis of DNA in those specimens, the maintenance of a data bank of DNA analysis data, and the use and disposition of specimens and data in the data bank.

TEXT OF THE PROPOSED PERMANENT RULES

SECTION 1. Chapter Jus 9 (title) is repealed and recreated to read:

CHAPTER JUS 9: DEOXYRIBONUCLEIC ACID (DNA) DATA BANK

SECTION 2. Jus 9.01 is repealed, recreated, and titled to read:

Jus 9.01 Purpose. This chapter is promulgated under ss. 165.76(4), 165.77(8), 938.34(15), 973.047(2), and 980.063(2), Stats., to specify the procedures for carrying out the submission of human biological specimens, the analysis of DNA in those specimens, the maintenance of a data bank of DNA analysis data, and the use and disposition of specimens and data in the data bank under ss. 165.76, 165.77, 938.34(15), and 973.047(2), Stats.

SECTION 3. Jus 9.02 is repealed, recreated, and titled to read:

Jus 9.02 Applicability. This chapter applies to any person who meets any of the criteria listed in ss. 165.76(1), 938.34(15), and 973.047(1f), Stats.

SECTION 4. Jus 9.03 is repealed, recreated, and titled to read:

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), 938.34(15), and 973.047(1f), Stats.
- (5) “Tribal law enforcement agency” has the meaning given in s. 165.83(1)(e), Stats.
- (6) “Violent crime” has the meaning given in s. 165.84(7)(ab), Stats.

SECTION 5. Jus 9.04 is repealed, recreated, and titled to read:

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 this 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 in s. 165.76(1)(a), (ag), (bg), (c), and (e), Stats., or on or after January 1, 2000 under circumstances provided in s. 165.76(1)(ar), (cr), and (f), Stats.

2. Is found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under circumstances provided in s. 165.76(1)(bm), Stats., or on or after January 1, 2000, and committed under circumstances provided in s. 165.76(1)(br), Stats.

3. Is adjudicated delinquent under circumstances provided in s. 938.34(15)(a), Stats.

4. Is required by a court to provide a biological specimen under circumstances provided in s. 165.76(1)(g), Stats.

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

6. Is or was found guilty of any misdemeanor on or after April 1, 2015, any felony on or after January 1, 2000, or under circumstances as provided in s. 165.76(1)(av)2., and 165.76(1)(aw), Stats.

7. Is arrested for a violent crime, or is taken into custody for a juvenile offense that would be a violent crime, as defined in s. 165.84(7)(ab), Stats.

8. Is notified that the person is required to provide a biological specimen under circumstances provided in s. 165.76(1m), Stats.

(b) An offender required to provide a biological specimen under par. (a) shall provide a biological 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.

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

(a) 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 or parole agent in conformity with s. Jus 9.04(3).

(b) If the offender has been placed on supervision as a child [juvenile], 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 [juvenile] in conformity with s. Jus 9.04(3).

(c) If the offender has been placed in a secured correctional facility as a child [juvenile], 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 in conformity with s. Jus 9.04(3).

(d) If the offender has been found guilty of a misdemeanor or felony and is present in court for said finding, the offender shall contemporaneously provide the specimen to the office of the county sheriff exercising jurisdiction within the venue of the court in conformity with s. Jus 9.04(3).

(e) If the offender has been committed to the department of health services under s. 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 services in conformity with s. Jus 9.04(3).

(f) If the offender has been arrested or taken into custody for a violent crime, he or she shall contemporaneously provide the specimen to the law enforcement or tribal law

enforcement agency that obtains the person's fingerprints or other identifying data in conformity with s. Jus 9.04(3).

(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 in conformity with s. Jus 9.04(3).

(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 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) Before a human biological specimen is collected from a person required to submit such a specimen under s. Jus 9.04(1), the law enforcement agency responsible for collecting the specimen shall do the following in the sequence listed:

1. Review the Crime Information Bureau's Computerized Criminal History to determine if "Conviction DNA" is on file for the person in question. If "Conviction DNA" is on file, no additional biological specimen shall be collected. If "Conviction DNA" is not on file, proceed under par. (c)3.

2. Determine whether the biological specimen to be collected is the result of a conviction of a violent crime for which a biological specimen was taken at arrest. If a biological

specimen was taken at arrest, no additional biological specimen shall be collected. If a biological specimen was not taken at arrest, proceed under par. (c)3.

3. Complete a DNA buccal swab submission form as provided by the state crime laboratories indicating the reason for the submission.

4. Collect the human biological specimen as provided in s. Jus 9.04 and in accordance with department procedures and with methods approved by the state crime laboratories.

5. Obtain a full set of fingerprints from the person from whom the human biological specimen is being collected.

(d) Within 24 hours of the collection of each human biological specimen collected under this section, the specimen and the full set of fingerprints of the person from whom it was collected shall be sent to a state crime laboratory in accordance with department procedures approved by the state crime laboratories.

SECTION 6. Jus 9.05 is repealed, recreated, and titled to read:

Jus 9.05 Use of human biological specimens for DNA data bank. Upon receiving a human biological specimen under this chapter, the state crime laboratories shall analyze the DNA in the specimen and shall maintain a data bank based on the data obtained from the DNA analysis of those specimens.

SECTION 7. Jus 9.06 is repealed, recreated, and titled to read:

Jus 9.06 Use of DNA data bank.

(1) USE. The state crime laboratories may compare the data obtained from one human biological 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. 971.23(9), Stats.

(2) EXPUNGEMENT OF DNA ANALYSIS DATA.

(a) A person may request expungement of his or her DNA analysis data submitted under this chapter on the following grounds:

1. The DNA analysis data was included in the data bank pursuant to s. 165.77(4)(am)1., Stats., and all convictions, findings, or adjudications for which the person was required to submit a biological sample have been reversed, set aside or vacated.

2. The DNA analysis data was included in the data bank pursuant to s. 165.77(4)(am)2., Stats., and one of the circumstances provided for in s. 165.77(4)(am)2.a., b., c., or d., Stats., applies to the person.

3. The DNA analysis data was included in the data bank pursuant to s. 165.77(4)(am)3., Stats., and one of the circumstances provided for in s. 165.77(4)(am)3.a. b., c., or d., Stats., applies to the person.

(b) A request for expungement of DNA analysis data under par. (a) must be made in writing on a form provided by the state crime laboratories. If par. (a)1. applies to the person making the request, then the request must be accompanied by a certified copy of the court order reversing, setting aside or vacating the person's conviction or adjudication.

(c) Upon receipt of a complete expungement request meeting the requirements of pars. (a) and (b), the state crime laboratories shall expunge all records and identifiable information in the databank pertaining to the person that are required to be purged under s. 165.77(4)(bm), Stats., and destroy all human biological specimens from the person.

(d) The state crime laboratories shall destroy a biological specimen under the circumstances provided in s. 165.84(7)(am)2m., Stats.

(e) A fingerprint expungement request made pursuant to s. 165.84(1), Stats., related to a violent crime as defined in s. 165.84(7)(ab), Stats., shall be subject to the provisions of s. Jus 9.06(2)(a)2., and if the offender has no other arrest record with the department resulting in expungement of the entire criminal history record, will result in the expungement of the accompanying biological specimen.

(f) If the administrator of the department's division of law enforcement services or his or her designee 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 databank

pertaining to the person that are required to be purged under s. 165.77(4)(bm), Stats., and destroy all human biological specimens from the person.

(3) 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.

SECTION 8. Jus 9.07 is repealed, recreated, and titled to read:

Jus 9.07 Compliance and penalties. Failure to provide a biological specimen under this chapter constitutes a criminal offense under s. 946.52, Stats. Failure to provide a human biological specimen under this chapter may also constitute a disciplinary offense or probation or parole violation.

SECTION 9. Jus 9.08 is repealed, recreated, and titled to read:

Jus 9.08 DNA analysis surcharge.

(1) If a court imposes a sentence or places a person on probation, the court shall impose a deoxyribonucleic acid analysis surcharge of \$250 for each felony conviction and \$200 for each misdemeanor conviction as provided under s. 973.046, Stats.

(2) If a court imposes a DNA surcharge under sub. (1) on a person who is an inmate in a state prison and the inmate 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 secretary of administration.

SECTION 10. Jus 9.09 is repealed, recreated, and titled to read:

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

SECTION 11. Jus 9.10 is repealed, recreated, and titled to read:

Jus 9.10 Reimbursements to law enforcement agencies. The department shall reimburse law enforcement and tribal law enforcement agencies for each human biological specimen collected and received by the state crime laboratories as provided in s. 165.76(4)(d), Stats. The department shall not reimburse for duplicate biological specimens. The department shall make payment on an annual basis or more often as it deems necessary.