

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Wis. Admin. Code chapter JUS 9, Deoxyribonucleic Acid (DNA) Data Bank

Subject

Establishing standards and procedures 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 under ss. 165.76, 165.77, and 165.84, Stats.

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20, Stats. Appropriations Affected

20.455(2)(kd)

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy
 Local Government Units

Specific Businesses/Sectors
 Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

Implementation of those portions of 2013 WI Act 20 ("Act 20") and 2013 Wisconsin Act 214 ("Act 214") related to Wis. Admin. code ch. JUS 9.

The State of Wisconsin Department of Justice proposes to promulgate emergency administrative rules to amend Jus 9.01, 9.05, and 9.09; to repeal and recreate Jus 9.04, 9.06, 9.07, and 9.08; and to create Jus 9.03(2m), (5) and (6) and 9.10 relating to the procedures for the collection of human biological specimens, the submission of such specimens to the Department of Justice crime laboratories for DNA analysis, the analysis of specimens, the maintenance of a data bank of DNA analysis data, the use of the DNA data bank, the expungement of biological specimens and DNA analysis data, the confidentiality of some DNA data bank records, and the imposition of a DNA analysis surcharge in certain cases.

The proposed rules would bring Wis. Admin. Code ch. Jus 9 into full compliance and consistency with the provisions in Acts 20 and 214 that amended various statutes related to the collection and handling of biological samples, the conduct of DNA analysis, and the handling of DNA analysis data.

The proposed emergency rules will correspond to and have the same scope as the proposed permanent rules that are in the process of being promulgated by DOJ. See Clearinghouse Rule 14-070.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

DOJ does not anticipate any economic or fiscal impact on specific businesses, business sectors, public utility rate payers, or the State's economy as a whole. There is minimal affect on local governmental units, as the new law requires law enforcement to collect more biological specimens than it has collected in previous years—from approximately 12,000 specimens to an estimated 65,000 specimens. However, each collection requires minimal additional time—approximately 3-5 minutes—and law enforcement agencies will be reimbursed, pursuant to s. 165.76(4)(d), Stats.

Fiscal and economic costs associated with implementing the program are not driven by the proposed administrative rules, but rather are driven by the statutory requirements established in Acts 20 and 214. DOJ does not believe the proposed rules impose additional costs beyond those necessary to fulfill the requirements of Acts 20 and 214.

Act 20 requires that if a court imposes a sentence or places a person on probation, the court shall impose a DNA analysis surcharge of \$200 for each misdemeanor conviction and \$250 for each felony conviction. All moneys received are utilized to pay for costs of the program, to include: (1) DNA analysis; (2) program administration; (3) costs of mailing and materials for the submission of biological specimens by the departments of corrections and health services and by persons in charge of law enforcement and tribal law enforcement agencies; and (4) reimbursement of law enforcement agencies.

DOJ performed an analysis of prior year data and estimated that there are approximately 43,000 misdemeanor convictions and 12,000 felony convictions annually for persons who do not currently have DNA in the data bank. Based on a conservative analysis, DOJ projects surcharge revenue of 2.7 million in FY 2016 and 4.7 million in FY 2017-2020.

From November 14 through November 28, 2014, DOJ also solicited comments on the economic impact of its corresponding proposed permanent rules, pursuant to s. 227.137, Stats., and Executive Order 50. One comment was provided in response to DOJ's solicitation. The comment was made by a law enforcement officer who was concerned about the requirement in the proposed rules that biological specimens be sent to a state crime laboratory within 24 hours of collection and feared that this requirement might be cost prohibitive. DOJ reviewed and discussed this issue and concluded that the requirement in question should have minimal economic impact on law enforcement agencies. As discussed above, the collection of biological specimens requires only a small amount of time and DOJ anticipates that costs associated with sending samples to a state crime laboratory will be adequately reimbursed, pursuant to s. 165.76(4)(d), Stats.

Based on all of the considerations discussed above, DOJ concludes that the proposed emergency rules will not have any adverse material impact on the economy, a sector of the economy, productivity, jobs, private businesses, public utilities, or the overall economic competitiveness of the state.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rules are predicated on (1) analysis by DOJ legal staff of the language and requirements of the relevant statutes, as amended by Acts 20 and 214; and (2) analysis by DOJ law enforcement staff of the existing procedures for the collecting, handling, and analysis of biological specimens and what is needed to make those procedures compliant and consistent with the changes in the relevant statutes made by Acts 20 and 214. Based on the above analyses, DOJ has determined that the proposed rules are necessary for DOJ to carry out its responsibilities under ss. 165.76, 165.77, and 165.84, Stats., as amended by Acts 20 and 214. The alternative to implementing the rules would be non-compliance with Acts 20 & 214.

Long Range Implications of Implementing the Rule

There are no known long range implications of implementing the rule.

Compare With Approaches Being Used by Federal Government

The activities regulated by the proposed rules are also affected by the federal statutes and regulations that govern the Combined DNA Index System ("CODIS"), which is the program of support for state and local criminal justice DNA databases operated by the Federal Bureau of Investigation, pursuant to 42 U.S.C. § 14132 and 28 C.F.R. Part 28.

CODIS includes the National DNA Index System ("NDIS"), a national database that contains DNA analysis data contributed by forensic laboratories at the federal, state, and local levels. Under s. 165.76(4)(c), Stats., DOJ is expressly authorized to submit biological specimens or DNA analysis data for inclusion in NDIS.

Forensic laboratories participating in NDIS are required to be accredited by a nationally recognized forensic science association, to undergo an external audit every two years to demonstrate compliance with quality assurance standards established by the FBI, and to disclose DNA samples or analyses only in accordance with federal privacy requirements. See 42 U.S.C. § 14132(b)(2) and (3). Access to NDIS is subject to cancellation if the quality control and privacy requirements are not met. 42 U.S.C. § 14132(c).

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois

Illinois requires the collection of DNA samples from a person convicted of, found guilty of, or who received a disposition of court supervision for a felony, an offense requiring registration as a sex offender, or any other statutorily enumerated qualifying offense. The collection requirement also applies to a person found guilty or given supervision for the same offenses under the state's juvenile court act. Any person arrested for first degree murder, home invasion, predatory criminal sexual assault of a child, aggravated criminal sexual assault, or criminal sexual assault must submit a DNA sample once a judge finds that there was probable cause for the arrest. It does not appear that juvenile arrestees are subject to DNA testing. DNA records of convicted offenders are expunged upon receipt of notification of a reversal of conviction based on actual innocence or the granting of a pardon based on actual innocence. DNA records of arrestees are expunged upon receipt of a court order stating that the charge was dismissed, the person was acquitted, or the charge was not filed within the applicable time period. See 730 Ill. Comp. Stat. 5/5-4-3 and Ill. Admin. Code tit. 20, §§ 1285.10 through 1285.90.

Iowa

Iowa requires the collection of DNA samples from sexually violent predators, sex offenders, persons convicted of felonies, and persons convicted of aggravated misdemeanors other than those related to gambling, hazardous waste, agricultural production, and certain traffic offenses. The collection requirement also applies to juveniles adjudicated delinquent for an offense that requires DNA profiling of an adult offender. Iowa does not require the collection of DNA samples from arrestees who have not been convicted of a crime. A person may request expungement of DNA records by submitting a certified copy of a court order showing that the conviction, adjudication or civil commitment that caused the submission of the person's DNA sample has been reversed on appeal and the case dismissed. See Iowa Code §§ 81.1 through 81.10 and Iowa Admin Code 61-8.1 through 61-8.5.

Michigan

Michigan requires the collection of DNA samples from offenders who are arrested or convicted of a qualifying offense, inmates who have not already provided a sample, juvenile offenders who are found responsible for a qualifying offense, and juvenile offenders who are public wards and have not already provided a sample. Qualifying offenses include felony assault, first or second degree murder, manslaughter, kidnapping, hostage taking, certain offenses against children, mayhem, certain sex offenses, carjacking, and robbery. A person may request expungement by submitting a written request accompanied by a certified copy of a final court order stating that the charge was dismissed, the person was acquitted, or the charge was not filed. See Mich. Comp. Laws §§ 28.171 through 28.176 and Mich. Admin. Code R. 28.5051 through 28.5059.

Minnesota

Minnesota requires the collection of DNA samples from adults or juveniles who have had a judicial probable cause determination on a charge of committing a qualifying offense or persons who have been convicted of committing or

attempting to commit a qualifying offense. Qualifying offenses include murder, manslaughter, assault, robbery or aggravated robbery, kidnapping, false imprisonment, criminal sexual conduct, incest, burglary, and indecent exposure. DNA samples are also collected from persons sentenced as patterned sex offenders. A person may request expungement if acquitted or if the charges are dismissed. See Minn. Stat. § 299C.105.

Name and Phone Number of Contact Person

Brian O'Keefe, Administrator
DOJ- Division of Law Enforcement Services
608-266-7598