



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-060

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. The department should revise the caption for the proposed rule to read: “The Wisconsin Department of Justice proposes an order to create ch. Jus 20, relating to the storage and processing of sexual assault kits.”. [s. 1.01 (1), Manual.]

b. In s. Jus 20.01, replace the use of “ss.” with the abbreviation “s.” when referring to s. 165.775 (6), Stats., i.e., a single section of the statutes. [s. 1.15 (2) (d), Manual.]

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

In s. Jus 20.01, the department could consider removing the reference to 2021 Wisconsin Act 116 (Act 116) to eliminate redundancy, as the relevant authority for permanent rulemaking is contained within s. 165.775 (6), Stats.

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

a. Replace “through” with “to” in the rule summary’s section titled “Statutes interpreted”. [s. 1.15 (2) (Table), Manual.]

b. Delete the first comma and insert “and” between the two statutory citations in the rule summary’s section titled “Statutory authority”. [s. 1.15 (2) (Table), Manual.]

c. In the second full paragraph on page 4, insert a comma after the first reference to s. 165.775 (5), Stats.

d. In the definition of “delayed report” in s. Jus 20.02 (1), the department should consider clarifying, consistent with its intent, the temporal nature of the term “later” – i.e., later than what event? For example, in the context of this rule, it seems a “delayed report” is a report of sexual assault by a victim that occurs after a collected sexual assault kit has been sent to the state crime laboratories for storage.

e. In s. Jus 20.02, the department could consider creating additional defined terms to ensure the meaning of terminology within ch. Jus 20 is clear and consistent with Act 116. [s. 1.07 (1), Manual.] For example, consider defining “health care professional” to have the meaning given in s. 165.775 (1) (b), Stats., so as to define the scope of professionals subject to the rule requirements in a manner consistent with Act 116.

f. In s. Jus 20.03 (intro.), consider revising the plural “health care professionals” to the singular “a health care professional”. When regulating a class of people, the obligation to comply with the regulation is on each individual. [s. 1.05 (1) (c), Manual.] The same comment applies to the plural “law enforcement agencies” in s. Jus 20.04 (intro.).

g. To conform to Act 116’s requirements, the department should consider inserting “securely” at the beginning of s. Jus 20.05 (3).

h. Section 165.775 (6), Stats., requires the department to promulgate rules to administer s. 165.775, Stats., as set forth in the rule summary’s explanation of agency authority. In addition, the department’s rulemaking authority in s. 165.775 (6) is referenced throughout s. 165.775, Stats., in that certain acts – such as the sending, processing, and storage of sexual assault kits – are required to be performed “in accordance with the procedures specified in the rules promulgated under sub. (6)”. [See, s. 165.775 (2) (b), (3) (b) and (c), and (4) (b), Stats.] The department should consider whether the proposed rule provides the level of detail contemplated by Act 116 with respect to these procedures. For example, the department could consider whether ch. Jus 20 should address more specific procedural aspects of sending, processing, and storing sexual assault kits – by what method, in what manner, to whom, etc.

i. Similarly, consider clarifying the procedures for actions required under s. Jus 20.05, such as storage and destruction of sexual assault kits. For example, is there a manner in which such kits must be properly stored to ensure preservation or security? If a kit is to be destroyed, is there a proper method or procedure for such destruction?