

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date May 19, 2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) JUS 20 (emergency rule)</p>	
<p>4. Subject Storage and processing of sexual assault kits</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input checked="" type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected 20.455(2)(Lm)</p>
<p>7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$Estimated to be less than \$10 million biennially.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule Consistent with Wis. Stat. § 165.775(6), as created by 2021 Wis. Act. 116, the State of Wisconsin Department of Justice ("DOJ") will promulgate emergency rules to conform to statutory requirements in Wis. Stat. §§ 165.775(1) through (5), as created by 2021 Wis. Act. 116. These provisions relate to the submission, processing, and storage of sexual assault kits collected from victims.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. N/A</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) No economic or fiscal impacts are anticipated for specific businesses, sectors, rate payers, or the State's economy as a whole. Some local governmental units may experience increased costs due to local law enforcement agencies being required to send sexual assault kits to the state crime laboratories for processing. Local law enforcement agencies may also experience additional costs to the extent that the timeframes for taking possession of, submitting, and storing sexual assault kits differ from past policies. The amount of these costs for local law enforcement agencies are unknown, as that information is known to those agencies. No local law enforcement agencies or related associations registered or testified against the bill that became 2021 Wis. Act 116 when it was before the Wisconsin Legislature.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing the emergency rules are that DOJ will establish guidance to the public to implement the statutes created by 2021 Wis. Act 116 governing the submission and storage of sexual assault kits, which contain</p>	

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evidence collected as part of sexual assault forensic examinations of victims. These emergency rules are required by non-statutory provisions in 2021 Wis. Act. 116. See 2021 Wis. Act 116, ss. 2, 10(1).

The alternatives to implementing the emergency rules are that there will be no guidance for the public from DOJ regarding these laws. The Legislature directed DOJ to promulgate emergency rules.

16. Long Range Implications of Implementing the Rule

The long-range implications of implementing the emergency rules are improved practices regarding the submission, processing, and storage of sexual assault kits collected from victims.

17. Compare With Approaches Being Used by Federal Government

Congress enacted the Survivors' Bill of Rights Act of 2016, which was signed into law on October 7, 2016. See 18 U.S.C. § 3772. This law gives sexual assault survivors several rights, including: (1) the right not to be prevented from, or charged for, receiving a medical forensic examination; (2) the right to have a sexual-assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter; (3) the right to be informed of any result of a sexual assault evidence collection kit, including a DNA profile match, toxicology report, or other information collected as part of a medical forensic examination, if such disclosure would not impede or compromise an ongoing investigation; (4) the right to be informed in writing of policies governing the collection and preservation of a sexual assault evidence collection kit; (5) the right to, upon written request, receive written notification from the appropriate official with custody not later than 60 days before the date of the intended destruction or disposal of the sexual assault evidence collection kit; and (6) the right to, upon written request, be granted further preservation of the kit or its probative contents. 18 U.S.C. §§ 3772(a)(1)–(3)(B).

18 U.S.C. § 3772 generally addresses the same activities that the emergency rules address, namely, the storage and processing of sexual assault kits and related evidence. However, the federal law is about providing specific rights to crime victims; whereas the emergency rules establish how the Wisconsin Department of Justice will administer and execute the statutes governing storage and processing of sexual assault kits, namely Wis. Stat. § 165.775.

In 2021, a bill was proposed in Congress to enact the Survivors' Bill of Rights in the States Act of 2021. See Survivors' Bill of Rights in the States Act of 2021, H.R. 4978, 117th Cong. § 1 (2021). The bill was introduced in the U.S. House of Representatives on August 6, 2021. It would create an incentive for states to put in place laws that provide to sexual assault survivors the rights, at a minimum, under 18 U.S.C. § 3772. It would enable the U.S. Attorney General to make grants to those states equal to 10 percent of the average of the amount of funding of the three most recent awards that a state received under part T of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 34 U.S.C. § 10441 et seq., commonly referred to as the STOP Violence Against Women Formula Grant Program.

This proposed legislation involves grant funding, and the emergency rules do not address grants or funding sources for sexual-assault kit analysis.

Lastly, 32 C.F.R. § 114, addressing "Victim and Witness Assistance" in cases involving offenses by military personnel, establishes certain rights for sexual assault victims. These include the rights to: (1) have a "sexual assault evidence collection kit or its probative contents preserved, without charge"; (2) be informed of the result of such kits; (3) be informed in writing of policies governing the collection and preservation of such kits; (4) upon written request, receive written notification from the appropriate official with custody not less than 60 days before the intended destruction or disposal of the kit; and (5) upon written request, be granted further preservation of such kits or their probative contents. 32 C.F.R. § 114.6(b)(1)(xi), (xii), (xiii), (xiv), (xv).

These federal regulations generally address the same activities that the emergency rules address, namely, the storage and processing of sexual assault kits and related evidence. However, the federal regulations are about providing specific

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rights to victims of particular crimes by military personnel; whereas the emergency rules establish how the Wisconsin Department of Justice will administer and execute the statutes governing storage and processing of sexual assault kits, namely Wis. Stat. § 165.775.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: In Illinois, the Sexual Assault Evidence Submission Act governs sexual-assault-kit evidence collection, storage, and processing. 725 ILCS 202. It includes provisions addressing: the submission, analysis, and inventorying of evidence; reporting regarding sexual-assault cases; rulemaking regarding evidence; a sexual-assault-kit-evidence tracking system; and other related provisions. 725 ILCS 202/10 to 202/50. Similarly, the Sexual Assault Incident Procedure Act, 725 ILCS 203, includes provisions regarding: victim notification; sexual assault incident policies; reports by law enforcement officers; third-party reports; victim notice; release and storage of sexual assault evidence; and release of other information. 725 ILCS 203/11 to 203/35.

Iowa: In Iowa, Iowa Code section 709.10 governs evidence of sexual abuse. It establishes a sexual assault kit tracking system. I. C. A. § 709.10.1.c., 2.–3., 8.–9. The law addresses how health care providers and law enforcement agencies are to collect and process and document sexual assault kit evidence. I. C. A. § 709.10.4.–5. Law enforcement agencies are required to store the kit for a minimum of 15 years or, in the case of a minor victim, for 15 years after the minor reaches the age of majority. I. C. A. § 709.10.6. The law addresses disposal of sexual assault kits. I. C. A. § 709.10.7. It also addresses victim consent. I. C. A. § 709.10.11.a.–e.

Michigan: In Michigan, the Michigan Legislature enacted the Sexual Assault Kit Evidence Submission Act in 2014. This law governs sexual assault kit evidence collection, storage, and processing, and it includes provisions that specifically address the duties of health care facilities, written victim consent, notice to law enforcement agencies, the duties of law enforcement agencies, and destruction of sexual assault kit evidence. Mich. Comp. Laws. Ann. §§ 752.931–935.

Minnesota: In Minnesota, Minn. Stat. § 299C.106 governs sexual assault kit handling, submission, and storage. Specifically, the law requires law enforcement agencies to retrieve unrestricted sexual assault examination kits from health care professionals within 10 days of receiving notice that the kit is available for transfer. Minn. Stat. § 299C.106, subd. 2. Within 60 days of receiving an unrestricted sexual assault examination kit, a law enforcement agency must submit the kit for testing to a forensic laboratory. Minn. Stat. § 299C.106, subd. 3. The law also mandates that a uniform consent form be developed and distributed and that a searchable database providing sexual assault victims with information on the status of their individual sexual assault examination kit be maintained. Minn. Stat. § 299C.106, subsd. 3a., 3b.

19. Contact Name

Clayton P. Kawski, Assistant Attorney General

20. Contact Phone Number

608-266-8549

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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