

STANDING COMMITTEES:

Natural Resources & Energy, Chair  
Transportation & Local Government, Vice-Chair

JOINT COMMITTEES:

Audit Committee, Co-Chair

**ROBERT L. COWLES**

Wisconsin State Senator  
2nd Senate District

## Testimony on 2021 Senate Bill 71

Senator Robert Cowles  
Senate Committee on Judiciary and Public Safety  
February 25, 2021

Thank you, Chairman Wanggaard and committee members, for hearing 2021 Senate Bill 71. This bill establishes timelines and protocols for nurses and members of law enforcement that will prevent a future backlog of sexual assault kits, ensure a proper chain of evidence, preserve these kits throughout the statute of limitations, and most importantly, provide certainty to sexual assault survivors seeking justice.

We're all familiar with the events that led to the necessity of this legislation. The inaction to address the sexual assault kit backlog head on, over the course of decades, allowed this problem to grow and become further exacerbated as Attorneys General, prosecutors, and law enforcement failed to address the inventory of sexual assault kit evidence around the state.

Former Attorney General Brad Schimel had taken the first steps to address the sexual assault kit backlog by securing funding and establishing processes to clear the backlog. Those efforts should not be understated. Under Attorney General Josh Kaul and local district attorneys, prosecutions as a result of findings from backlogged evidence are taking place and future prosecutions are still in the works.

While the kit testing delay should not be forgotten, the progress that has been made has been tremendous. The cause of the sexual assault kit backlog is a bipartisan and multi-disciplinary failure, and that's why I'm proud to be here today as part of a team of bi-partisan co-authors and supporters presenting a statutory solution that will systematically prevent similar circumstances from happening again.

Under current law, there is no statutory procedure for the collection and processing of sexual assault kits. Senate Bill 71 statutorily creates needed procedures for the custody, processing, and storage of sexual assault kits. This legislation ensures that health care professionals report sexual assault to law enforcement within 24 hours of collection of a kit, if the survivor intends to report the assault. Once law enforcement is notified by a health care professional, the law enforcement agency must take possession of the collected kit within 72 hours and submit the kit to the State Crime Lab within 14 days for processing. Therefore under Senate Bill 71, we've gone from decades of backlogged evidence to kit collection to processing in less than three weeks.

Once the State Crime Lab has taken possession of a sexual assault kit and consent has been given from the survivor, the kit is processed and sent to the relevant law enforcement agency. Law enforcement must then preserve the evidence either in storage for 50 years, until the expiration of the statute of limitations, or until the term of imprisonment or probation of a person convicted in the sexual assault case ends, whichever is longer. Last legislative session several questions arose regarding this distinction. The reason for this primarily surrounds the crime of First-Degree Sexual Assault, a Class B felony, which does not have a statute of limitation, and carries a maximum sentence of 40 years of confinement and 20 years of extended supervision in a bifurcated judgement.

If a survivor chooses not to report the sexual assault at the time a kit is collected, the health care professional must send the kit to a state crime lab within 72 hours for storage. This statutory certainty should help to ensure those who have experienced a sexual assault are comfortable to come forward, and volunteer to an examination, even at the time they choose to seek care they are concerned about of pursuing investigation and prosecution. If the survivor changes their mind and chooses to pursue justice, the kit will have been preserved for up to 10 years at the State Crime Lab to allow for processing at a later date.

Finally, Senate Bill 71 ensures that more data, in addition to the data already reported, will be provided on sexual assault kit collection and processing to the state Department of Justice.

Sexual assault is an issue that impacts all of our districts, and historically has been a notoriously underreported crime. Providing clarity and certainty to survivors with evidence collected from an assault may lead to more survivors seeking justice and more successful investigations and prosecutions.

Senate Bill 71 does not impact the definition of classifications of any crimes, nor does it interfere with the justice system which ensures a fair prosecution. Instead, this legislation ensures the proper handling of evidence by mirroring legislation already enacted in over twenty other states. This legislation is supported by groups representing law enforcement, health care professionals, and sexual assault survivor advocates.

I believe this is a common-sense step that we owe to the survivors of sexual assault to ensure that evidence is handled properly so they can have one less thing on their mind as they deal with the trauma they endured.



# DAVID STEFFEN

STATE REPRESENTATIVE • 4<sup>TH</sup> ASSEMBLY DISTRICT

February 25, 2021

Chairman Wanggaard and Committee Members,

Thank you for holding a Public Hearing on SB 71 relating to storage and processing of sexual assault kits and requiring the exercise of rule-making authority.

One out of every six American women in her lifetime is a victim of attempted or completed rape. The current backlog in rape kits nationwide underscores a devastating gap in the criminal justice system. In the last decade, hundreds of thousands of rape kits — which include physical and DNA evidence gathered from rape victims — have gone untested because law enforcement agencies around the country are not prioritizing their testing or do not have the resources to do so. The testing of these kits are crucial to identifying perpetrators by demonstrating an individual's culpability in sex crimes.

We owe it to sexual assault survivors and their families to ensure that local law enforcement and hospitals submit sexual assault kits to the state crime lab quickly in order to fully integrate them into the Department of Justice's (DOJ) testing process and avoid any unnecessary delays. Every single assault kit that is untested represents a human being who went through an awful trauma, and they deserve to have their case fully investigated.

Under current law, there is no statutory procedure for the collection and processing of sexual assault kits. This lack of a standard process led to a backlog of kits that were not being submitted to the state crime laboratory for testing.

If passed, when a health care professional collects sexual assault evidence, a victim will have the choice to report to law enforcement or not. If a victim does choose to report to law enforcement, under the proposed legislation the health care professional will notify law enforcement within 24 hours after collecting the sexual assault kit. The law enforcement agency then has 72 hours to collect the kit from the health care professional, and then 14 days to send the kit to the state crime laboratories for analysis. After the kit has been processed it will be sent to a law enforcement agency and stored for 50 years.

This bill is the result of thoughtful collaboration from a variety of stakeholders such as DOJ, law enforcement, prosecutors, victim advocates, sexual assault nurse examiners, and the State Crime Laboratory.

I appreciate your consideration of this bill and I would be happy to answer any questions you may have.



**STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE**

**Josh Kaul  
Attorney General**

Room 114 East, State Capitol  
PO Box 7857  
Madison WI 53707-7857  
(608) 266-1221  
TTY 1-800-947-3529

**PREPARED TESTIMONY OF ATTORNEY GENERAL JOSH KAUL**

Senate Committee on Judiciary and Public Safety

Thursday, February 25, 2021

Chairperson Wanggaard, Vice-Chair Wimberger, and Members of the Committee:

Thank you for holding a hearing today on Senate Bill 71, legislation that seeks to prevent a future backlog of untested sexual assault kits in Wisconsin.

I would also like to thank Senators Cowles and Agard, Representatives Steffen and Macco, and other members of the legislature who have supported this legislation, as well as the members of the Attorney General's Sexual Assault Response Team, a multi-disciplinary group that played a large role in developing this legislation.

Sexual assault is a serious violent crime, and the investigation and prosecution of these cases should be a priority. Sexual assault forensic examinations are used to collect evidence from the body of a victim following an assault that can stand up in a courtroom. These examinations are invasive and sometimes painful, but they are often critical to investigations. Justice should not be delayed because a sexual assault kit is not submitted—or because there is a lengthy delay before a kit is submitted—to the Wisconsin State Crime Laboratories.

If enacted, Senate Bill 71 will establish a statutory framework for the submission to the Wisconsin State Crime Laboratories and retention of sexual assault kits.

Under this proposed legislation, when a health care professional collects a sexual assault kit during a sexual assault forensic examination and the assault is reported to law enforcement, the health care professional must notify law enforcement of the kit within 24 hours. The law enforcement agency would then have 72 hours to obtain the kit from the health care professional, and (unless the survivor notifies the agency that he or she does not want the kit to be tested) 14 days after that to send the kit to the state crime labs.

Alternatively, when a health care professional collects a sexual assault kit during a sexual assault forensic examination and the assault is not reported to law enforcement, Senate Bill 71 requires the health care professional to send the kit to

Prepared Testimony of Attorney General Josh Kaul  
Senate Committee on Judiciary and Public Safety  
Thursday, February 25, 2021  
Page 2

the state crime laboratories within 72 hours of collecting the kit. The kit would then be stored at the state crime lab for 10 years or until the survivor decides to report the sexual assault to law enforcement.

Senate Bill 71 also would require the Wisconsin Department of Justice to collect information regarding sexual assault kits collected in Wisconsin.

Last session, this proposal passed the Senate Committee on Insurance, Financial Services, Government Oversight and Courts on a vote of 5-0, and was ultimately passed by the Wisconsin State Senate on a voice vote. Unfortunately, it was not taken up by the Assembly prior to the end of the legislative session. I hope this proposal will be signed into law this session.

Again, thank you for holding a hearing on this legislation. Sexual assault is a serious crime that should be investigated thoroughly to get justice for survivors and dangerous criminals off the streets. I hope you all support this legislation through passage. If you have any questions or require any additional information, please do not hesitate to contact Chris McKinny, DOJ's Government Affairs Director, at 608-224-9207 or [McKinnyCJ@doj.state.wi.us](mailto:McKinnyCJ@doj.state.wi.us).



25 Broadway, 9<sup>th</sup> Floor  
New York, New York 10004  
(212) 475-2026  
joyfulheartfoundation.org

Board of Directors:

Mariska Hurnay  
Founder & President

Debbie Millman  
Chair

Heli Amateau  
Vice Chair

Mark Herzlich  
Treasurer

Chauncey Parker  
Secretary

Jessica Ambrose

Laura Rowley

Cynthia Ervin

Peter Hermann

Danielle Herzlich

Marta Kater Katcha, Ph.D.

Andrea McCartney

Res. Al Miles

Heather Maudlin

Pamela Selman Murphy

Tom Nason

Sarah Beth Beck

Leandra Rothberg

Sophia Schrage

Amanda Stephens

Ala Westworth

Kyun Wintby

February 24, 2021

**TO:** Wisconsin Senate Committee on the Judiciary and Public Safety

**FROM:** Ilse Knecht  
Director of Policy & Advocacy  
Joyful Heart Foundation

**RE: Testimony in Support of Senate Bill 71 and Senate Bill 94**

The Joyful Heart Foundation strongly supports Senate Bill 71 and Senate Bill 94, which would require sexual assault kit handling timelines and establish a statewide kit tracking system.

- S.B. 71 mandates hospitals to notify law enforcement agencies within 24 hours of collecting a sexual assault kit, law enforcement to then pick up the kit within 72 hours of being notified and drop the evidence off to the state lab within 14 days for receiving the kit.

- S.B. 94 requires the Wisconsin Department of Justice to create a rape kit tracking system following kits through the collection and testing process. The tracking system will allow victims to access the system anonymously. All agencies that handle kits are required to participate in the system. The bill also allocates funds to create the tracking system.

The Joyful Heart Foundation's mission is to transform society's response to sexual assault, domestic violence, and child abuse, support survivors' healing, and end this violence forever. Since 2010, Joyful Heart has made the elimination of the rape kit backlog—hundreds of thousands of untested rape kits across the nation—our top priority. We work directly with survivors, stakeholders, and jurisdictions to achieve this goal. Our staff, consultants, and partners have decades of expertise at the forefront of rape kit reform efforts. We have been instrumental in passing state-level rape kit reform legislation in 43 states including Arizona, California, Florida, Georgia, Hawai'i, Kentucky, Massachusetts, Nevada, New Mexico, New York, Texas, and Utah, and we have collaborated with local and state agencies to provide support during the implementation process. With this expertise and legislative track record, we

respectfully submit testimony supporting Senate Bill 71 and Senate Bill 94.

## The Problem

Every 73 seconds, someone is sexually assaulted in the United States. In the immediate aftermath of a sexual assault, a victim may choose to undergo a medical forensic examination to collect evidence left behind during the assault. A doctor or nurse will conduct the four-to-six hour examination and will preserve this evidence in what is commonly called a “rape kit.” Survivors who take the step of undergoing this exhaustive and invasive forensic exam do so because they have been told this evidence could help law enforcement hold their offender accountable.

When tested, the DNA evidence from rape kits can be a powerful tool to solve and prevent crimes. DNA evidence can identify unknown assailants, link crimes together, and exonerate the wrongfully convicted. Too often, however, these rape kits languish untested for years—even decades—in storage facilities.

There are hundreds of thousands of untested rape kits in storage across the country. Since 2010, over 220,000 untested rape kits are uncovered. However, we don’t know the true extent of the backlog nationwide because many states do not require police departments to count or track the kits in their possession. Most times, the number of untested kits in a particular jurisdiction is unknown until legislators, journalists, survivors, or advocates step in to investigate.

## Why Testing Rape Kits Matters

Joyful Heart joins experts in endorsing the federal government’s best practice recommendation to submit every rape kit connected to a reported sexual assault to a crime lab for DNA analysis. In 2017, the U.S. Department of Justice National Institute of Justice released *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, which includes 35 recommendations for victim-centered approaches for responding to sexual assault cases. This approach has been embraced by elected officials, law enforcement leaders, lab professionals, prosecutors, and advocates in jurisdictions across the country.

It’s important to understand that every single rape kit represents a survivor whose body has become a crime scene and has reported the crime to police, everything society asks them to do. Many do this because they want to prevent the perpetrator from hurting anyone else and they want the criminal justice system to hold the offender accountable.

**Testing rape kits solves and prevents future crimes, and provides survivors with a path to justice and healing.** Rape kits can yield DNA evidence which can be entered into local, state, and national DNA databases containing DNA from offenders. By testing every kit connected to a reported crime, more DNA profiles will be in these databases, potentially linking crimes and revealing serial rapists, who assault both acquaintances and strangers as recent research has shown. Even more, offenders who commit sexual assault often are engaged in other crimes such as burglary and homicide. DNA from rape kits can match DNA from other crime scenes and provide leads for investigators to follow. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are averted.

By requiring every sexual assault kit to be swiftly submitted and tested, Wisconsin can send a powerful message to survivors that they—and their cases—matter. It demonstrates a commitment to survivors to bring a path to healing and justice. Testing every kit sends a message to perpetrators that law enforcement will employ every available tool to apprehend and prosecute them. It is also the pathway to a more effective criminal justice system and safer communities across the country.

**Testing rape kits also saves communities money.** In 2016, the Begun Center for Violence Prevention Research and Education at Case Western Reserve University analyzed the cost of testing backlogged rape kits in Cuyahoga County, Ohio. Factoring in the cost of testing kits and other related expenses, the study calculated the overall cost effectiveness of testing 4,347 unsubmitted kits, engaging survivors, investigating every lead, and prosecuting cases. The study found that Cuyahoga County **saved \$38.7 million** by testing 4,437 backlogged kits, investigating every case, prosecuting offenders, and preventing them from committing future crimes.

## **Rape Kit Reform in Wisconsin**

In 2014, the Attorney General's Office conducted a one-time audit and found 6,006 untested rape kits among the 81% of agencies that responded. In 2017, the AG set up a website to track progress in testing backlogged kits. The state received around \$10 million in grants from the Manhattan District Attorney's Office and the U.S. Department of Justice Bureau of Justice Assistance (BJA) between 2015 and 2019 to test kits, investigate and prosecute cases, and re-engage survivors. Although Wisconsin legislators introduced bills in 2017 and 2019 to require an annual inventory of sexual assault kits, kit handling and testing timelines, and a tracking system, these bills failed to pass.

**Currently Wisconsin does not have statute that guarantees that sexual assault kits linked to a crime will be tested.** S.B. 71 ensures that newly collected rape kits are handled uniformly across the state and prevent future backlogs by establishing timeframes for submission and testing rape kits. This process will remove biased individual decision-making on whether or not a kit should be tested, and rape kits will be handled uniformly, like evidence from any other crime. Additionally, this bill would align the state with federal best practices, which unambiguously recommend submitting every rape kit connected to a reported sexual assault to a crime lab for DNA analysis. To add to this, mandating deadlines for submitting and testing kits, as S.B.71 does, will allow Wisconsin to keep the promise to survivors in that their case matters. It will show that the state is taking the crime of rape seriously and prevent future backlogs.

The tracking system mandated by S.B. 94 is crucial to holding actors such as hospitals, law enforcement, and DNA testing labs accountable. It will provide clarity around if these actors are following the laws that dictate rape kit handling procedures. Additionally, tracking systems provide for a comprehensive analysis of total rape kits in a state, showing how many are in possession of the hospital, how many law enforcement has, and the amount of rape kits at state labs that are either awaiting testing or have already been tested.

Including a victim portal in the tracking system is crucial to survivors healing and well being also important. Our research on victim notification in cold cases found that survivors of sexual assault feel strongly that the information about their kits belongs to them, and they want to determine how and when to receive information about their rape kits. A rape kit tracking system with a secure victim access portal allows survivors to control when they obtain critical information about the status and location of their kits. In half of the states, survivors have access to transparent handling of their rape kits. Sexual assault survivors in Wisconsin deserve it too.

## **The Road Ahead**

To achieve comprehensive rape kit reform and to align with national best practices, Wisconsin should pass laws that mandate an annual inventory of rape kits; the testing of all backlogged and newly collected kits within certain timeframes; the development of a statewide tracking system for kits; victims' rights to know the status of their kit and case; and the funding necessary to implement these changes. We encourage the



legislature, in consultation with advocates, practitioners, agency leaders, and most importantly, survivors of sexual assault, to push forward with survivor-centered legislative action.

We urge you to enact this important legislation. The Joyful Heart Foundation thanks you for your efforts on this issue. We stand ready to assist you in creating safer communities and offering a path to healing and justice to all sexual assault survivors in Wisconsin.

With Gratitude,

Ilse Knecht

A handwritten signature in black ink that reads "Ilse Knecht". The script is fluid and cursive, with the first letters of "Ilse" and "Knecht" being capitalized and prominent.

Director, Policy and Advocacy  
Joyful Heart Foundation  
(212) 475-2026  
[i.knecht@joyfulheartfoundation.org](mailto:i.knecht@joyfulheartfoundation.org)



MELISSA AGARD  
STATE SENATOR

**Senator Melissa Agard - Testimony in Support of SB 71 and SB 94**  
Committee on Judiciary and Public Safety - February 25, 2021

Chairman Wanggaard and committee members, thank you for holding this public hearing today.

Thank you also to Representative Steffen and Senator Cowles' staff for being here in support of SB71. And thank you to Senator Darling for her testimony on SB 94.

I want to start by saying these bills are an example of what is possible in the Legislature. They are bipartisan pieces of legislation. And they are supported by different interest groups who are not always on the same side of every issue.

While it sometimes feels like we are destined to continue operating solely within our own parties - I'm hopeful that what we are taking up today can show all of our colleagues how we can be a better, more deliberative - and cooperative - body. The bills I am here to testify in support of, SB 71 and SB 94 are primarily aimed at three things:

- First, ensuring that justice is not delayed for survivors of sexual assault.
- Second, making sure that we do not have a backlog of untested sexual assault kits in Wisconsin ever again.
- And finally, creating a tracking system to provide victims of sexual assault access to information about the status of any sexual assault kit they have provided.

I have championed legislation regarding sexual assault kits and our state's backlog for three sessions. I have heard from victims and survivors of sexual assault. I carry their stories with me, and have promised them I will work tirelessly on their behalf to create a better system.

The bills before you today will ensure a procedure is in place that upholds survivors' dignity, choice, and the right to a fair and just process, protecting those who choose not to report at the time of an assault, or who change their minds. We know that sexual violence can be a hard conversation to have, and that reporting can be one of the most challenging steps for a sexual assault survivor to take. Survivors deserve the respect to report when they are ready — storing kits for the time frame specified in this legislation provides this respect by taking the traumatic nature of sexual assault into account.

Due to the hard work of a bipartisan group of legislators and expertise of advocates, law enforcement, health care providers, and Attorney General Josh Kaul - I am confident these bills are comprehensive in their approach to solving the issue of sexual assault kit storage, processing, and tracking in Wisconsin

While no piece of legislation can ever erase the trauma of sexual violence, failures to effectively and efficiently collect, submit, and store kits should never be a barrier to justice. As elected officials, we must do all that we can to support survivors of sexual assault. We have that opportunity today.

## PREPARED TESTIMONY OF MICHELLE VISTE

Senate Committee on Judiciary and Public Safety

Thursday, February 25, 2021

Chairperson Wanggaard, Vice-Chair Wimberger, and Members of the Committee:

Thank you for holding a hearing today on Senate Bill 71.

I would also like to thank Senators Cowles and Agard, Representatives Steffen and Macco, and other members of the legislature who have supported this legislation.

I am Michelle Viste, Executive Director of the Office of Crime Victim Services at the Wisconsin Department of Justice. I began in this role in August of 2017 and was a criminal prosecutor for 16 years prior to my current role at Wisconsin DOJ.

I am here today to speak in favor of 2021 Senate Bill 71.

Upon being appointed to my current role as director of OCVS, I also began serving in a leadership role in the Sexual Assault Kit Initiative, also known as SAKI. Having worked on this project for nearly four years now, I have witnessed firsthand, the injustices suffered by crime victims as a result of untested sexual assault kits accumulating in Wisconsin and all over the country.

Senate Bill 71 will not only ensure that in Wisconsin, victims' sexual assault kits never accumulate again in hospitals or law enforcement agencies, it will be a significant step in the right direction toward sexual assault reform in our state.

First, Senate Bill 71 gives victims a choice of whether they want to report their victimization to law enforcement at the time their kit is collected. If the victim chooses not to report, their sexual assault kit will be sent to the Wisconsin State Crime Lab for storage within 72 hours of collection. There, the kit will be stored in a secure and temperature-controlled manner. If the victim later decides to report, the

kit can then be tested for potential DNA evidence. The kit will be stored for a period of 10 years, allowing victims ample time to change their mind and later report their victimization.

If the victim chooses to report to law enforcement, the kit must be retrieved from the hospital by law enforcement within 72 hours of law enforcement receiving the notification. Once law enforcement is in receipt of the kit, the agency will have 14 days to send the kit to the Wisconsin State Crime Laboratory for testing.

Then, if a victim decides they no longer wish to report to law enforcement, their kit will be sent to the Wisconsin State Crime Laboratory for storage for a period of 10 years, again, allowing a victim to change their mind and later report their victimization.

Further, this bill ensures that in cases where a sexual assault is reported to law enforcement, a kit will not be destroyed for at least 50 years. This is critical in our world of ever-changing technology. A sexual assault kit collected today may not yield probative evidence now, however, more advanced technology may yield different results in 5 or 10 years.

Senate Bill 71 also requires the reporting and publishing of data related to the collection and processing of sexual assault kits, a key component in ensuring that untested sexual assault kits never accumulate again in Wisconsin.

Finally, there is a provision that sexual assault nurse examiners have requested to be included in this bill, providing a liability exemption for performing a sexual assault forensic examination pursuant to informed consent or a court order.

In summary, I enthusiastically support Senate Bill 71 because of the positive impact it will have on survivors of sexual assault and in holding offenders accountable. Senate Bill 71 gives survivors options and continues to offer options to survivors, whether they choose to report to law enforcement or not. It will not only result in sexual assault kits being processed in the proper manner, but also expediently. This is critical for survivors and for the safety of the public. When sexual assault kits are tested and DNA profiles are entered into national and state

databases, unknown perpetrators and serial offenders are identified. By expanding the number of profiles in these databases, we are helping to solve crimes of every nature, all over the country. Finally, this bill goes a long way in addressing mistakes of the past and gives current and future sexual assault survivors the opportunity for justice that they deserve.

Thank you for holding a hearing on this bill and thank you for the opportunity to speak in favor of the Senate Bill 71 today.