



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5601/1
MLJ/CMH/FFK:kjf&amn

2019 SENATE BILL 809

February 12, 2020 - Introduced by Senator JACQUE, cosponsored by Representatives STEFFEN, THIESFELDT, BRANDTJEN, JAMES, LOUDENBECK, DITTRICH, GUNDRUM, KERKMAN, KNODL, KRUG, KULP, MAGNAFICI, MURPHY, MURSAU, SANFELIPPO, PETERSEN, QUINN, TITTL and ZIMMERMAN. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to repeal* 165.77 (7) and 175.405; *to renumber* 950.03 and 950.04 (1v)
2 (dL); *to amend* 165.845 (title), 165.845 (1) (a), 165.845 (1) (b), 165.845 (2),
3 949.20 (3) and 968.205 (3) (intro.); and *to create* 50.378 (1m), 100.58, 118.60
4 (1) (f), 118.60 (1) (h), 118.60 (3g), 119.23 (1) (cf), 119.23 (1) (e), 119.23 (3g), 165.25
5 (20), 165.775, 165.788, 165.845 (1) (d), 165.847, 175.408, 895.537, 949.23,
6 950.02 (3t), 950.03 (2), 950.043 and 973.06 (1) (i) of the statutes; **relating to:**
7 creating a sexual assault victim bill of rights; collection and reporting of data
8 regarding sexual assault kits; storage and processing of sexual assault kits;
9 tracking of sexual assault kits in sexual assault cases; and requiring the
10 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

PROCESSING OF SEXUAL ASSAULT KITS

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

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victim chooses 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 chooses not to report the sexual assault to law enforcement, the health care professional must send the kit to the state crime laboratories for storage no more than two business days after collecting the kit. Under the bill, if a law enforcement agency has been notified by a health care professional that a kit has been collected, the law enforcement agency must take possession of the kit within 48 hours, and must then send the kit to the state crime laboratories for processing no less than 48 hours and no more than seven days after taking possession of it. 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.

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 50 years; or 2) if it has received the kit of a person who has consented to analysis, process the kit within 90 days and then securely store the kit for 50 years, 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 longest.

SEXUAL ASSAULT VICTIM BILL OF RIGHTS

This bill creates a sexual assault victim bill of rights. In addition to the rights extended to crime victims under Wisconsin's basic bill of rights for victims and witnesses, this bill adds the following rights for victims of sexual assault, regardless of whether or not they choose to cooperate with a law enforcement agency: the right to be provided with accurate written information about his or her rights as a sexual assault victim; the right to bathe immediately following a sexual assault forensic examination; the right to choose whether or not to cooperate with a law enforcement agency; the right to have any sexual assault kit stored for 50 years or until the end of the prison term of the person convicted of the assault against him or her; and the right to be notified in writing of the results of his or her sexual assault kit analysis, to be notified in writing of the occurrence of analysis of another sexual assault kit in which there is a matching DNA sample collected, and to be notified in writing 60 days prior to the destruction of any evidence obtained in a sexual assault forensic examination.

SEXUAL ASSAULT DATA

Under current law, local law enforcement agencies must report certain crime statistics to the Department of Justice. This bill requires DOJ to collect certain data regarding sexual assault kits collected and tested in Wisconsin in addition to the data currently being collected, and requires DOJ to submit an annual report to the legislature on those sexual assault kits. Under the bill, DOJ must report specific information including the following: the number of sexual assault kits collected and the dates of collection, the number of sexual assault kits submitted to DOJ laboratories for analysis, the number of kits submitted to DOJ laboratories for analysis that have not yet been analyzed and the reason they have not been

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analyzed, the dates of submission and, if applicable, analysis, and the number of kits not submitted to DOJ for analysis that remain in law enforcement custody and the reason the kits were not submitted. The bill also requires DOJ to publish data on law enforcement agency compliance with DOJ reporting requirements.

This bill also requires DOJ to establish a data bank, to be known as the Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing a victim of sexual assault access to information about the status of any sexual assault kit the victim has provided.

CITIZENSHIP OF INDIVIDUALS ARRESTED FOR AND CONVICTED OF SEXUAL ASSAULT

Under the bill, if a person under arrest for sexual assault is not a U.S. citizen and is not authorized to be in the United States under federal law, the law enforcement agency must notify U.S. Immigration and Customs Enforcement. In addition, if a person convicted for sexual assault is not a U.S. citizen and is not authorized to be in the United States under federal law, DOJ must notify U.S. Immigration and Customs Enforcement.

PARENTAL CHOICE PROGRAMS; EXCEPTIONS FOR VICTIMS OF SEXUAL ASSAULT

Under the bill, a pupil who is a victim of sexual assault may attend a private school participating in the Milwaukee Parental Choice Program, the Racine Parental Choice Program, or the statewide parental choice program, regardless of whether the pupil meets the standard eligibility requirements to participate in the parental choice program. Additionally, the bill provides an alternative application procedure that allows a pupil who is victim of sexual assault to begin attending a private school under a parental choice program at any time during the school year. For purposes of these provisions, a pupil is a victim of sexual assault if charges are filed for the sexual assault and the person against whom the charges were filed is a pupil or a school district employee.

MISCELLANEOUS

Current law allows a health care provider who conducts an examination to gather evidence regarding a sex offense to apply to DOJ for reimbursement of the examination costs, which include tests for sexually transmitted diseases and medications to prevent or treat a sexually transmitted disease. This bill adds the following as costs that may be reimbursed: 1) if the health care provider believes that pregnancy could be a consequence of the sex offense, the costs of a pregnancy test, to be administered when a pregnancy may be detected and 2) a post-exposure prophylaxis.

The bill also provides authority to a court to require a defendant who is convicted of a crime in which a sexual assault kit was collected to pay the costs for collection of the sexual assault kit and prohibits the sale of at-home sexual assault evidence collection kits.

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

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

1 **SECTION 1.** 50.378 (1m) of the statutes is created to read:

2 50.378 **(1m)** NOTIFICATION OF VICTIM RIGHTS. A hospital that provides emergency
3 services to a victim of sexual assault, human trafficking, or child sexual abuse shall
4 inform the victim of his or her rights under ss. 950.04 (1v) (ag), (bm), (c), (d), and (em)
5 and 950.043 orally and, using a form provided by the department of justice, in
6 writing.

7 **SECTION 2.** 100.58 of the statutes is created to read:

8 **100.58 At-home sexual assault evidence collection kits.** (1) In this
9 section:

10 (a) “At-home sexual assault evidence collection kit” means a kit that is
11 intended for use by a person who is not a health care professional or employee of a
12 law enforcement agency to collect forensic evidence regarding a sex offense.

13 (b) “Health care professional” means a person licensed, certified, or registered
14 under ch. 441, 448, or 455.

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

16 **(2)** No person may sell or offer for sale in this state an at-home sexual assault
17 evidence collection kit.

18 **SECTION 3.** 118.60 (1) (f) of the statutes is created to read:

19 118.60 **(1)** (f) “Sexual assault” means conduct that is in violation of s. 940.225,
20 948.02, 948.025, 948.055, 948.06, 948.08, 948.085, 948.09 or 948.10.

21 **SECTION 4.** 118.60 (1) (h) of the statutes is created to read:

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1 118.60 (1) (h) "Victim" means an individual who is the victim of sexual assault
2 if charges have been filed for the sexual assault and the individual against whom the
3 charges are filed is a pupil or an employee of a school district.

4 **SECTION 5.** 118.60 (3g) of the statutes is created to read:

5 118.60 (3g) (a) 1. Notwithstanding sub. (2), a pupil in grades kindergarten to
6 12 who resides within an eligible school district and is a victim may attend a
7 participating private school under this section.

8 2. Notwithstanding sub. (2), a pupil in grades kindergarten to 12 who resides
9 in a school district, other than an eligible school district or a 1st class city school
10 district, and is a victim may attend a participating private school under this section.

11 (b) 1. Notwithstanding sub. (3), the parent of a pupil under par. (a) who wishes
12 to attend a participating private school under this section may, in lieu of applying
13 under sub. (3), submit an application under this subsection, on a form provided by
14 the department, at any time during the school year.

15 2. If a participating private school receives an application under subd. 1. the
16 participating private school shall notify the applicant, in writing, whether it has
17 accepted the application no later than 60 days after receiving the application. A
18 participating private school may reject an applicant under this paragraph only if the
19 participating private school has reached its maximum general capacity or seating
20 capacity. If a participating private school rejects an application, the participating
21 private school shall include the reason in the written notice.

22 3. If an application is accepted by a participating private school under this
23 paragraph, the pupil may immediately begin attending the participating private
24 school.

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1 (c) The department may not count a pupil who attends a participating private
2 school under this subsection for purposes of determining whether a school district
3 has exceeded its pupil participation limit under sub. (2) (be).

4 **SECTION 6.** 119.23 (1) (cf) of the statutes is created to read:

5 119.23 (1) (cf) "Sexual assault" means conduct that is in violation of s. 940.225,
6 948.02, 948.025, 948.055, 948.06, 948.08, 948.085, 948.09 or 948.10.

7 **SECTION 7.** 119.23 (1) (e) of the statutes is created to read:

8 119.23 (1) (e) "Victim" means an individual who is the victim of sexual assault
9 if charges have been filed for the sexual assault and the individual against whom the
10 charges are filed is a pupil or an employee of a school district.

11 **SECTION 8.** 119.23 (3g) of the statutes is created to read:

12 119.23 (3g) (a) 1. Notwithstanding sub. (2), a pupil in grades kindergarten to
13 12 who resides within the city and is a victim may attend a participating private
14 school under this section.

15 2. Notwithstanding sub. (2), a pupil in grades kindergarten to 12 who resides
16 in a school district, other than an eligible school district or a 1st class city school
17 district, and is a victim may attend a participating private school under this section.

18 (b) 1. Notwithstanding sub. (3), the parent of a pupil under par. (a) who wishes
19 to attend a participating private school under this section may, in lieu of applying
20 under sub. (3), submit an application under this subsection, on a form provided by
21 the department, at any time during the school year.

22 2. If a participating private school receives an application under subd. 1. the
23 participating private school shall notify the applicant, in writing, whether it has
24 accepted the application no later than 60 days after receiving the application. A
25 participating private school may reject an applicant under this paragraph only if the

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1 participating private school has reached its maximum general capacity or seating
2 capacity. If a participating private school rejects an application, the participating
3 private school shall include the reason in the written notice.

4 3. If an application is accepted by a participating private school under this
5 paragraph, the pupil may immediately begin attending the participating private
6 school.

7 **SECTION 9.** 165.25 (20) of the statutes is created to read:

8 165.25 (20) SEXUAL ASSAULT VICTIM NOTICE. On behalf of the state crime
9 laboratories and law enforcement agencies, notify a sexual assault victim from whom
10 a sexual assault kit, as defined in s. 165.775 (1) (e), was collected, of all of the
11 following:

12 (a) If the sexual assault kit is analyzed, the results of the analysis.

13 (b) If the sexual assault kit is analyzed and analysis identifies a foreign
14 deoxyribonucleic acid profile, the occurrence of any future sexual assault kit analysis
15 that identifies a matching foreign deoxyribonucleic acid profile.

16 (c) At least 60 days before the end of the storage period under s. 165.775 (4) (a)
17 or (5), the date on which the person's sexual assault kit will be destroyed.

18 **SECTION 10.** 165.77 (7) of the statutes is repealed.

19 **SECTION 11.** 165.775 of the statutes is created to read:

20 **165.775 Sexual assault kits. (1)** In this section:

21 (a) "Department" means the department of justice.

22 (b) "Health care professional" has the meaning given in s. 154.01 (3).

23 (c) "Sex offense" has the meaning given in s. 949.20 (7).

24 (d) "Sexual assault forensic examination" means an examination performed by
25 a health care professional to gather evidence regarding a sex offense.

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1 (e) "Sexual assault kit" means the evidence collected from a sexual assault
2 forensic examination.

3 (f) "Wisconsin law enforcement agency" has the meaning given in s. 165.77 (1)
4 (c).

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

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

11 (b) If the victim chooses not to report the sexual assault to a Wisconsin law
12 enforcement agency, and reporting is not required under s. 48.981 (2), send the
13 sexual assault kit to the state crime laboratories for storage in accordance with the
14 procedures specified in the rules promulgated under sub. (7) no more than 2 business
15 days after collecting the sexual assault kit.

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

18 (a) Take possession of the sexual assault kit from the health care professional
19 within 48 hours after receiving the notification.

20 (b) Except as provided in par. (c), send the sexual assault kit to the state crime
21 laboratories for processing in accordance with the procedures specified in the rules
22 promulgated under sub. (7) no less than 48 hours and no more than 7 days after
23 taking possession of the sexual assault kit.

24 (c) If the Wisconsin law enforcement agency, after taking possession of the
25 sexual assault kit under par. (a) but before sending the sexual assault kit under par.

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1 (b), receives notification from the victim that the victim does not want to proceed with
2 the analysis of his or her sexual assault kit, send the sexual assault kit to the state
3 crime laboratories for storage in accordance with the procedures specified in the
4 rules promulgated under sub. (7) within 7 days after taking possession of the sexual
5 assault kit.

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

8 (a) If the victim chooses not to report the sexual assault to a Wisconsin law
9 enforcement agency and thus has not consented to the analysis of his or her sexual
10 assault kit, securely store the sexual assault kit for 50 years, during which time the
11 sexual assault victim may choose to report the assault to a Wisconsin law
12 enforcement agency.

13 (b) If the victim chooses to report the sexual assault to a Wisconsin law
14 enforcement agency and thus has consented to the analysis of his or her sexual
15 assault kit, process the kit in accordance with the procedures specified in the rules
16 promulgated under sub. (7) within 90 days after taking possession of the sexual
17 assault kit.

18 (5) After the state crime laboratories have processed a sexual assault kit,
19 notwithstanding s. 968.205, it shall securely store the sexual assault kit for 50 years,
20 until the date of the expiration of the statute of limitations, or until the end of the
21 term of imprisonment or probation of a person who was convicted in the sexual
22 assault case, whichever is longest.

23 (6) The department shall establish a data bank, which shall be known as the
24 Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing victims
25 of alleged or suspected sexual assault access to information about the status of any

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1 sexual assault kit the victim has provided. The data bank shall use electronic
2 technologies to allow continuous, ongoing access to do all of the following:

3 (a) Allow health care professionals collecting sexual assault kits, forensic
4 laboratories, law enforcement agencies, prosecutors, and the department to update
5 and track the location and status of sexual assault kits throughout the criminal
6 justice process, including the initial collection of evidence, receipt and storage at law
7 enforcement agencies, receipt and analysis at forensic laboratories, and storage and
8 any destruction after completion of analysis.

9 (b) Allow a victim of sexual assault to anonymously track or receive updates
10 regarding the location and status of the victim's sexual assault kit throughout the
11 criminal justice process. Notwithstanding s. 165.79 (1), a victim may receive
12 information and analyses of evidence obtained from the victim's sexual assault kit.

13 (7) The department shall promulgate rules to administer this section.

14 **SECTION 12.** 165.788 of the statutes is created to read:

15 **165.788 Citizenship of individuals convicted of sexual assault.** (1) In
16 this section, "sexual assault" has the meaning given in s. 165.93 (1) (b).

17 (2) If a person convicted of a sexual assault is not a U.S. citizen and is not
18 authorized to be in the United States under federal law, the department shall notify
19 U.S. immigration and customs enforcement.

20 **SECTION 13.** 165.845 (title) of the statutes is amended to read:

21 **165.845 (title) Collect crime and criminal justice data.**

22 **SECTION 14.** 165.845 (1) (a) of the statutes is amended to read:

23 165.845 (1) (a) Collect information concerning the number and nature of
24 offenses known to have been committed in this state, concerning sexual assault kits,
25 as defined in s. 165.775 (1) (e), collected in this state, and concerning such other

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

7 **SECTION 15.** 165.845 (1) (b) of the statutes is amended to read:

8 165.845 (1) (b) Furnish all reporting officials with forms or instructions or both
9 that specify the nature of the information required under par. (a), the time it is to be
10 forwarded, the process for submitting the information, the method of classifying and
11 any other matters that facilitate collection and compilation.

12 **SECTION 16.** 165.845 (1) (d) of the statutes is created to read:

13 165.845 (1) (d) Publish data at least annually on law enforcement agency
14 compliance with the reporting requirement under par. (a) relating to sexual assault
15 kits.

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

17 165.845 (2) All persons in charge of law enforcement agencies and other
18 criminal and juvenile justice system agencies shall supply the department of justice
19 with the information described in sub. (1) (a) on the basis of the forms or instructions
20 or both to be supplied by the department under sub. (1) ~~(a)~~ (b). The department may
21 conduct an audit to determine the accuracy of the data and other information it
22 receives from law enforcement agencies and other criminal and juvenile justice
23 system agencies.

24 **SECTION 18.** 165.847 of the statutes is created to read:

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1 **165.847 Report on status of sexual assault kits.** On an annual basis, using
2 information collected under s. 165.845 (1) (a), the department of justice shall submit
3 to the legislature for distribution under s. 13.172 (2) a report that includes all of the
4 following information for that year:

5 **(1)** The total number of sexual assault kits collected in Wisconsin.

6 **(2)** The date that each sexual assault kit was collected.

7 **(3)** The number of sexual assault kits submitted to the crime laboratories for
8 analysis.

9 **(4)** The date of submission of each sexual assault kit submitted to the crime
10 laboratories.

11 **(5)** The date of analysis of each sexual assault kit submitted to the crime
12 laboratories.

13 **(6)** The number of sexual assault kits that were submitted to the crime
14 laboratories for analysis that have not yet been analyzed.

15 **(7)** For each unanalyzed sexual assault kit, the reason the kit has not been
16 analyzed.

17 **(8)** The number of sexual assault kits that identified a foreign deoxyribonucleic
18 acid profile, the number of such profiles uploaded into the combined deoxyribonucleic
19 acid index system, and the number of such profiles that match a profile in the system.

20 **(9)** The number of sexual assault kits associated with further investigations.

21 **(10)** The number of criminal cases filed, the number of such active cases, and
22 the number of such cases with dispositions resulting from the analysis of sexual
23 assault kits.

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1 **(11)** Any recommendations for statutory changes necessary to ensure that
2 department practices regarding sexual assault kits conform with changes in
3 technology and scientific best practices.

4 **SECTION 19.** 175.405 of the statutes is repealed.

5 **SECTION 20.** 175.408 of the statutes is created to read:

6 **175.408 Citizenship of individuals arrested for sexual assault. (1)** In
7 this section:

8 (a) “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).

9 (b) “Sexual assault” has the meaning given in s. 165.93 (1) (b).

10 **(2)** If a person arrested for a sexual assault is not a U.S. citizen and is not
11 authorized to be in the United States under federal law, the law enforcement agency
12 shall notify U.S. immigration and customs enforcement.

13 **SECTION 21.** 895.537 of the statutes is created to read:

14 **895.537 Liability exemption; sexual assault evidence collection. (1)** In
15 this section:

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

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

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

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

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1 **SECTION 22.** 949.20 (3) of the statutes is amended to read:

2 949.20 (3) “Examination costs” means the costs of an examination that is done
3 to gather evidence regarding a sex offense;~~;~~ any procedure during that examination
4 process that tests for or prevents a sexually transmitted disease,~~and;~~ any medication
5 provided or prescribed, during that examination process, that prevents or treats a
6 sexually transmitted disease that the person performing the examination or
7 procedure believes could be a consequence of the sex offense, including
8 post-exposure prophylaxis; and a pregnancy test, to be administered at a time when
9 a pregnancy could be detected, if the person performing the examination or
10 procedure believes that pregnancy could be a consequence of the sex offense.
11 “Examination costs” does not include any processing or administrative costs,
12 attorney fees, or other expenses.

13 **SECTION 23.** 949.23 of the statutes is created to read:

14 **949.23 Victims rights.** A health care provider conducting an examination to
15 gather evidence regarding a sex offense shall do all of the following:

16 (1) Inform the victim, orally and, using a form provided by the department of
17 justice, in writing, of his or her rights under ss. 950.04 (1v) (ag), (bm), (c), (d), and (em)
18 and 950.043.

19 (2) If facilities are available, provide to the victim an opportunity to bathe
20 immediately following the examination.

21 **SECTION 24.** 950.02 (3t) of the statutes is created to read:

22 950.02 (3t) “Sexual assault victim” means an individual against whom a crime
23 has been committed under s. 940.22, 940.225 (1) to (3m), 948.02 (1) or (2), 948.025,
24 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.08, 948.085, 948.095, 948.10,
25 948.11 (2) (a) or (am), or 948.12, or s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

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1 **SECTION 25.** 950.03 of the statutes is renumbered 950.03 (1).

2 **SECTION 26.** 950.03 (2) of the statutes is created to read:

3 950.03 (2) Notwithstanding sub. (1), a sexual assault victim has the rights and
4 is eligible for the services under this chapter regardless of whether the crime has
5 been reported to law enforcement authorities. A victim of sexual assault is under no
6 obligation to seek medical attention, to have a sexual assault forensic examination
7 administered, or to report the sexual assault to law enforcement authorities.

8 **SECTION 27.** 950.04 (1v) (dL) of the statutes is renumbered 950.043 (10).

9 **SECTION 28.** 950.043 of the statutes is created to read:

10 **950.043 Bill of rights for victims of sexual assault.** In addition to the
11 rights of victims under ss. 950.04 and 950.045, sexual assault victims have all of the
12 following rights:

13 (1) To receive at no charge a sexual assault forensic examination performed by
14 a department-certified sexual assault nurse or another health care professional
15 with similar training.

16 (2) To receive oral and written information about his or her rights as a sexual
17 assault victim at the time he or she seeks medical attention following a sexual
18 assault, as provided under ss. 50.378 (1m) and 949.23 (1).

19 (3) If facilities are available, to bathe immediately following a sexual assault
20 forensic examination.

21 (4) To report or decline to report the sexual assault to a law enforcement agency.

22 (5) To have any evidence collected in a sexual assault forensic examination
23 transported to the state crime laboratories for storage or testing or both, as provided
24 under s. 165.775.

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1 **(6)** If the victim chooses not to cooperate with a law enforcement agency, as
2 defined in s. 949.20 (1), to have all evidence collected in a sexual assault forensic
3 examination stored for 50 years, during which time the sexual assault victim may
4 choose to report the assault to a law enforcement agency.

5 **(7)** If the victim chooses to cooperate with a law enforcement agency, as defined
6 in s. 949.20 (1), and no conviction results from the sexual assault forensic
7 examination, state crime laboratory testing, and subsequent law enforcement
8 agency investigation, to have all evidence collected in the sexual assault forensic
9 examination stored for 50 years.

10 **(8)** If the victim chooses to cooperate with a law enforcement agency, as defined
11 in s. 949.20 (1), and a conviction results from the sexual assault forensic
12 examination, state crime laboratory testing, and subsequent law enforcement
13 agency investigation, to have all evidence collected in the sexual assault forensic
14 examination stored until the end of the term of imprisonment or probation of the
15 person who was convicted of the sexual assault.

16 **(9)** To have the department of justice make a reasonable attempt to notify him
17 or her in writing 60 days prior to the destruction of any evidence acquired from a
18 sexual assault forensic examination, as provided in s. 165.25 (20).

19 **SECTION 29.** 968.205 (3) (intro.) of the statutes is amended to read:

20 968.205 **(3)** (intro.) Subject Except in sexual assault cases, subject to sub. (5),
21 a law enforcement agency may destroy evidence that includes biological material
22 before the expiration of the time period specified in sub. (2) if all of the following
23 apply:

24 **SECTION 30.** 973.06 (1) (i) of the statutes is created to read:

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1 973.06 (1) (i) The cost of administration of any sexual assault kit under s.
2 165.775 that was administered in the case.

3 **SECTION 31. Nonstatutory provisions.**

4 (1) Within 180 days of the effective date of this subsection, the department of
5 justice shall promulgate emergency rules under s. 227.24 to implement s. 165.775 for
6 the period before the effective date of the permanent rules but not to exceed the
7 period authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2).
8 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to
9 provide evidence that promulgating a rule under this subsection as an emergency
10 rule is necessary for the preservation of the public peace, health, safety, or welfare
11 and is not required to provide a finding of emergency for a rule promulgated under
12 this subsection.

13 (2) Within 180 days of the effective date of this subsection, the department of
14 justice shall conduct an audit of all sexual assault kits and submit to the legislature
15 for distribution under s. 13.172 (2) a report that includes all of the following
16 information: the number of sexual assault kits submitted to the state crime
17 laboratories that have not yet been analyzed, the number of sexual assault kits not
18 submitted to the state crime laboratories that remain in law enforcement custody,
19 and the reasons those sexual assault kits were not submitted for analysis.

20 **SECTION 32. Effective dates.** This act takes effect on the day after publication,
21 except as follows:

22 (1) The treatment of ss. 165.77 (7), 165.775 (1) to (6), 165.845 (title), (1) (a), (b),
23 and (d), and (2), 175.405, and 895.537 takes effect on the first day of the 7th month
24 beginning after publication.

25

(END)