

JUVENILE COURT  
POLICY/PROCEDURE

**COLLECTION OF BIOLOGICAL SAMPLES FOR DNA DATABANK**

POLICY

Pursuant to 938.21 (1m), if the juvenile has been **taken into custody (arrested)** on the basis of a violation that would be a violent crime, as defined in s. 165.84 (7) (ab), if committed by an adult in this state, the court shall determine if a biological specimen has been obtained from the juvenile under s. 165.84 (7), and if not, the court shall direct that a law enforcement agency or tribal law enforcement agency obtain a biological specimen from the juvenile and submit it to the state crime laboratories as specified in rules promulgated by the department of justice under s. 165.76 (4). If the court requires the juvenile to provide a specimen under this subsection or if a biological specimen has already been obtained from the juvenile, the court shall inform the juvenile that he or she may request expungement under s. 165.77 (4). The list of violent crime offenses is listed at the end of this policy.

Pursuant to 938.34 (15), if the juvenile is **adjudicated delinquent on or after April 1, 2015** on the basis of a violation that would be a felony if committed by an adult in this state **or** of a violation of s. 940.225 (3m), 941.20 (1), 944.20, 944.30 (1m), 944.31, 944.33, 946.52, or 948.10 (1) (b), the court shall require the juvenile to comply with the requirement under s. 165.76 (1) (am) by providing a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. The court shall inform the juvenile that he or she may request expungement under s. 165.77 (4). The date of offense for the following violations in this category are not a factor in providing a specimen so long as the adjudication occurs on or after April 1, 2015:

- Any felony
- 4th Degree Sexual Assault [940.225(3m)]
- Lewd and Lascivious Behavior [944.20]
- Exposing Genitals to a Child [948.10(1)(b)]
- Failure to Submit a Biological Specimen [946.52]
- Endangering Safety by Use of a Dangerous Weapon [941.20(1)]
- Prostitution [944.30(1m)]
- Patronizing Prostitutes [944.31]
- Pandering [944.33]

Juveniles adjudicated delinquent on the basis of any violation under Ch. 940, 944, or 948, or §943.01 to 943.15 **may** be ordered by the court to provide a biological specimen.

## PROCEDURE

The Juvenile Reception Center will document if a DNA sample was taken by law enforcement for referrals of juveniles who are arrested on violent felony level offense. This information will be contained in the intake narrative.

In addition to submitting a sample at the point of arrest for violent felony level offenses, juveniles will also be required to submit a sample upon adjudication for any felony level offense and certain misdemeanors. The Dane County Sheriff's Office Bailiff's will help determine if a juvenile has previously submitted an analyzed DNA sample during the court proceeding when adjudication occurs. The court will order the sample to be submitted depending on the juvenile's status. The following are possible scenarios and the method of sampling that would be ordered:

- Juveniles who are NOT in secure custody and appear at a custody or plea hearing and should have submitted a sample at arrest. The court will order them to appear at a future date and time at the Public Safety Building and the DCSO will take a sample.
- Juveniles who are adjudicated who are NOT in secure custody. The court will order them to appear at a future date and time at the Public Safety Building and the DCSO will take a sample.
- Juveniles who are adjudicated who are in secure custody BUT will be placed into an in-county placement at disposition. The court will order them to appear at a future date and time at the Public Safety Building and the DCSO will take a sample.
- Juveniles who are in secure custody and appear at a custody hearing and should have submitted a sample at arrest. The court will order them to submit to a sample. The Madison Police Department has agreed to assist with this collection in their CCB booking area. Detention staff will transport the juvenile in restraints to MPD down the secure elevator. These will almost always be weekday, daytime collections. JRC staff must document that the sample was taken in the juvenile's file and will notify court parties if the juvenile refuses to submit to a sample.
- Juveniles who are adjudicated who are in secure custody BUT will be placed into an out-of-county placement at disposition. The court will order them to submit to a sample. The Madison Police Department has agreed to assist with this collection in their CCB booking area. Detention staff will transport the juvenile in restraints to MPD down the secure elevator. These will almost always be weekday, daytime collections. JRC staff must document that the sample was taken in the juvenile's file and will notify court parties if the juvenile refuses to submit to a sample.
- Juveniles who fail to show for their scheduled sample or who refuse will have an opportunity to submit the required sample at a later date. Juveniles should call the DCSO DNA sample office at 608-284-6912 to re-schedule. The office is staffed

from 10 a.m. to 4 p.m. Tu, Wed and Thur currently. There is the option to leave a voicemail message. This number and information should only be given out if a juvenile or parent makes contact about the missed appointment.

Juveniles will not be assessed (as are adults) the \$250 fee to pay for the DNA program.

**1. Violent Crimes as defined in s. 165.84 (7) (ab):**

- 940.01\* – first-degree intentional homicide
- 940.02# – first-degree reckless homicide
- 940.03# – felony murder
- 940.05\* – second-degree intentional homicide
- 940.06# – second-degree reckless homicide
- 940.07# – homicide resulting from negligent control of vicious animal
- 940.08# – homicide by negligent handling of a dangerous weapon, explosives or fire
- 940.09 (1c) # – homicide by intoxicated use of vehicle
- 940.10# – homicide by negligent operation of vehicle
- 940.19 (2) # – battery causing substantial bodily harm with intent to cause harm
- 940.19 (4) # – battery causing great bodily harm with intent to cause harm
- 940.19 (5) # – battery causing great bodily harm with intent to cause great harm
- 940.19 (6) # – battery causing bodily harm
- 940.195 (2) # – battery to unborn child causing substantial bodily harm with intent to cause harm
- 940.195 (4) # – battery to unborn child causing great bodily harm with intent to cause harm
- 940.195 (5) # – battery to unborn child causing great bodily harm with intent to cause great harm
- 940.195 (6) # – battery to unborn child causing harm
- 940.20# – battery by prisoners, to certain public employees
- 940.201 (2) # – battery or threat of battery to witness or family of witness
- 940.203 (2) # – battery or threat of battery to judge or family of judge
- 940.205 (2) # – battery or threat of battery to DOR employee or family of DOR employee
- 940.207 (2) # – battery or threat of battery to DSPS or DWD employee or family of DSPS or DWD employee
- 940.208# – battery to certain municipal employees
- 940.21\* – mayhem
- 940.225 (1)\* – first-degree sexual assault
- 940.225 (2)\* – second-degree sexual assault
- 940.225 (3)\* – third-degree sexual assault
- 940.23 – reckless injury
- 940.235\* – strangulation and suffocation
- 940.30\* – false imprisonment
- 940.302 (2)\* – human trafficking
- 940.305\* – taking hostages
- 940.31\* – kidnapping
- 940.32 (2)\* – stalking

940.32 (2e)\* – stalking  
940.32 (2m)\* – stalking  
940.43\* – intimidation of witness  
940.45\* – intimidation of victim  
941.20 (2) & (3)\* – endanger safety by use of a dangerous weapon  
941.21\* – disarming a police officer  
941.30 – recklessly endangering safety  
943.02\* – arson of buildings  
941.327\* – tampering with household products  
943.06\* – Molotov cocktail  
943.10\* – burglary  
943.23 (1g)\* – operating vehicle without consent with dangerous weapon  
943.23 (2)\* – operation vehicle without consent  
943.32\* – robbery  
948.02 (1)\* – first degree sexual assault of a child  
948.02 (2)\* – second degree sexual assault of a child  
948.025\* – repeated acts of sexual assault of same child  
948.03 (2) (a)\* – Physical Abuse of a child: intentionally cause great bodily harm to child  
948.03 (2) (c)\* – Physical Abuse of a child: intentionally cause bodily harm by conduct with probability to cause harm  
948.03 (3) # – Physical Abuse of a child: recklessly cause harm to child  
948.05\* – sexual exploitation of child  
948.051\* – trafficking a child  
948.055\* – cause child to view or listen to sexual activity  
948.07\* – child enticement  
948.08\* – soliciting child for prostitution  
948.085\* – sexual assault of child in substitute care  
948.095\* – sexual assault of child by person who works with children  
948.30 (2)\* – abduction of another’s child

**2. A felony violation of a # offense.**

**3. Solicitation, conspiracy, or attempt, under s. 939.30, 939.31, or 939.32, to commit a \* offense.**

**4. A felony if a penalty enhancer specified in s. 939.621 could be imposed.**