

## Johns, Melinda

---

**From:** Zolik, Nathan J - DOJ  
**Sent:** Tuesday, March 12, 2019 4:45 PM  
**To:** Johns, Melinda  
**Subject:** FW: Draft review: LRB -2194/P3  
**Attachments:** 19-2194/P3.pdf

Hi Melinda: Two more changes:

Page 2, line 5: delete "alleged or suspected"

Page 5, line 20: delete entirety of line 20. Result is that it says, "The department shall promulgate rules to administer this section."

Thank you!

**Nate Zolik**  
Senior Counsel  
Wisconsin Department of Justice  
17 W. Main Street  
Madison, WI 53703  
[ZolikNJ@doj.state.wi.us](mailto:ZolikNJ@doj.state.wi.us)

---

**From:** LRB.Legal <[lrblegal@legis.wisconsin.gov](mailto:lrblegal@legis.wisconsin.gov)>  
**Sent:** Tuesday, March 12, 2019 1:55 PM  
**To:** Zolik, Nathan J. <[ZolikNJ@doj.state.wi.us](mailto:ZolikNJ@doj.state.wi.us)>  
**Subject:** Draft review: LRB -2194/P3

**Following is the PDF version of draft LRB -2194/P3.**



State of Wisconsin  
2019 - 2020 LEGISLATURE

DUE 3/13/19

LRB-2194/P3  
MLJ:amn&kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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

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

16 **165.845 (title) Collect crime and evidentiary data.**

17 SECTION 6. 165.845 (1) (a) of the statutes is amended to read:

18 165.845 (1) (a) Collect information concerning the number and nature of  
19 offenses known to have been committed in this state, the number and nature of  
20 sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state, and such  
21 other information as may be useful in the study of crime and the administration of  
22 justice. The department of justice may determine any other information to be  
23 obtained regarding crime, evidence, and justice system data or statistics. The  
24 information shall include data requested by federal agencies under the U.S.

1 department of justice, including but not limited to the federal bureau of investigation  
2 under its system of uniform crime reports for the United States.

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

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

8 **SECTION 8.** 165.845 (2) of the statutes is amended to read:

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

16 **SECTION 9.** 175.405 of the statutes is repealed.

17 **SECTION 10. Nonstatutory provisions.**

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



1 and is not required to provide a finding of emergency for a rule promulgated under  
2 this subsection.

3 **SECTION 11. Fiscal changes.**

4 (1) WISCONSIN SEXUAL ASSAULT KIT TRACKING SYSTEM. In the schedule under s.  
5 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (a),  
6 the dollar amount for fiscal year 2019-20 is increased by \$800,000 to create the data  
7 bank required under s. 165.77 (7g).

8 **SECTION 12. Effective dates.** This act takes effect on the day after publication,  
9 except as follows:

10 (1) The treatment of ss. 165.77 (7) and (7g), 165.775 (1) to (5), 165.79 (1),  
11 165.845 (title), (1) (a) and (b), and (2), and 175.405 takes effect on the first day of the  
12 7th month beginning after publication.

13 (END)

## Johns, Melinda

---

**From:** Zolik, Nathan J - DOJ  
**Sent:** Friday, March 15, 2019 3:19 PM  
**To:** Johns, Melinda  
**Subject:** further edits to LRB 2194/P4

Hi Melinda – A few more follow ups on the sex assault kit bill draft:

1. For inclusion in the bill description: This bill requires law enforcement agencies to provide additional data to DOJ regarding sexual assault kits collected and analyzed in Wisconsin. The bill also requires DOJ to report on the status of the additional data at least annually.

2. Then, in Section 8 of the bill, add new sentence at the end of s. 165.845(2): The department shall report at least *and* annually on the status of compliance with the reporting requirements under sub. (1). *make new sub. (3) instead,*

3. And, new provision on liability exemption for SANE nurse exams:

*apply only  
to sexual  
assault kits*

### **895.539 Civil and criminal liability exemption; sexual assault evidence collection.**

(1) In this section:

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

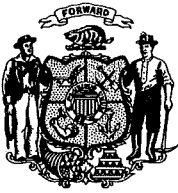
(b) "Sexual assault forensic examination" has the meaning specified in s. 165.775(1)(d).

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

(3) Any employer of the person under sub. (2) or any health care facility where the search is conducted by that person has the same immunity from liability under sub. (2).

Thank you!

**Nate Zolik**  
Senior Counsel  
Wisconsin Department of Justice  
17 W. Main Street  
Madison, WI 53703  
[ZolikNI@doj.state.wi.us](mailto:ZolikNI@doj.state.wi.us)



State of Wisconsin  
2019 - 2020 LEGISLATURE

DUE 3/19/19

LRB-2194/P4  
MLJ:amn&kjf

IPS

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

INSERT

Reyn

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

process  
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.

processed  
law enforcement agencies to provide additional data to DOJ

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

publish an annual report on law enforcement agency compliance with the reporting requirement. In addition, under the bill, DOJ is required to

**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 sexual assault access to information about the status of any sexual assault  
6 kit he or she has provided. The data bank shall use electronic technologies to allow  
7 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.

processing  
analysis  
processing

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<sup>processing</sup> at forensic laboratories, and storage and any destruction after completion  
6 of analysis<sup>processing</sup>. 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 <sup>processing</sup> 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 <sup>for</sup>  
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, <sup>process the kit in accordance with</sup> 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 <sup>processed</sup> 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 SECTION 4. 165.79 (1) of the statutes is amended to read:

21 165.79 (1) Evidence, information, and analyses of evidence obtained from law  
22 enforcement officers by the laboratories is privileged and not available to persons  
23 other than law enforcement officers nor is the defendant entitled to an inspection of  
24 information and evidence submitted to the laboratories by the state or of a  
25 laboratory's findings, or to examine laboratory personnel as witnesses concerning

1 the same, prior to trial, except to the extent that the same is used by the state at a  
2 preliminary hearing and except as provided in s. 165.775 (5) or 971.23. Upon request  
3 of a defendant in a felony action, approved by the presiding judge, the laboratories  
4 shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer  
5 is entitled to an inspection of information and evidence submitted to the laboratories  
6 by the defendant, or of a laboratory's findings, or to examine laboratory personnel as  
7 witnesses concerning the same, prior to trial, except to the extent that the same is  
8 used by the accused at a preliminary hearing and except as provided in s. 971.23.  
9 Employees who made examinations or analyses of evidence shall attend the criminal  
10 trial as witnesses, without subpoena, upon reasonable written notice from either  
11 party requesting the attendance.

12 SECTION 5. 165.845 (title) of the statutes is amended to read:

13 **165.845 (title) Collect crime and evidentiary data.**

14 SECTION 6. 165.845 (1) (a) of the statutes is amended to read:

15 165.845 (1) (a) Collect information concerning the number and nature of  
16 offenses known to have been committed in this state, the number and nature of  
17 sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state, and such  
18 other information as may be useful in the study of crime and the administration of  
19 justice. The department of justice may determine any other information to be  
20 obtained regarding crime, evidence, and justice system data or statistics. The  
21 information shall include data requested by federal agencies under the U.S.  
22 department of justice, including but not limited to the federal bureau of investigation  
23 under its system of uniform crime reports for the United States.

24 SECTION 7. 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 8.** 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 9.** 175.405 of the statutes is repealed.

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. Fiscal changes.**

INSERT  
7-13

INSERT  
7-14

1 (1) WISCONSIN SEXUAL ASSAULT KIT TRACKING SYSTEM. In the schedule under s.  
2 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (a),  
3 the dollar amount for fiscal year 2019-20 is increased by \$800,000 to create the data  
4 bank required under s. 165.77 (7g).

5 **SECTION 12. Effective dates.** This act takes effect on the day after publication,  
6 except as follows:

7 (1) The treatment of ss. 165.77 (7) and (7g), 165.775 (1) to (5), 165.79 (1),  
8 165.845 (title), (1) (a) <sup>3</sup> and (b) <sup>3</sup>, and (2), <sup>and (d)</sup> and 175.405 <sup>3</sup> <sup>and 895.537</sup> takes effect on the first day of the  
9 7th month beginning after publication.

10 (END)

**2019-2020 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-2194/P5ins  
MLJ:... *amv*

INSERT 7-13

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

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

INSERT 7-14

**SECTION 2.** 895.537 of the statutes is created to read:

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

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

(b) "Sexual assault forensic examination" has the meaning given in s. 165.775

(1) (d).

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

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

## Johns, Melinda

---

**From:** McKinny, Christopher J - DOJ  
**Sent:** Friday, March 29, 2019 4:12 PM  
**To:** Johns, Melinda  
**Cc:** Zolik, Nathan J - DOJ  
**Subject:** LRB-2194/P5

Hi Melinda,

Thank you very much for all of your help with this bill draft, we really appreciate it. As we discussed, we would like the language in Section 8 (beginning on p. 7, line 5) of the bill broadened to be inclusive of all of the information collected under 165.845(1)(a). Here is some proposed language:

"Publish a report or data at least annually on law enforcement agency compliance with the reporting requirements designated by the department under sub. (1)(a).

In addition, we would like the provisions regarding the tracking system removed from this draft.

If you have any questions please do not hesitate to let me know. Thanks and have a great weekend!

Chris McKinny  
Government Affairs Director  
Office of the Attorney General  
Wisconsin Department of Justice  
O: (608) 264-6367  
C: (608) 224-9207  
[McKinnyCJ@doj.state.wi.us](mailto:McKinnyCJ@doj.state.wi.us)



State of Wisconsin  
2019 - 2020 LEGISLATURE

DWF 4/4/19

LRB-2194(P5) 7/19  
MLJ:amn&kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1 **AN ACT to repeal** 165.77 (7) and 175.405; **to amend** 165.79 (1), 165.845 (title),  
2 165.845 (1) (a), 165.845 (1) (b) and 165.845 (2); and **to create** 165.77 (7g),  
3 165.775, 165.845 (1) (d) and 895.537 of the statutes; **relating to:** storage and  
4 processing of 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 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 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 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 transmits the kit to the state crime laboratories for processing, the agency must transmit 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 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, 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 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 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. This bill also requires DOJ to publish an annual report on law enforcement agency compliance with the reporting requirement. In addition, under the bill, DOJ is required 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 sexual assault access to information about the status of any sexual assault  
6 kit he or she has provided. The data bank shall use electronic technologies to allow  
7 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

1 enforcement agencies, receipt and processing at forensic laboratories, and storage  
2 and any destruction after completion of processing.

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

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

11 **165.775 Sexual assault kits.** (1) In this section:

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

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

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

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

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

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

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

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 processing 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 under  
22 par. (b), receives notification from the crime victim that the victim does not want to  
23 proceed with the analysis of his or her sexual assault kit, submit the sexual assault  
24 kit to the state crime laboratories for storage in accordance with the procedures



1 specified in the department's rules under sub. (6) within 14 days after the collection  
2 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, process the kit in accordance with the procedures 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, it shall securely and  
16 confidentially 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 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  
24 other than law enforcement officers nor is the defendant entitled to an inspection of  
25 information and evidence submitted to the laboratories by the state or of a

1 laboratory's findings, or to examine laboratory personnel as witnesses concerning  
2 the same, prior to trial, except to the extent that the same is used by the state at a  
3 preliminary hearing and except as provided in s. 165.775 (5) or 971.23. Upon request  
4 of a defendant in a felony action, approved by the presiding judge, the laboratories  
5 shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer  
6 is entitled to an inspection of information and evidence submitted to the laboratories  
7 by the defendant, or of a laboratory's findings, or to examine laboratory personnel as  
8 witnesses concerning the same, prior to trial, except to the extent that the same is  
9 used by the accused at a preliminary hearing and except as provided in s. 971.23.  
10 Employees who made examinations or analyses of evidence shall attend the criminal  
11 trial as witnesses, without subpoena, upon reasonable written notice from either  
12 party requesting the attendance.

13 SECTION 5. 165.845 (title) of the statutes is amended to read:

14 **165.845 (title) Collect crime and evidentiary data.**

15 SECTION 6. 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  
18 sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state, and such  
19 other information as may be useful in the study of crime and the administration of  
20 justice. The department of justice may determine any other information to be  
21 obtained regarding crime, evidence, and justice system data or statistics. The  
22 information shall include data requested by federal agencies under the U.S.  
23 department of justice, including but not limited to the federal bureau of investigation  
24 under its system of uniform crime reports for the United States.

25 SECTION 7. 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 8.** 165.845 (1) (d) of the statutes is created to read:

6           165.845 (1) (d) Publish a report at least annually on law enforcement agency  
7 compliance with the reporting requirement <sup>designated by the department</sup> under par. (a) relating to sexual assault  
8 kits.

9           **SECTION 9.** 165.845 (2) of the statutes is amended to read:

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

17           **SECTION 10.** 175.405 of the statutes is repealed.

18           **SECTION 11.** 895.537 of the statutes is created to read:

19           **895.537 Liability exemption; sexual assault evidence collection.** (1) In  
20 this section:

21           (a) "Health care professional" has the meaning given in s. 154.01 (3).

22           (b) "Sexual assault forensic examination" has the meaning given in s. 165.775  
23 (1) (d).

24           (2) Any health care professional conducting a sexual assault forensic  
25 examination pursuant to informed consent or a court order is immune from any civil

1 or criminal liability for the act, except for civil liability for negligence in the  
2 performance of the act.

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

6 **SECTION 12. Nonstatutory provisions.**

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

16 **SECTION 13. Fiscal changes.**

17 (1) WISCONSIN SEXUAL ASSAULT KIT TRACKING SYSTEM. In the schedule under s.  
18 20.005 (3) for the appropriation to the department of justice under s. 20.455 (2) (a),  
19 the dollar amount for fiscal year 2019-20 is increased by \$800,000 to create the data  
20 bank required under s. 165.77 (7g).

21 **SECTION 14. Effective dates.** This act takes effect on the day after publication,  
22 except as follows:

1 (1) The treatment of ss. 165.77 (7) and (7g), 165.775 (1) to (5), 165.79 (1),  
2 165.845 (title), (1) (a), (b), and (d), and (2), 175.405, and 895.537 takes effect on the  
3 first day of the 7th month beginning after publication.

4

(END)

## Johns, Melinda

---

**From:** Zolik, Nathan J - DOJ  
**Sent:** Monday, April 08, 2019 5:08 PM  
**To:** Johns, Melinda  
**Cc:** McKinny, Christopher J - DOJ  
**Subject:** RE: further edits to LRB-2194

We're good to go. Ready for P7. Thanks Melinda!

---

**From:** Johns, Melinda L - LEGIS <Melinda.Johns@legis.wisconsin.gov>  
**Sent:** Monday, April 8, 2019 5:04 PM  
**To:** Zolik, Nathan J. <ZolikNJ@doj.state.wi.us>  
**Subject:** RE: further edits to LRB-2194

Hi Nate,

I can include these changes. With these and the ones I discussed on the phone with Chris last Friday, is it ready to go ahead to a P7, or will there be more changes coming yet?

Melinda

### Melinda L. Johns

Legislative Attorney  
Wisconsin Legislative Reference Bureau  
P.O. Box 2037  
Madison, WI 53701-2037  
(608) 504-5855

---

**From:** Zolik, Nathan J - DOJ <zoliknj@doj.state.wi.us>  
**Sent:** Monday, April 08, 2019 3:59 PM  
**To:** Johns, Melinda <Melinda.Johns@legis.wisconsin.gov>  
**Cc:** McKinny, Christopher J - DOJ <McKinnyCJ@doj.state.wi.us>; Viste, Michelle L - DOJ <visteml@doj.state.wi.us>  
**Subject:** further edits to LRB-2194

Hi Melinda. We have a few more changes:

Section 2. Delete lines 10 – 13, page 2. Delete lines 1 – 4, page 3. On page 1, line 9, delete “one of the following” and after “means” insert “the evidence collected from a sexual assault forensic examination.”

Section 2. Page 3, line 10, after “agency,” and before “notify” insert “or if reporting is required under s. 48.981(2),”. Page 3, line 13, after “agency,” and before “submit” insert “and reporting is not required under s. 48.981(2),”.

Questions for us, please let us know.

Thanks again!

**Nate Zolik**  
Senior Counsel  
Wisconsin Department of Justice  
17 W. Main Street  
Madison, WI 53703  
[ZolikN@doj.state.wi.us](mailto:ZolikN@doj.state.wi.us)



State of Wisconsin  
2019 - 2020 LEGISLATURE

DUE 4/9/19

LRB-2194/P6  
MLJ:amn&kjf

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

Resen.

1 AN ACT *to repeal* 165.77 (7) and 175.405; *to amend* 165.79 (1), 165.845 (title),  
2 165.845 (1) (a), 165.845 (1) (b) and 165.845 (2); and *to create* 165.775, 165.845  
3 (1) (d) and 895.537 of the statutes; **relating to:** storage and processing of sexual  
4 assault kits and requiring the exercise of rule-making authority.

---

***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 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~~<sup>send</sup> 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~~<sup>send</sup> 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 ~~transmits~~<sup>sends</sup> the kit to the state crime laboratories for processing, the agency must ~~transmit~~<sup>send</sup> 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 ~~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, 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 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 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. This bill also requires DOJ to publish an annual report 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.

---

***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 <sup>the evidence collected from</sup> one of the following:

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

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

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

(c).

(2) Whenever a health care professional <sup>conducts a sexual assault forensic</sup> collects a sexual assault kit, the health <sup>examiner</sup> care professional shall do one of the following: <sup>and</sup>

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

(b) If the victim chooses not to report the sexual assault to a Wisconsin law enforcement agency, <sup>and reporting is not required under s. 48.981(2), send</sup> submit the sexual assault kit to the state crime laboratories for storage in accordance with the procedures specified in the department's rules under sub. (6) within 72 hours after collecting the sexual assault kit.

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

(a) Take possession of the sexual assault kit from the health care professional within 72 hours after <sup>receiving the notification</sup> the collection of the sexual assault kit.

(b) Except as provided in par. (c), <sup>send</sup> submit the sexual assault kit to the state crime laboratories for processing in accordance with the procedures specified in the department's rules under sub. (6) within 14 days after taking possession of the sexual assault kit.

(c) If the Wisconsin law enforcement agency, after taking possession of the sexual assault kit under par. (a) but before <sup>sending</sup> submitting the sexual assault kit under

1 par. (b), receives notification from the crime victim that the victim does not want to  
2 proceed with the analysis of his or her sexual assault kit, ~~(submit)~~<sup>send</sup> the sexual assault  
3 kit to the state crime laboratories for storage in accordance with the procedures  
4 specified in the department's rules under sub. (6) within 14 days after the collection  
5 of the sexual 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 and confidentially store the sexual assault kit for a period of 10  
11 years, during which time the sexual assault victim may choose to report the assault  
12 to a Wisconsin law 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 in the rules  
16 promulgated under sub. (6).

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

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

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

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

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

18 **165.845 (title) Collect crime and evidentiary data.**

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

20 165.845 (1) (a) Collect information concerning the number and nature of  
21 offenses known to have been committed in this state, <sup>concerning</sup> ~~the number and nature of~~  
22 sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state, and <sup>concerning</sup> ~~such~~  
23 other information as may be useful in the study of crime and the administration of  
24 justice. The department of justice may determine any other information to be  
25 obtained regarding crime, evidence, and justice system data or statistics. The

1 information shall include data requested by federal agencies under the U.S.  
2 department of justice, including but not limited to the federal bureau of investigation  
3 under its system of uniform crime reports for the United States.

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

5 165.845 (1) (b) Furnish all reporting officials with forms or instructions or both  
6 that specify the nature of the information required under par. (a), the time it is to be  
7 forwarded, the process for submitting the information, the method of classifying and  
8 any other matters that facilitate collection and compilation.

9 **SECTION 7.** 165.845 (1) (d) of the statutes is created to read:

10 165.845 (1) (d) Publish a report at least annually on law enforcement agency  
11 compliance with the reporting requirement designated by the department under par.

12 (a) *relating to sexual assault kits*

13 **SECTION 8.** 165.845 (2) of the statutes is amended to read:

14 165.845 (2) All persons in charge of law enforcement agencies and other  
15 criminal and juvenile justice system agencies shall supply the department of justice  
16 with the information described in sub. (1) (a) on the basis of the forms or instructions  
17 or both to be supplied by the department under sub. (1) (a) (b). The department may  
18 conduct an audit to determine the accuracy of the data and other information it  
19 receives from law enforcement agencies and other criminal and juvenile justice  
20 system agencies.

21 **SECTION 9.** 175.405 of the statutes is repealed.

22 **SECTION 10.** 895.537 of the statutes is created to read:

23 **895.537 Liability exemption; sexual assault evidence collection.** (1) In  
24 this section:

25 (a) "Health care professional" has the meaning given in s. 154.01 (3).

1 (b) "Sexual assault forensic examination" has the meaning given in s. 165.775

2 (1) (d).

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

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

10 **SECTION 11. Nonstatutory provisions.**

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

20 **SECTION 12. 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 (5), 165.79 (1), 165.845 (title),  
23 (1) (a), (b), and (d), and (2), 175.405, and 895.537 takes effect on the first day of the  
24 7th month beginning after publication.

25

(END)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*Now*

*Pwf ✓*

*Regen,*

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.

**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 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 send 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 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.

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

*the following*

*15*

has not consented to analysis, securely 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, 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 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 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. This bill also requires DOJ to publish an annual report 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.

---

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

12           (c).

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



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

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

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

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

13 (b) Except as provided in par. (c), send the sexual assault kit to the state crime  
14 laboratories for processing in accordance with the procedures specified in the  
15 department's <sup>promulgated</sup> rules under sub. (6) within 14 days after taking possession of the sexual  
16 assault kit.

17 (c) If the Wisconsin law enforcement agency, after taking possession of the  
18 sexual assault kit under par. (a) but before sending the sexual assault kit under par.  
19 (b), receives notification from the crime victim that the victim does not want to  
20 proceed with the analysis of his or her sexual assault kit, send the sexual assault kit  
21 to the state crime laboratories for storage in accordance with the procedures specified  
22 in the department's <sup>promulgated</sup> rules under sub. (6) within 14 days after <sup>taking possession of</sup> the collection of the  
23 sexual assault kit.

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

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

6 (b) If the victim chooses to report the sexual assault to a Wisconsin law  
7 enforcement agency and thus has consented to the analysis of his or her sexual  
8 assault kit, process the kit in accordance with the procedures <sup>specified</sup> in the rules  
9 promulgated under sub. (6). *notwithstanding s. 968.205*

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

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

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

17 **165.845 (title) Collect crime and ~~evidentiary~~ <sup>criminal justice</sup> data.**

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

19 165.845 (1) (a) Collect information concerning the number and nature of  
20 offenses known to have been committed in this state, concerning sexual assault kits,  
21 as defined in s. 165.775 (1) (e), collected in this state, and concerning such other  
22 information as may be useful in the study of crime and the administration of justice.  
23 The department of justice may determine any other information to be obtained  
24 regarding crime, evidence, and justice system data or statistics. The information  
25 shall include data requested by federal agencies under the U.S. department of

1 justice, including but not limited to the federal bureau of investigation under its  
2 system of uniform crime reports for the United States.

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

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

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

9 165.845 (1) (d) Publish a report <sup>data</sup> at least annually on law enforcement agency  
10 compliance with the reporting requirement under par. (a) relating to sexual assault  
11 kits.

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

13 165.845 (2) All persons in charge of law enforcement agencies and other  
14 criminal and juvenile justice system agencies shall supply the department of justice  
15 with the information described in sub. (1) (a) on the basis of the forms or instructions  
16 or both to be supplied by the department under sub. (1) ~~(a)~~ (b). The department may  
17 conduct an audit to determine the accuracy of the data and other information it  
18 receives from law enforcement agencies and other criminal and juvenile justice  
19 system agencies.

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

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

22 **895.537 Liability exemption; sexual assault evidence collection.** (1) In  
23 this section:

24 (a) "Health care professional" has the meaning given in s. 154.01 (3).

1 (b) "Sexual assault forensic examination" has the meaning given in s. 165.775

2 (1) (d).

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

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

10 **SECTION 10. Nonstatutory provisions.**

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

20 **SECTION 11. 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 (5), 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)

**Barman, Mike**

---

**From:** Kuehl, Nicole  
**Sent:** Tuesday, April 16, 2019 11:59 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -2194/1

Please Jacket LRB -2194/1 for the ASSEMBLY.