



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

Scott Grosz and Jessica Karls-Ruplinger  
Clearinghouse Co-Directors

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

### CLEARINGHOUSE RULE 14-070

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

a. Section Jus 9.07 appears to be inconsistent with s. 946.52, Stats. Section Jus 9.07 provides that failure to provide a biological specimen as required under the rule constitutes a criminal offense, as opposed to s. 946.52, Stats., which requires an element of intent.

b. In s. Jus 9.04 (1) (a) 1., the text reads: “on or after August 12, 1993 under circumstances provided in s. 165.76 (1) ... (e), Stats.”. Section 165.76 (1) (e), Stats., relates to circumstances that occur on or after July 9, 1996. Should the reference to circumstances in s. 165.76 (1) (e), Stats., reference the date of July 9, 1996, rather than August 12, 1993?

#### 2. Form, Style and Placement in Administrative Code

a. Throughout the rule, note that when a series of consecutively numbered rule sections are affected in their entirety by the same treatment, the affected rule sections may be included in a single SECTION. [s. 1.04 (2) (a), Manual.]

b. Throughout the rule, it is not necessary to include “titled” in the treatment clause. If the purpose is to repeal and recreate a section, the proper treatment is to “repeal and recreate”. [s. 1.065, Manual.]

c. Throughout the rule, use of the treatment “repeal and recreate” should be used sparingly and only when major changes are being made to an existing rule provision. A drawback of repealing and recreating rule provisions is that only the newly created text is shown, and not the changes to existing text. [s. 1.065, Manual.] It does not appear that repealing and recreating many

of the affected sections is necessary. A few examples of provisions where repealing and recreating is likely not necessary include ss. Jus 9.01, 9.02, 9.03, 9.07, 9.08 (2), and 9.09.

d. The treatment for s. Jus 9.10 should be to “create” because this section does not exist in current law. [s. 1.055, Manual.]

e. The rule needs an effective date clause, set forth in a numbered SECTION at the end of the rule. [s. 1.02 (4), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. Jus 9.04 (1) (a) 6., “s. 165.76 (1) (av) 2. or (aw)” should replace “s. 165.76 (1) (av) 2., and 165.76 (1) (aw), Stats.”. [s. 1.07 (2), Manual.]

b. Throughout s. Jus 9.04 (2), “sub. (3)” should replace “s. Jus 9.04 (3)”. [s. 1.07 (2), Manual.]

c. In s. Jus 9.04 (3) (c) (intro.), “sub. (1)” should replace “s. Jus 9.04 (1)”. [s. 1.07 (2), Manual.]

d. In s. Jus 9.04 (3) (c) 1. and 2., “subd. 3.” should replace “par. (c) 3.”. [s. 1.07 (2), Manual.]

e. In s. Jus 9.04 (3) (c) 4., “this section” should replace “s. Jus 9.04”. [s. 1.07 (2), Manual.]

f. In s. Jus 9.06 (2) (e), the reference to s. 165.87 (4) (ah), Stats., appears to be incorrect, as that statutory section does not exist.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. Jus 9.04 (2) (b) and (c), use of the words “child [juvenile]” should be avoided to prevent confusion. These terms can refer to different groups of people. The rule should be specific to which group or groups of individuals it is referencing. Use of a definition may also be advisable.

b. In s. Jus 9.04 (3) (intro.), “all of” should be inserted before “the following procedures”. Similarly, “all of” should be inserted before “the following” in s. Jus 9.04 (3) (c) (intro.), and “any of” should be inserted before “the following grounds” in s. Jus 9.06 (2) (a) (intro.). [s. 1.03 (3), Manual.]

c. In s. Jus 9.04 (3) (c) 5. and (d), why are the “department procedures” not included in the proposed rule?

d. In s. Jus 9.10, “may” should replace “shall”. [s. 1.01 (2), Manual.]