



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0742/P2
MLJ:wlj&skw

DOA:.....Schmidt, BB0225 - Sexual assault kit storage and processing
FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau
JUSTICE

Sexual assault kits

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

Under the bill, once the state crime laboratories takes possession of a sexual assault kit, it must do one of the following: 1) if it has received the kit of a person who

has not consented to analysis, securely store the kit for a period of 10 years; or 2) if it has received the kit of a person who has consented to analysis, process the kit and then send it to a law enforcement agency to store the kit for a period of 50 years, or until the date of the expiration of the statute of limitations, or until the end of a term of imprisonment or probation of a person convicted in the sexual assault case, whichever is longer.

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

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

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 the evidence collected from a sexual assault forensic examination.

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

(c).

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

(a) If the victim chooses to report the sexual assault to a Wisconsin law enforcement agency, or if reporting is required under s. 48.981 (2), 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, and reporting is not required under s. 48.981 (2), send the sexual assault kit to the state crime laboratories for storage in accordance with the procedures specified in the rules promulgated 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 receiving the notification.

(b) Except as provided in par. (c), send the sexual assault kit to the state crime laboratories for processing in accordance with the procedures specified in the rules promulgated 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 sending the sexual assault kit under par. (b), receives notification from the victim that the victim does not want to proceed with the analysis of his or her sexual assault kit, send the sexual assault kit to the state crime laboratories for storage in accordance with the procedures specified in the rules promulgated under sub. (6) within 14 days after taking possession of the sexual assault kit.

(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 store the sexual assault kit for a period of 10 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, process the kit in accordance with the procedures specified in the rules promulgated under sub. (6).

(5) If a law enforcement agency takes possession of a sexual assault kit after it has been processed by the state crime laboratories, notwithstanding s. 968.205, it shall securely store the sexual assault kit for a period of 50 years, or until the date of the expiration of the statute of limitations, 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.

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

SECTION 3. 175.405 of the statutes is repealed.

SECTION 4. 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 health care professional under sub. (2) or any health care facility where the sexual assault forensic examination is conducted by that health care professional has the same immunity from liability under sub (2).

SECTION 9127. Nonstatutory provisions; Justice.

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

SECTION 9427. Effective dates; Justice.

(1) SEXUAL ASSAULT KITS. The treatment of ss. 165.77 (7), 165.775 (1) to (5), 165.845 (1r) (a) 2. and (d) 1., 175.405, and 895.537 takes effect on the first day of the 7th month beginning after publication.

***NOTE: This is reconciled Section 9427 (1). This SECTION has been affected by drafts with the following LRB numbers: -0742/P1, -0907/P3.

(END)