

2019 DRAFTING REQUEST

Bill

For: **David Steffen (608) 266-5840** Drafter: **mjohns**
 By: **Nate Zolik** Secondary Drafters:
 Date: **2/21/2019** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.Steffen@legis.wisconsin.gov**
 Carbon copy (CC) to: **Melinda.Johns@legis.wisconsin.gov**
Elizabeth.Wheeler@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Sexual Assault Kit testing

Instructions:

Redraft 17-5779 with changes-- request from Chris M at DOJ to share with the Steffen office

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mjohns 2/26/2019	anienaja 2/28/2019			
/P1	mjohns 3/7/2019	anienaja 3/11/2019	mbarman 2/28/2019		State S&L
/P2	mjohns 3/12/2019	anienaja 3/12/2019	lparisi 3/11/2019		State S&L
/P3	mjohns 3/13/2019	anienaja 3/13/2019	dwalker 3/12/2019		State S&L
/P4	mjohns	anienaja	dwalker		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	3/18/2019	3/19/2019	3/13/2019		S&L
/P5	mjohns 4/2/2019	kfollett 4/3/2019	lparisi 3/19/2019		State S&L
/P6	mjohns 4/8/2019	anienaja 4/9/2019	lparisi 4/3/2019		State S&L
/P7	chanaman 4/15/2019	anienaja 4/15/2019	mbarman 4/9/2019		State S&L
/1			chanaman 4/15/2019	dwalker 4/16/2019	State S&L

FE Sent For:
 2
 at
 intro

<END>

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



75779/P1 - Redial for '19

3-11 - change to 14 days

AB 408 - 4 - pars. (7)-(9) - but
as DOS required

Annual Audit/Reporting - AB 405 -
reporting/auditing requirement

→ add a requirement that LED's submit
info to DOS

ASSEMBLY BILL 408**SECTION 10**

1 (6) To have any evidence collected in a medical forensic examination
2 transported to the state crime laboratories for storage or testing or both within 30
3 days of the examination, as provided under s. 175.405.

4 (7) If the victim chooses not to cooperate with a law enforcement agency, as
5 defined in s. 949.20 (1), to have all evidence collected in a medical forensic
6 examination stored for a period of 15 years, during which time the sexual assault
7 victim may choose to report the assault to a law enforcement agency.

8 (8) If the victim chooses to cooperate with a law enforcement agency, as defined
9 in s. 949.20 (1), and no conviction results from the medical forensic examination,
10 state crime laboratory testing, and subsequent law enforcement agency
11 investigation, to have all evidence collected in the medical forensic examination
12 stored for a period of 15 years.

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

19 (11) To not have any evidence acquired from a sexual assault nurse
20 examination, including the results of a toxicology report, used to prosecute the victim
21 for any misdemeanor crimes or any crime defined under ch. 961.

22 (12) To not have any evidence acquired from a sexual assault nurse
23 examination, including the results of a toxicology report, used as a basis to search
24 for further evidence of any unrelated misdemeanor crimes or any violation of ch. 961.

25 **SECTION 11.** 968.205 (3) (intro.) of the statutes is amended to read:

*adapt to
be a DOJ
requirement*



State of Wisconsin
2017 - 2018 LEGISLATURE

2194/P1

LRB-5779/P1
MLJ:amn

DWE 2/27/19
if possible,
2/28 OK

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓
xref ✓
PwJ ✓

2 INSERTS

Gen:

Insert 1 Rel

- 1 AN ACT *to repeal* 165.77 (7) and 175.405; *to amend* 165.79 (1); and *to create*
- 2 165.775 of the statutes; **relating to:** storage and ^{analysis} testing of sexual assault kits
- 3 and requiring the exercise of rule-making authority.

INSERT 1A1

Analysis by the Legislative Reference Bureau

This bill creates procedures for transmission, ^{analysis} testing and storage of sexual assault kits. Under the bill, a health care professional who collects a sexual assault kit must do one of two things: 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 transmit the kit to the state crime lab within 72 hours for long-term storage. Under the bill, once 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 transmit the kit to the state crime lab ^{analysis} for testing within seven days. If the victim changes his or her mind about wanting to have his or her kit tested after it is given to a law enforcement agency but before the agency transmits the kit to the state crime lab for testing, the agency must transmit the kit to the state crime lab for storage rather than for testing.

INSERT 1A2

INSERT 2A
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. 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) "Sexual assault kit" means one of the following:

7 1. An evidence collection kit that is provided by the department and that
8 contains medical supplies, other necessary items, and forms for a health care
9 professional to conduct a sexual assault ^{forensic} examination on a victim of sexual assault.

10 2. An evidence collection kit that may contain forms developed by the
11 department for the health ^{care} professional and that contains medical supplies and
12 other necessary items that are provided by a health ^{care} professional and that are
13 used to conduct a sexual assault ^{forensic} examination.

14 ^{h & added a definition of forensic} ******NOTE:** Do you want to define "sexual assault ^{forensic} examination"? ^{Please let me know if this is consistent with your intent.}

14 (d) "Wisconsin law enforcement agency" has the meaning given in s. 165.77 (1)

15 (c).

16 **(2)** Whenever a health care professional collects a sexual assault kit, the health
17 care professional shall do one of the following:

18 (a) If the victim chooses to report the sexual assault to a Wisconsin law
19 enforcement agency, notify a Wisconsin law enforcement agency within 24 hours
20 after collecting the sexual assault kit.

1 (b) If the victim chooses not to report the sexual assault to a Wisconsin law
2 enforcement agency, submit the sexual assault kit to the state crime laboratories for
3 storage in accordance with the procedures specified in the department's rules under
4 sub. ^{e/s}(5) within 72 hours after collecting the sexual assault kit.

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

7 (a) Take possession of the sexual assault kit from the health care professional
8 within 72 hours after the collection of the sexual assault kit.

9 (b) Except as provided in par. (c), submit the sexual assault kit to the state
10 crime laboratories for ^{e analysis}(testing) in accordance with the procedures specified in the
11 department's rules under sub. ^{e/s}(5) within ^{e/s}7 days after taking possession of the sexual
12 assault kit.

13 (c) If the Wisconsin law enforcement agency, after taking possession of the
14 sexual assault kit under par. (a) but before submitting the sexual assault kit for
15 ^{e analysis}(testing) under par. (b), receives notification from the crime victim that the victim does
16 not want to proceed with the ^{e analysis}(testing) of his or her sexual assault kit, submit the sexual
17 assault kit to the state crime laboratories for storage in accordance with the
18 procedures specified in the department's rules under sub. ^{e/s}(5) within ^{e/s}7 days after the
19 collection of the sexual assault kit.

INSERT
3-20

20 (4) The department shall create a system to be administered by the department
21 that allows for the tracking of each sexual assault kit in possession of the department
22 or a Wisconsin law enforcement agency.

INSERT
3-23

23 (5) The department shall promulgate rules to administer this section,
24 including the procedures for ^{e analysis}(testing) and storage of sexual assault kits.

****NOTE: Do you think there needs to be more detail here as to what the rules should contain? There could be an "all of the following" list that the rules must contain if you would like.

SECTION 3. 165.79 (1) of the statutes is amended to read:

165.79 (1) Evidence, information, and analyses of evidence obtained from law enforcement officers by the laboratories is privileged and not available to persons other than law enforcement officers nor is the defendant entitled to an inspection of information and evidence submitted to the laboratories by the state or of a laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the state at a preliminary hearing and except as provided in s. 165.775 (4) or 971.23. Upon request of a defendant in a felony action, approved by the presiding judge, the laboratories shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer is entitled to an inspection of information and evidence submitted to the laboratories by the defendant, or of a laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the accused at a preliminary hearing and except as provided in s. 971.23. Employees who made examinations or analyses of evidence shall attend the criminal trial as witnesses, without subpoena, upon reasonable written notice from either party requesting the attendance.

SECTION 4. 175.405 of the statutes is repealed.

SECTION 5. Nonstatutory provisions.

(1) Within 180 days of the effective date of this subsection, the department of justice shall promulgate emergency rules under section 227.24 of the statutes to implement section 165.775 of the statutes for the period before the effective date of the permanent rules but not to exceed the period authorized under section 227.24 (1)

INSERT 4-17
INSERT 4-18
INSERT 4-18

1 (c) of the statutes, subject to extension under section 227.24 (2) of the statutes.
 2 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
 3 is not required to provide evidence that promulgating a rule under this subsection
 4 as an emergency rule is necessary for the preservation of the public peace, health,
 5 safety, or welfare and is not required to provide a finding of emergency for a rule
 6 promulgated under this subsection.

SECTION 6. Effective date.

Insert
ed: intro

7
 8 (1) The treatment of sections 165.77 (7), 165.775, 165.79 (1), and 175.405 of the
 9 statutes takes effect on the first day of the 7th month beginning after publication.

(1) to (5) 165.845 (title) and (1) (a)
 165.847

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-3181/1
MLJ:amn

INSERT 2

2017 ASSEMBLY BILL 405

June 26, 2017 - Introduced by Representatives SARGENT, KOLSTE, BERCEAU, ANDERSON, SPREITZER, FIELDS, C. TAYLOR, CONSIDINE, OHNSTAD, VRUWINK and SUBECK, cosponsored by Senators CARPENTER, JOHNSON and L. TAYLOR. Referred to Committee on State Affairs.

1 AN ACT *to amend* 165.845 (title) and 165.845 (1) (a); and *to create* 165.847 of
2 the statutes; **relating to:** collection and reporting of data regarding sexual
3 assault forensic evidence kits.

Analysis by the Legislative Reference Bureau

Under current law, local law enforcement agencies report certain crime statistics to the Department of Justice using forms issued by DOJ. This bill requires DOJ to collect certain data regarding sexual assault forensic evidence 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 forensic evidence kits. Under the bill, DOJ must collect the following information: the number of sexual assault kits collected, 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 analyzed, the dates of submission and, if applicable, analysis, the number of kits not submitted to DOJ for analysis that remain in law enforcement custody, and the reason the kits were not submitted for analysis.

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

SECTION 1. 165.845 (title) of the statutes is amended to read:

4

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USE AS
INSERT
4-17

ASSEMBLY BILL 405

SECTION 1

1 **165.845 (title) Collect crime and evidentiary data.**

2 **SECTION 2.** 165.845 (1) (a) of the statutes is amended to read:

3 165.845 (1) (a) Collect information concerning the number and nature of
4 offenses known to have been committed in this state, the number and nature of
5 sexual assault forensic evidence kits^{as defined in s. 165.995(1)(e)} collected in this state, and such other
6 information as may be useful in the study of crime and the administration of justice.

7 The department of justice may determine any other information to be obtained
8 regarding crime, evidence, and justice system statistics. The information shall
9 include data requested by the federal bureau of investigation under its system of
10 uniform crime reports for the United States.

11 **SECTION 3.** 165.847 of the statutes is created to read:

12 **165.847 Report on status of sexual assault forensic evidence kits.** On
13 an annual basis, using information collected under s. 165.845 (1) (a), the department
14 of justice shall submit to the legislature for distribution under s. 13.172 (2) a report
15 that includes all of the following information for that year:

16 (1) The total number of sexual assault forensic evidence kits collected in
17 Wisconsin.

18 (2) The date that each sexual assault forensic evidence kit was collected.

19 (3) The number of sexual assault forensic evidence kits submitted to the crime
20 laboratories for analysis.

21 (4) The date of submission of each sexual assault forensic evidence kit
22 submitted to the crime laboratories.

23 (5) The date of analysis of each sexual assault forensic evidence kit submitted
24 to the crime laboratories.

4-17

4-18

ASSEMBLY BILL 405

4-18
cont

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

(7) For each unanalyzed sexual assault forensic evidence kit, the reason the kit has not been analyzed.

(8) The number of sexual assault forensic evidence kits that were not submitted to the crime laboratories for analysis that remain in the possession of a law enforcement agency.

(9) For each unsubmitted sexual assault forensic evidence kit, the reason the kit has not been submitted for analysis.

10

(END)

INSERT 1

INSERT 1 REL

7 collection and reporting of data regarding sexual assault kits,

INSERT 1A1

Under current law, there is no statutory procedure for the collection and analysis of sexual assault kits.

INSERT 1A2

170
or
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 and confidentially store the kit for a period of 15 years; or 2) if ~~it~~ ^{it} has received the kit of a person who has consented to analysis, analyze the kit within 90 days after receipt, then store the kit for a period of 15 years ^{and} until the end of a term of imprisonment or probation of a person prosecuted in the sexual assault case.

INSERT 2-6

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

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

INSERT 3-20

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

(a) If the victim chooses not to report the sexual assault to a Wisconsin law enforcement agency and thus has not consented to the analysis of his or her sexual assault kit, securely and confidentially store the sexual assault kit for a period of 15 years, during which time the sexual assault victim may choose to report the assault to a Wisconsin law enforcement agency.

(b) If the victim chooses to report the sexual assault to a ~~Wisconsin~~ law enforcement agency and thus has consented to the analysis of his or her sexual assault kit, analyze the kit within 90 days after taking possession of the sexual assault kit, and securely and confidentially store the sexual assault kit for a period of 15 years or until the end of the term of imprisonment or probation of a person who was convicted in the sexual assault case, whichever is longer.

INSERT 3-23

****NOTE: Do you want to add more detail about what the system should be capable of, or its purpose?

INSERT 4-18

****NOTE: You requested a requirement that law enforcement agencies submit this information on sexual assaults to DOJ. Law enforcement agencies are already required to submit information to DOJ under s. 165.845 (2); this just expands the information they must submit.

WISCONSIN LEGISLATIVE REFERENCE BUREAU

Information Services 608-266-0341—Legal Services 608-266-3561



-2194 Drafting Instructions from Nale on 3/7/

Sub. (A) - Kit retention

(4)(a) ← gone 10 years, not 15

(4)(b) — 1st half of par... shall follow the procedures of DOJ
under (rules)

(4)(b) 2nd half ^{sub.} = (5), LEO shall gone for a period of
50 years OR until the date of the expiration of
SOL or until the end of the term of impress...
... , whichever is longer

9 also capture idea that it will go for testing
'first'

Sub. (5) → remove entirely

Section 5 - see word document

Section 6 - remove entirely →

Add material from 2240:

Bill sections 3:5 to -2194, as-is, in entirety.

By MONDAY → 3/11

For s. 165.845 ...

(1) The department of justice shall:

- (a)** Collect information concerning the number and nature of offenses known to have been committed in this state and such other information as may be useful in the study of crime and the administration of justice. The department of justice may determine any other information to be obtained regarding crime and justice system data or statistics. The information shall include data requested by federal agencies under the US department of justice, including, but not limited to, the federal bureau of investigation under its system of uniform crime reports for the United States.
 - (b)** Furnish all reporting officials with forms or instructions or both that specify the nature of the information required under par. (a), the time it is to be forwarded, the process for submitting the information, the method of classifying and any other matters that facilitate collection and compilation.
 - (c)** Maintain a statistical analysis center to serve as a clearing house of justice system data and information and conduct justice system research and data analysis under this section.
- (2)** All persons in charge of law enforcement agencies and other criminal and juvenile justice system agencies shall supply the department of justice with the information described in sub. (1) (a) on the basis of the forms or instructions or both to be supplied by the department under sub. (1) (a**b**). The department may conduct an audit to determine the accuracy of the data and other information it receives from law enforcement agencies and other criminal and juvenile justice system agencies.



State of Wisconsin
2019 - 2020 LEGISLATURE

DUE 3/11/19

LRB-2194/P1

MLJ:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2 inserts

Dwf

Regen

1 **AN ACT to repeal** 165.77 (7) and 175.405; **to amend** 165.79 (1), 165.845 (title)
2 and 165.845 (1) (a); and **to create** 165.775 and 165.847 of the statutes; **relating**
3 **to:** storage and analysis of sexual assault kits, collection and reporting of data
4 regarding sexual assault kits, and requiring the exercise of rule-making
5 authority.

Analysis by the Legislative Reference Bureau

Under current law, there is no statutory procedure for the collection and analysis of sexual assault kits. This bill creates procedures for transmission, analysis, and storage of sexual assault kits. Under the bill, a health care professional who collects a sexual assault kit must do one of two things: 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 transmit the kit to the state crime laboratories within 72 hours for long-term storage. Under the bill, once 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 transmit the kit to the state crime laboratories for analysis 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 transmits the kit to the state crime laboratories for analysis, the agency must transmit the kit to the state crime laboratories for storage rather than for analysis.

*the date of the expiration of
the statute of limitations,
or until*

*send it to a law enforcement
agency to*

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 and confidentially store the kit for a period of 15 years; or 2) if it has received the kit of a person who has consented to analysis, analyze the kit within 90 days after receipt and then store the kit for a period of 15 years, or until the end of a term of imprisonment or probation of a person prosecuted in the sexual assault case.

Under current law, local law enforcement agencies report certain crime statistics to the Department of Justice using forms issued by DOJ. This bill requires DOJ to collect certain data regarding sexual assault kits collected and analyzed 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 collect the following information: the number of sexual assault kits collected, 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 analyzed, the dates of submission and, if applicable, analysis, the number of kits not submitted to DOJ for analysis that remain in law enforcement custody, and the reason the kits were not submitted for analysis.

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:

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

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

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

- (a) "Department" means the department of justice.
- (b) "Health care professional" has the meaning given in s. 154.01 (3).
- (c) "Sex offense" has the meaning given in s. 949.20 (7).
- (d) "Sexual assault forensic examination" means an examination performed by

a health care professional to gather evidence regarding a sex offense.

(e) "Sexual assault kit" means one of the following:

- 1. An evidence collection kit that is provided by the department and that contains medical supplies, other necessary items, and forms for a health care

100
INSERT 3
2-A

INSERT 2
2-2

1 professional to conduct a sexual assault forensic examination on a victim of sexual
2 assault.

3 2. An evidence collection kit that may contain forms developed by the
4 department for the health care professional and that contains medical supplies and
5 other necessary items that are provided by a health care professional and that are
6 used to conduct a sexual assault forensic examination.

****NOTE: I added a definition of "sexual assault forensic examination." Please let
me know if this is consistent with your intent.

7 (d) "Wisconsin law enforcement agency" has the meaning given in s. 165.77 (1)

8 (c).

9 **(2)** Whenever a health care professional collects a sexual assault kit, the health
10 care professional shall do one of the following:

11 (a) If the victim chooses to report the sexual assault to a Wisconsin law
12 enforcement agency, notify a Wisconsin law enforcement agency within 24 hours
13 after collecting the sexual assault kit.

14 (b) If the victim chooses not to report the sexual assault to a Wisconsin law
15 enforcement agency, submit the sexual assault kit to the state crime laboratories for
16 storage in accordance with the procedures specified in the department's rules under
17 sub. (6) within 72 hours after collecting the sexual assault kit.

18 **(3)** If a Wisconsin law enforcement agency receives notification under sub. (2)

19 (a), it shall do all of the following:

20 (a) Take possession of the sexual assault kit from the health care professional
21 within 72 hours after the collection of the sexual assault kit.

22 (b) Except as provided in par. (c), submit the sexual assault kit to the state
23 crime laboratories for analysis in accordance with the procedures specified in the

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

3 (c) If the Wisconsin law enforcement agency, after taking possession of the
4 sexual assault kit under par. (a) but before submitting the sexual assault kit for
5 analysis under par. (b), receives notification from the crime victim that the victim
6 does not want to proceed with the analysis of his or her sexual assault kit, submit the
7 sexual assault kit to the state crime laboratories for storage in accordance with the
8 procedures specified in the department's rules under sub. (6) within 14 days after the
9 collection of the sexual assault kit.

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

12 (a) If the victim chooses not to report the sexual assault to a Wisconsin law
13 enforcement agency and thus has not consented to the analysis of his or her sexual
14 assault kit, securely and confidentially store the sexual assault kit for a period of ¹⁰15
15 years, during which time the sexual assault victim may choose to report the assault
16 to a Wisconsin law enforcement agency.

17 (b) If the victim chooses to report the sexual assault to a Wisconsin law
18 enforcement agency and thus has consented to the analysis of his or her sexual
19 assault kit, ~~analyze the kit within 90 days after taking possession of the sexual~~
follow the procedures in the rules promulgated under sub. (6).
20 ~~assault kit, and~~ ^{or} securely and confidentially store the sexual assault kit for a period
until the date of the expiration of the statute of limitations,
21 ~~of 15 years or until the end of the term of imprisonment or probation of a person who~~
⁵⁰
22 was convicted in the sexual assault case, whichever is longer.

23 (5) The department shall create a system to be administered by the department
24 that allows for the tracking of each sexual assault kit in possession of the department
25 or a Wisconsin law enforcement agency.

****NOTE: Do you want to add more detail about what the system should be capable of, or its purpose?

1 **(6)** The department shall promulgate rules to administer this section,
2 including the procedures for analysis and storage of sexual assault kits.

****NOTE: Do you think there needs to be more detail here as to what the rules should contain? There could be an "all of the following" list that the rules must contain if you would like.

3 **SECTION 3.** 165.79 (1) of the statutes is amended to read:

4 **165.79 (1)** Evidence, information, and analyses of evidence obtained from law
5 enforcement officers by the laboratories is privileged and not available to persons
6 other than law enforcement officers nor is the defendant entitled to an inspection of
7 information and evidence submitted to the laboratories by the state or of a
8 laboratory's findings, or to examine laboratory personnel as witnesses concerning
9 the same, prior to trial, except to the extent that the same is used by the state at a
10 preliminary hearing and except as provided in s. 165.775 (5) or 971.23. Upon request
11 of a defendant in a felony action, approved by the presiding judge, the laboratories
12 shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer
13 is entitled to an inspection of information and evidence submitted to the laboratories
14 by the defendant, or of a laboratory's findings, or to examine laboratory personnel as
15 witnesses concerning the same, prior to trial, except to the extent that the same is
16 used by the accused at a preliminary hearing and except as provided in s. 971.23.
17 Employees who made examinations or analyses of evidence shall attend the criminal
18 trial as witnesses, without subpoena, upon reasonable written notice from either
19 party requesting the attendance.

20 **SECTION 4.** 165.845 (title) of the statutes is amended to read:

21 **165.845 (title) Collect crime and evidentiary data.**

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

1 165.845 (1) (a) Collect information concerning the number and nature of
 2 offenses known to have been committed in this state, the number and nature of
 3 sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state, and such
 4 other information as may be useful in the study of crime and the administration of
 5 justice. The department of justice may determine any other information to be
 6 obtained regarding crime, evidence, and justice system ^{data or} statistics. The information
 7 shall include data requested by ^{federal agencies under the} the federal bureau of investigation ^{(United States) department of justice,} under its system ^{including but}
 8 of uniform crime reports for the United States. ^{not limited to} U.S.

INSERT
6-9

****NOTE: You requested a requirement that law enforcement agencies submit this information on sexual assaults to DOJ. Law enforcement agencies are already required to submit information to DOJ under s. 165.845 (2); this just expands the information they must submit.

9 **SECTION 6.** 165.847 of the statutes is created to read:

10 **165.847 Report on status of sexual assault kits.** On an annual basis, using
 11 information collected under s. 165.845 (1) (a), the department of justice shall submit
 12 to the legislature for distribution under s. 13.172 (2) a report that includes all of the
 13 following information for that year:

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

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

16 (3) The number of sexual assault kits submitted to the crime laboratories for
 17 analysis.

18 (4) The date of submission of each sexual assault kit submitted to the crime
 19 laboratories.

20 (5) The date of analysis of each sexual assault kit submitted to the crime
 21 laboratories.

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

1 (7) For each unanalyzed sexual assault kit, the reason the kit has not been
2 analyzed.

3 (8) The number of sexual assault kits that were not submitted to the crime
4 laboratories for analysis that remain in the possession of a law enforcement agency.

5 (9) For each unsubmitted sexual assault kit, the reason the kit has not been
6 submitted for analysis.

7 SECTION 7. 175.405 of the statutes is repealed.

8 SECTION 8. Nonstatutory provisions.

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

18 SECTION 9. Effective dates. This act takes effect on the day after publication,
19 except as follows:

20 (1) The treatment of ss. 165.77 (7), 165.775 (1) to (5), 165.79 (1), 165.845 (title)
21 and (1) (a), 165.847, and 175.405 takes effect on the first day of the 7th month
22 beginning after publication.

23 (END)

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State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-2240/P1
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT to repeal** 175.405; **to amend** 165.77 (title); and **to create** 165.77 (1) (bm)
2 and 165.77 (7g) of the statutes; **relating to:** tracking of sexual assault kits in
3 sexual assault cases and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill requires the Department of Justice to maintain a data bank, to be known as the Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing victims of sexual assault access to information about the status of any sexual assault kit he or she has provided.

For further information see the *state* 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:

4 **SECTION 1.** 165.77 (title) of the statutes is amended to read:
5 **165.77 (title) Deoxyribonucleic acid analysis and data bank banks.**
6 **SECTION 2.** 165.77 (1) (bm) of the statutes is created to read:
7 165.77 (1) (bm) "Sexual assault kit" means the package of materials collected
8 by a Wisconsin law enforcement agency or a health care professional in a case of

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also DOJ

1 alleged or suspected sexual assault that are used to gather and preserve forensic
2 evidence of sexual assault.

3 SECTION 3. 165.77 (7g) of the statutes is created to read:

4 165.77 (7g) The department shall maintain a data bank, which shall be known
5 as the Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing
6 victims of alleged or suspected sexual assault access to information about the status
7 of any sexual assault kit he or she has provided. The data bank shall use electronic
8 technologies to allow continuous, ongoing access to do all of the following:

9 (a) Allow health care professionals collecting sexual assault kits, forensic
10 laboratories, law enforcement agencies, prosecutors, and the department to update
11 and track the location and status of sexual assault kits throughout the criminal
12 justice process, including the initial collection of evidence, receipt and storage at law
13 enforcement agencies, receipt and analysis at forensic laboratories, and storage and
14 any destruction after completion of analysis.

15 (b) Allow a victim of sexual assault to anonymously track or receive updates
16 regarding the location and status of his or her sexual assault kit throughout the
17 criminal justice process, including the initial collection in examinations performed
18 at medical facilities, receipt and storage at law enforcement agencies, receipt and
19 analysis at forensic laboratories, and storage and any destruction after completion
20 of analysis. Notwithstanding s. 165.79 (1), a victim may receive information and
21 analyses of evidence obtained from his or her sexual assault kit.

22 SECTION 4. 175.405 of the statutes is repealed.

23 SECTION 5. Fiscal changes.

24 (1) WISCONSIN SEXUAL ASSAULT KIT TRACKING SYSTEM. In the schedule under s.
25 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (a),

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1 ↑ the dollar amount for fiscal year 2019-20 is increased by \$800,000 to create the data
2 | bank required under s. 165.77 (7g).
3 └──

(END)

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**2019-2020 DRAFTING INSERT
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(5) If a law enforcement agency takes possession of a sexual assault kit after it has been analyzed by the state crime laboratories, it shall

INSERT 6-9

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

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

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

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

Johns, Melinda

From: Zolik, Nathan J - DOJ
Sent: Monday, March 11, 2019 3:22 PM
To: Johns, Melinda
Subject: small change on LRB-2194/P2

use language added in P2 plus this

Hi Melinda – thanks for the quick turnaround on the draft. In addition to the changes currently included in Section 5 of the bill (P2), please also include these below. These were in P1, but I must have misspoke on the phone last week. Once you make the change, could you circulate an updated draft? Thanks!

Nate
7-8937

1 165.845 (1) (a) Collect information concerning
2 offenses known to have been committed in this state,
3 sexual assault kits, as defined in s. 165.775 (1) (e), coll
4 other information as may be useful in the study of crim
5 justice. The department of justice may determine a
6 obtained regarding crime, evidence, and justice system
7 shall include data requested by the federal bureau of in
8 of uniform crime reports for the United States.

1 165.845 (1) (a) Collect information concerning the number and nature of
2 offenses known to have been committed in this state, the number and nature of
3 sexual assault kits, as defined in s. 165.775(1) (e), collected in this state, and such
4 other information as may be useful in the study of crime and the administration of
5 justice. The department of justice may determine any other information to be
6 obtained regarding crime, evidence, and justice system statistics. The information
7 shall include data requested by the federal bureau of investigation under its system
8 of uniform crime reports for the United States.



State of Wisconsin
2019 - 2020 LEGISLATURE

ONE 3/12/19

LRB-2194/P2
MLJ:amn&kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Reger.

- 1 AN ACT *to repeal* 165.77 (7) and 175.405; *to amend* 165.79 (1), 165.845 (1) (a),
2 165.845 (1) (b) and 165.845 (2); and *to create* 165.77 (7g) and 165.775 of the
3 statutes; **relating to:** storage and analysis of sexual assault kits and requiring
4 the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, there is no statutory procedure for the collection and analysis of sexual assault kits. This bill creates procedures for transmission, analysis, and storage of sexual assault kits. Under the bill, a health care professional who collects a sexual assault kit must do one of two things: 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 transmit the kit to the state crime laboratories within 72 hours for long-term storage. Under the bill, once 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 transmit the kit to the state crime laboratories for analysis 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 transmits the kit to the state crime laboratories for analysis, the agency must transmit the kit to the state crime laboratories for storage rather than for analysis.

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 and confidentially store the kit for a period of ten years; or 2) if it has received the kit of a person who has consented to analysis, analyze 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 prosecuted in the sexual assault case.

Under current law, local law enforcement agencies report certain crime statistics to the Department of Justice using forms issued by DOJ. This bill requires DOJ to collect certain data regarding sexual assault kits collected and analyzed in Wisconsin in addition to the data currently being collected. This bill also requires DOJ to maintain a data bank, to be known as the Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing victims of sexual assault access to information about the status of any sexual assault kit he or she has provided.

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

2 **SECTION 2.** 165.77 (7g) of the statutes is created to read:

3 **165.77 (7g)** The department shall maintain a data bank, which shall be known
4 as the Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing
5 victims of alleged or suspected sexual assault access to information about the status
6 of any sexual assault kit he or she has provided. The data bank shall use electronic
7 technologies to allow continuous, ongoing access to do all of the following:

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

1 (b) Allow a victim of sexual assault to anonymously track or receive updates
2 regarding the location and status of his or her sexual assault kit throughout the
3 criminal justice process, including the initial collection in examinations performed
4 at medical facilities, receipt and storage at law enforcement agencies, receipt and
5 analysis at forensic laboratories, and storage and any destruction after completion
6 of analysis. Notwithstanding s. 165.79 (1), a victim may receive information and
7 analyses of evidence obtained from his or her sexual assault kit.

8 **SECTION 3.** 165.775 of the statutes is created to read:

9 **165.775 Sexual assault kits.** (1) In this section:

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

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

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

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

15 (e) "Sexual assault kit" means one of the following:

16 1. An evidence collection kit that is provided by the department and that
17 contains medical supplies, other necessary items, and forms for a health care
18 professional to conduct a sexual assault forensic examination on a victim of sexual
19 assault.

20 2. An evidence collection kit that may contain forms developed by the
21 department for the health care professional and that contains medical supplies and
22 other necessary items that are provided by a health care professional and that are
23 used to conduct a sexual assault forensic examination.

****NOTE: I added a definition of "sexual assault forensic examination." Please let
me know if this is consistent with your intent.

1 (d) "Wisconsin law enforcement agency" has the meaning given in s. 165.77 (1)

2 (c).

3 (2) Whenever a health care professional collects a sexual assault kit, the health
4 care professional shall do one of the following:

5 (a) If the victim chooses to report the sexual assault to a Wisconsin law
6 enforcement agency, notify a Wisconsin law enforcement agency within 24 hours
7 after collecting the sexual assault kit.

8 (b) If the victim chooses not to report the sexual assault to a Wisconsin law
9 enforcement agency, submit the sexual assault kit to the state crime laboratories for
10 storage in accordance with the procedures specified in the department's rules under
11 sub. (6) within 72 hours after 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 the collection of the sexual assault kit.

16 (b) Except as provided in par. (c), submit the sexual assault kit to the state
17 crime laboratories for analysis in accordance with the procedures specified in the
18 department's rules 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 submitting the sexual assault kit for
22 analysis under par. (b), receives notification from the crime victim that the victim
23 does not want to proceed with the analysis of his or her sexual assault kit, submit the
24 sexual assault kit to the state crime laboratories for storage in accordance with the

1 procedures specified in the department's rules under sub. (6) within 14 days after the
2 collection of the sexual 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 and confidentially store the sexual assault kit for a period of 10
8 years, during which time the sexual assault victim may choose to report the assault
9 to a Wisconsin law 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, follow the procedures in the rules promulgated under sub. (6).

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

19 (6) The department shall promulgate rules to administer this section,
20 including the procedures for analysis and storage of sexual assault kits.

****NOTE: Do you think there needs to be more detail here as to what the rules
should contain? There could be an "all of the following" list that the rules must contain
if you would like.

21 **SECTION 4.** 165.79 (1) of the statutes is amended to read:

22 165.79 (1) Evidence, information, and analyses of evidence obtained from law
23 enforcement officers by the laboratories is privileged and not available to persons

1 other than law enforcement officers nor is the defendant entitled to an inspection of
 2 information and evidence submitted to the laboratories by the state or of a
 3 laboratory's findings, or to examine laboratory personnel as witnesses concerning
 4 the same, prior to trial, except to the extent that the same is used by the state at a
 5 preliminary hearing and except as provided in s. 165.775 (5) or 971.23. Upon request
 6 of a defendant in a felony action, approved by the presiding judge, the laboratories
 7 shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer
 8 is entitled to an inspection of information and evidence submitted to the laboratories
 9 by the defendant, or of a laboratory's findings, or to examine laboratory personnel as
 10 witnesses concerning the same, prior to trial, except to the extent that the same is
 11 used by the accused at a preliminary hearing and except as provided in s. 971.23.
 12 Employees who made examinations or analyses of evidence shall attend the criminal
 13 trial as witnesses, without subpoena, upon reasonable written notice from either
 14 party requesting the attendance.

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15 SECTION 5. 165.845 (1) (a) of the statutes is amended to read:

16 165.845 (1) (a) Collect information concerning the number and nature of
 17 offenses known to have been committed in this state ^{the number and nature of sexual assault} and such other information as ^{Kits, as}
 18 may be useful in the study of crime and the administration of justice. The ^{defined in}
 19 department of justice may determine any other information to be obtained regarding ^{s. 165.775(6)}
 20 crime ^{evidence} and justice system data or statistics. The information shall include data ^{collected in this}
 21 requested by federal agencies under the U.S. department of justice, including but not
 22 limited to the federal bureau of investigation under its system of uniform crime
 23 reports for the United States. ^{state}

24 SECTION 6. 165.845 (1) (b) of the statutes is amended to read:

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

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

6 165.845 (2) All persons in charge of law enforcement agencies and other
7 criminal and juvenile justice system agencies shall supply the department of justice
8 with the information described in sub. (1) (a) on the basis of the forms or instructions
9 or both to be supplied by the department under sub. (1) ~~(a)~~ (b). The department may
10 conduct an audit to determine the accuracy of the data and other information it
11 receives from law enforcement agencies and other criminal and juvenile justice
12 system agencies.

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

14 **SECTION 9. 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 10. Fiscal changes.**

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SECTION 1. 165.845 (title) of the statutes is amended to read:

165.845 (title) Collect crime and evidentiary data.