

Fiscal Estimate - 2011 Session

Original Updated Corrected Supplemental

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| LRB Number 11-4136/1 | | Introduction Number AB-0584 | |
| Description Requiring a person arrested for or charged with certain offenses, or a juvenile taken into custody for certain offenses, to provide a biological specimen for deoxyribonucleic acid analysis; inclusion of the analysis results in the deoxyribonucleic acid data bank; requiring the exercise of rule-making authority; and providing a penalty | | | |
| Fiscal Effect | | | |
| State: | | | |
| <input type="checkbox"/> No State Fiscal Effect | | | |
| <input type="checkbox"/> Indeterminate | | | |
| <input type="checkbox"/> Increase Existing Appropriations | <input type="checkbox"/> Increase Existing Revenues | <input checked="" type="checkbox"/> Increase Costs - May be possible to absorb within agency's budget | |
| <input type="checkbox"/> Decrease Existing Appropriations | <input type="checkbox"/> Decrease Existing Revenues | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| <input type="checkbox"/> Create New Appropriations | | <input type="checkbox"/> Decrease Costs | |
| Local: | | | |
| <input type="checkbox"/> No Local Government Costs | | | |
| <input checked="" type="checkbox"/> Indeterminate | | 5. Types of Local Government Units Affected | |
| 1. <input type="checkbox"/> Increase Costs | 3. <input type="checkbox"/> Increase Revenue | <input type="checkbox"/> Towns | <input type="checkbox"/> Village <input type="checkbox"/> Cities |
| <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | <input type="checkbox"/> Counties | <input type="checkbox"/> Others |
| 2. <input type="checkbox"/> Decrease Costs | 4. <input type="checkbox"/> Decrease Revenue | <input type="checkbox"/> School Districts | <input type="checkbox"/> WTCS Districts |
| <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | | |
| Fund Sources Affected | | Affected Ch. 20 Appropriations | |
| <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEGS | | | |
| Agency/Prepared By | | Authorized Signature | Date |
| DOJ/ Mark Rinehart (608) 264-9463 | | Mark Rinehart (608) 264-9463 | 2/24/2012 |

Fiscal Estimate Narratives

DOJ 2/24/2012

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| LRB Number | 11-4136/1 | Introduction Number | AB-0584 | Estimate Type | Original |
| Description Requiring a person arrested for or charged with certain offenses, or a juvenile taken into custody for certain offenses, to provide a biological specimen for deoxyribonucleic acid analysis; inclusion of the analysis results in the deoxyribonucleic acid data bank; requiring the exercise of rule-making authority; and providing a penalty | | | | | |

Assumptions Used in Arriving at Fiscal Estimate

Generally, under s. 165.76, a person is required to submit a biological specimen to the Department of Justice (DOJ) state crime laboratories for deoxyribonucleic acid (DNA) analysis if: 1) a court imposes a sentence or places a person on probation for a felony or certain misdemeanors; 2) a person is found to be a sexually violent person; 3) a person is found not guilty by reason of mental disease or defect for a felony or certain misdemeanors; or 4) a juvenile is adjudicated delinquent of certain offenses. Under s. 165.77, when the crime labs receive a biological specimen, the labs are required to analyze the DNA of the specimen and maintain a data bank based on data obtained from the DNA analysis. This requirement results in the analysis of approximately 8,500 biological specimens each year.

Currently, under s. 165.77, the crime lab shall purge all records and identifiable information in the DNA data bank pertaining to a person and destroy all samples from the person if the person provides a written request for expungement and a certified copy of the court order reversing, setting aside, or vacating the conviction or adjudication for which their DNA was submitted. This requirement results in the crime lab expunging fewer than 10 records from the DNA data bank each year.

Generally, biological specimens are collected by the Department of Corrections from offenders in prison and collected by county sheriffs from offenders not in prison. Biological specimens are placed in collection kits and mailed to DOJ. DOJ reimburses sheriffs \$20 for their work each time they obtain a sample.* DOJ also covers the cost of the collection kits and the postage each way between sheriff offices and DOJ.

DOJ contracts with a private vendor to do the DNA analysis of offender samples. The private vendor currently charges DOJ \$20.17 for each sample analyzed. Under Federal Bureau of Investigation quality control regulations, DOJ is required to conduct a cursory analysis of every outsourced specimen upon its return from a private vendor and a full analysis of 5% of the outsourced specimens upon their return from a private vendor.

Under 2011 Assembly Bill 584, all law enforcement agencies shall obtain a biological specimen from each adult arrested for a felony or for certain misdemeanors, and each minor taken into custody for violating certain felonies and misdemeanors. All law enforcement agencies shall submit each specimen to the crime labs for DNA analysis and inclusion in the DNA databank.

Under AB 584, a person whose DNA data have been included in the data bank due to an arrest for a felony or for a certain misdemeanor, or due to being taken into custody for a violation of a certain felony or misdemeanor, may request expungement if: 1) all charges filed in connection with the arrest and all charges for which the person was required to provide a biological specimen, or all criminal complaints or delinquency petitions alleging the person violated a certain offense, have been dismissed; 2) the trial court reached final disposition for all charges in connection with the arrest and for any charges for which the person was required to provide a biological specimen, or all allegations of a violation of a certain offense in connection with the taking into custody, and the person was not adjudged guilty of a crime in connection with the arrest or the person was not convicted or adjudged delinquent for a violation of a certain offense in connection with the taking into custody; 3) at least one year has passed since the arrest or the taking into custody, and the person has not been charged with a crime in connection with the arrest and the person was not required to provide a biological specimen, or no criminal complaint or delinquency petition alleging a violation of a certain offense has been filed in connection with the taking into custody; or 4) the person was adjudged guilty of a crime in connection with the arrest or any charge for which the person was required to provide a biological specimen, or convicted or adjudged delinquent for a violation of a certain offense in connection with the taking into custody, and the conviction or delinquency adjudication has been reversed, set aside, or vacated. If any of the conditions above are satisfied, DOJ shall purge all records and identifiable information

in the data bank relating to the person and destroy all specimens from the person.

The department anticipates that AB 584 will result in a substantial increase in the number of biological specimens submitted to the crime lab for DNA analysis and will result in a substantial increase in the number of people requesting expungement of their DNA records from the DNA data bank. However, the department is not aware of any state agency that tracks data specific to the number of people who are arrested for a felony or taken into custody for a violation of certain felonies and misdemeanors. The department is not aware of any data specific to the number of people who would qualify for, and request, expungement.

Data from the Office of Justice Assistance (OJA) may be the best indicator of how many additional people would be subject to the provisions of AB 584. OJA tracks the number of annual arrests in Wisconsin. According to OJA's 2010 Arrests in Wisconsin Report, there were 355,463 total arrests in Wisconsin in 2010. DOJ estimates that approximately 25% of the 2010 arrests were arrests for felonies. If this assumption is correct and the number of arrests remains constant, under AB 584 DOJ would receive approximately 88,866 samples the first year. Due to recidivism, DOJ expects the number of samples collected after the first year to drop approximately 30%. As a result, DOJ would expect to receive approximately 62,206 samples in the second and subsequent years. Since DOJ already receives about 8,500 samples per year from convicted felons, the net impact of AB 584 would be the generation of approximately 80,366 new samples in the first year and approximately 53,706 new samples in subsequent years.

Based on these estimates, DOJ will need the following resources to meet its new DNA analysis responsibilities under AB 584.

First year DNA costs:

1) Supplies & Services:

DNA collection kits @ $\$1.52 \times 80,366 = \$122,156$
DNA collection kit postage @ $\$.525 \times 80,366 = \$42,192$
Sheriff specimen collection fee @ $\$20 \times 80,366 = \$1,607,320^*$
Private vendor outsourcing fee @ $\$20.17 \times 80,366 = \$1,620,982$

Total Supplies & Services Costs = \$3,392,650

2) Staff:

2.5 Forensic Scientists @ $\$22.026/\text{hr} \times 2080 \times 2.5 = \$114,535$
Fringe Benefits @ 38.12% = \$43,660
Equipment & Supplies $\$21,800 \times 2.5 = \$54,500$
Rent space @ $\$29.75/\text{sqft.} \times 517 \text{ sqft./position} \times 2.5 = \$38,451^{**}$

5.5 Forensic Program Technicians @ $\$12.84/\text{hr} \times 2080 \times 5.5 = \$146,889$
Fringe Benefits @ 38.12% = \$55,994
Equipment & Supplies $\$21,800 \times 5.5 = \$119,900$
Rent space @ $\$29.75/\text{sqft.} \times 64 \text{ sqft./position} \times 5.5 \text{ positions} = \$10,472^{**}$

Total Staff Costs \$584,401

3) Equipment:

DNA Quality Control Analysis Kits = \$77,432

Total Equipment = \$77,432

Total First Year DNA Costs = \$4,054,483

Second year DNA costs:

1) Supplies & Services:

DNA collection kits @ $\$1.51 \times 53,706 = \$81,633$

DNA collection kits postage @ \$.525 x 53,706 = \$28,195
Sheriff specimen collection fee @ \$20 x 53,706 = \$1,074,120*
Private vendor outsourcing fee @ \$20.17 x 53,706 = \$1,083,250

Total Supplies & Services costs = \$2,267,198

2) Staff:

2 Forensic Scientists @ \$22.026/hr x 2080 x 2 = \$91,628
Fringe Benefits @38.12% = \$34,928
Equipment & Supplies \$3,555 x 2 = \$7,110
Rent space @ \$29.75/sqft. x 517 sqft./position x 2 = \$30,761**

3.5 Forensic Program Technicians @ \$12.84/hr x 2080 x 3.5 = \$93,475
Fringe Benefits @38.12% = \$35,632
Equipment & Supplies \$3,555 x 3.5 = \$12,442
Rent space @ \$29.75/sqft. x 64 sqft./position x 3.5 positions = \$6,664**

Total Staff = \$312,640

3) Equipment:

DNA Quality Control Analysis Kits = 51,745

Total Equipment = \$51,745

Total second & subsequent year DNA costs = \$2,631,583

AB 584 also has the potential to require DOJ to expunge thousands of DNA profiles from the DNA data bank. Unfortunately, there is no way to accurately estimate how many arrestees will qualify for, and request, expungement. If the number of arrestees requesting expungement number in the thousands, DOJ will require additional staff and resources to process those expungements.

* Prior to 1999 Wisconsin Act 9, courts were required to order only persons sentenced or placed on probation for a violation of s. 940.225, 948.02 (1) or (2), or 948.025 to provide a biological specimen to the state crime labs for DNA analysis. Generally, DOC collected samples from offenders in prison for those crimes and sheriffs collected samples from offenders of those crimes who were not in prison. Act 9 created the current requirement that courts order persons sentenced or placed on probation for any felony conviction to provide a biological specimen to the state crime labs for DNA analysis. No additional resources were provided to cover the cost of obtaining samples from all felons.

At that time, several sheriffs called the change an unfunded mandate and some refused to collect samples. In 2001, DOJ's Crime Laboratories/DNA Analysis appropriation under s. 20.455 (2) (Lm) had an unexpected surplus and then Attorney General Doyle worked with DOA, through the state's allotment process, to increase the appropriation's spending authority to an amount sufficient to reimburse sheriffs \$20 for each sample collected. While the s. 20.455 (2) (Lm) appropriation surplus no longer exists, DOJ has reimbursed sheriffs \$20 for each sample collected for the past ten years. If AB 584 were to pass without resources sufficient to allow DOJ to reimburse sheriffs for collecting samples or to directly fund sheriffs' collection costs, once again, sheriffs may view an expansion of DNA collection as an unfunded mandate. Absent funding, DOJ would not be in a position to fund sheriffs' collection costs.

**The crime labs currently have room for only 1 additional position. There is no space available at the labs for the remaining 10 positions.

Long-Range Fiscal Implications