



## 2021 SENATE BILL 71

February 5, 2021 - Introduced by Senators COWLES, AGARD, DARLING, WANGGAARD and PETROWSKI, cosponsored by Representatives STEFFEN, MACCO, THIESFELDT, LOUDENBECK, KERKMAN, BROOKS, GUNDRUM, SCHRAA, ROZAR, SUBECK, MURPHY, SPREITZER, VINING and CABRERA. Referred to Committee on Judiciary and Public Safety.

1     **AN ACT** *to repeal* 165.77 (7) and 175.405; *to amend* 165.845 (title), 165.845 (1)  
2           (a), 165.845 (1) (b) and 165.845 (2); and *to create* 165.775, 165.845 (1) (d) and  
3           895.537 of the statutes; **relating to:** storage and processing of sexual assault  
4           kits and requiring the exercise of rule-making authority.

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### *Analysis by the Legislative Reference Bureau*

Under current law, there is no statutory procedure for the collection and processing of sexual assault kits. This bill creates procedures for transmission, processing, and storage of sexual assault kits. Under the bill, a health care professional who collects a sexual assault kit must do one of the following: 1) if the victim wants to report the sexual assault to law enforcement, the health care professional must notify a law enforcement agency within 24 hours of collecting the kit; or 2) if the victim does not want to report the sexual assault to law enforcement, the health care professional must send the kit to the state crime laboratories within 72 hours for storage. Under the bill, if a law enforcement agency has received notification from a health care professional that a kit has been collected, the law enforcement agency must take possession of the kit within 72 hours, and must send the kit to the state crime laboratories for processing within 14 days. If the victim changes his or her mind about wanting to have his or her kit analyzed after it is given to a law enforcement agency but before the agency sends the kit to the state crime laboratories for processing, the agency must send the kit to the state crime laboratories for storage rather than for processing.

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Under the bill, once the state crime laboratories takes possession of a sexual assault kit, it must do one of the following: 1) if it has received the kit of a person who has not consented to analysis, securely store the kit for a period of 10 years; or 2) if it has received the kit of a person who has consented to analysis, process the kit and then send it to a law enforcement agency to store the kit for a period of 50 years, or until the date of the expiration of the statute of limitations, or until the end of a term of imprisonment or probation of a person convicted in the sexual assault case, whichever is longer.

Under current law, local law enforcement agencies report certain crime statistics to the Department of Justice. The bill requires law enforcement agencies to provide additional data to DOJ regarding sexual assault kits collected and processed in Wisconsin in addition to the data currently being reported. The bill also requires DOJ to publish data on law enforcement agency compliance with DOJ reporting requirements.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 165.77 (7) of the statutes is repealed.

2           **SECTION 2.** 165.775 of the statutes is created to read:

3           **165.775 Sexual assault kits. (1)** In this section:

4           (a) “Department” means the department of justice.

5           (b) “Health care professional” has the meaning given in s. 154.01 (3).

6           (c) “Sex offense” has the meaning given in s. 949.20 (7).

7           (d) “Sexual assault forensic examination” means an examination performed by  
8 a health care professional to gather evidence regarding a sex offense.

9           (e) “Sexual assault kit” means the evidence collected from a sexual assault  
10 forensic examination.

11           (f) “Wisconsin law enforcement agency” has the meaning given in s. 165.77 (1)

12           (c).

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1           **(2)** Whenever a health care professional conducts a sexual assault forensic  
2 examination and collects a sexual assault kit, the health care professional shall do  
3 one of the following:

4           (a) If the victim chooses to report the sexual assault to a Wisconsin law  
5 enforcement agency, or if reporting is required under s. 48.981 (2), notify a Wisconsin  
6 law enforcement agency within 24 hours after collecting the sexual assault kit.

7           (b) If the victim chooses not to report the sexual assault to a Wisconsin law  
8 enforcement agency, and reporting is not required under s. 48.981 (2), send the  
9 sexual assault kit to the state crime laboratories for storage in accordance with the  
10 procedures specified in the rules promulgated under sub. (6) within 72 hours after  
11 collecting the sexual assault kit.

12           **(3)** If a Wisconsin law enforcement agency receives notification under sub. (2)  
13 (a), it shall do all of the following:

14           (a) Take possession of the sexual assault kit from the health care professional  
15 within 72 hours after receiving the notification.

16           (b) Except as provided in par. (c), send the sexual assault kit to the state crime  
17 laboratories for processing in accordance with the procedures specified in the rules  
18 promulgated under sub. (6) within 14 days after taking possession of the sexual  
19 assault kit.

20           (c) If the Wisconsin law enforcement agency, after taking possession of the  
21 sexual assault kit under par. (a) but before sending the sexual assault kit under par.  
22 (b), receives notification from the victim that the victim does not want to proceed with  
23 the analysis of his or her sexual assault kit, send the sexual assault kit to the state  
24 crime laboratories for storage in accordance with the procedures specified in the

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1 rules promulgated under sub. (6) within 14 days after taking possession of the sexual  
2 assault kit.

3 (4) If the state crime laboratories takes possession of a sexual assault kit, it  
4 shall do all of the following:

5 (a) If the victim chooses not to report the sexual assault to a Wisconsin law  
6 enforcement agency and thus has not consented to the analysis of his or her sexual  
7 assault kit, securely store the sexual assault kit for a period of 10 years, during which  
8 time the sexual assault victim may choose to report the assault to a Wisconsin law  
9 enforcement agency.

10 (b) If the victim chooses to report the sexual assault to a Wisconsin law  
11 enforcement agency and thus has consented to the analysis of his or her sexual  
12 assault kit, process the kit in accordance with the procedures specified in the rules  
13 promulgated under sub. (6).

14 (5) If a law enforcement agency takes possession of a sexual assault kit after  
15 it has been processed by the state crime laboratories, notwithstanding s. 968.205, it  
16 shall securely store the sexual assault kit for a period of 50 years, or until the date  
17 of the expiration of the statute of limitations, or until the end of the term of  
18 imprisonment or probation of a person who was convicted in the sexual assault case,  
19 whichever is longer.

20 (6) The department shall promulgate rules to administer this section.

21 **SECTION 3.** 165.845 (title) of the statutes is amended to read:

22 **165.845 (title) Collect crime and criminal justice data.**

23 **SECTION 4.** 165.845 (1) (a) of the statutes is amended to read:

24 165.845 (1) (a) Collect information concerning the number and nature of  
25 offenses known to have been committed in this state, concerning sexual assault kits,

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1 as defined in s. 165.775 (1) (e), collected in this state, and concerning such other  
2 information as may be useful in the study of crime and the administration of justice.  
3 The department of justice may determine any other information to be obtained  
4 regarding crime, evidence, and justice system data or statistics. The information  
5 shall include data requested by federal agencies under the U.S. department of  
6 justice, including but not limited to the federal bureau of investigation under its  
7 system of uniform crime reports for the United States.

8 **SECTION 5.** 165.845 (1) (b) of the statutes is amended to read:

9 165.845 (1) (b) Furnish all reporting officials with forms or instructions or both  
10 that specify the nature of the information required under par. (a), the time it is to be  
11 forwarded, the process for submitting the information, the method of classifying and  
12 any other matters that facilitate collection and compilation.

13 **SECTION 6.** 165.845 (1) (d) of the statutes is created to read:

14 165.845 (1) (d) Publish data at least annually on law enforcement agency  
15 compliance with the reporting requirement under par. (a) relating to sexual assault  
16 kits.

17 **SECTION 7.** 165.845 (2) of the statutes is amended to read:

18 165.845 (2) All persons in charge of law enforcement agencies and other  
19 criminal and juvenile justice system agencies shall supply the department of justice  
20 with the information described in sub. (1) (a) on the basis of the forms or instructions  
21 or both to be supplied by the department under sub. (1) ~~(a)~~ (b). The department may  
22 conduct an audit to determine the accuracy of the data and other information it  
23 receives from law enforcement agencies and other criminal and juvenile justice  
24 system agencies.

25 **SECTION 8.** 175.405 of the statutes is repealed.

**SENATE BILL 71****SECTION 9**

1           **SECTION 9.** 895.537 of the statutes is created to read:

2           **895.537 Liability exemption; sexual assault evidence collection. (1)** In  
3 this section:

4           (a) “Health care professional” has the meaning given in s. 154.01 (3).

5           (b) “Sexual assault forensic examination” has the meaning given in s. 165.775  
6 (1) (d).

7           **(2)** Any health care professional conducting a sexual assault forensic  
8 examination pursuant to informed consent or a court order is immune from any civil  
9 or criminal liability for the act, except for civil liability for negligence in the  
10 performance of the act.

11           **(3)** Any employer of the person under sub. (2) or any health care facility where  
12 the sexual assault forensic examination is conducted by that person has the same  
13 immunity from liability under sub (2).

14           **SECTION 10. Nonstatutory provisions.**

15           (1) Within 180 days of the effective date of this subsection, the department of  
16 justice shall promulgate emergency rules under s. 227.24 to implement s. 165.775 for  
17 the period before the effective date of the permanent rules but not to exceed the  
18 period authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2).  
19 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to  
20 provide evidence that promulgating a rule under this subsection as an emergency  
21 rule is necessary for the preservation of the public peace, health, safety, or welfare  
22 and is not required to provide a finding of emergency for a rule promulgated under  
23 this subsection.

24           **SECTION 11. Effective dates.** This act takes effect on the day after publication,  
25 except as follows:

