



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRBs0282/1  
MLJ:kjf&amn

**SENATE SUBSTITUTE AMENDMENT 1,  
TO SENATE BILL 809**

February 17, 2020 - Offered by Senator JACQUE.

1     **AN ACT** *to repeal* 165.77 (7) and 175.405; *to renumber* 950.03 and 950.04 (1v)  
2           (dL); *to amend* 165.845 (title), 165.845 (1) (a), 165.845 (1) (b), 165.845 (2),  
3           949.20 (3) and 968.205 (3) (intro.); and *to create* 50.378 (1m), 100.58, 165.25  
4           (20), 165.775, 165.776, 165.845 (1) (d), 165.847, 895.537, 949.23, 950.02 (3t),  
5           950.03 (2), 950.043 and 973.06 (1) (i) of the statutes; **relating to:** creating a  
6           sexual assault victim bill of rights; collection and reporting of data regarding  
7           sexual assault kits; storage and processing of sexual assault kits; tracking of  
8           sexual assault kits in sexual assault cases; and requiring the exercise of  
9           rule-making authority.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

10           **SECTION 1.** 50.378 (1m) of the statutes is created to read:  
11           50.378 (1m) NOTIFICATION OF VICTIM RIGHTS. A hospital that provides emergency  
12           services to a victim of sexual assault, human trafficking, or child sexual abuse shall

1 inform the victim of his or her rights under ss. 950.04 (1v) (ag), (bm), (c), (d), and (em)  
2 and 950.043 orally and, using a form provided by the department of justice, in  
3 writing.

4 **SECTION 2.** 100.58 of the statutes is created to read:

5 **100.58 At-home sexual assault evidence collection kits.** (1) In this  
6 section:

7 (a) “At-home sexual assault evidence collection kit” means a kit that is  
8 intended for use by a person who is not a health care professional or employee of a  
9 law enforcement agency to collect forensic evidence regarding a sex offense.

10 (b) “Health care professional” means a person licensed, certified, or registered  
11 under ch. 441, 448, or 455.

12 (c) “Sex offense” has the meaning given in s. 949.20 (7).

13 **(2)** No person may sell or offer for sale in this state an at-home sexual assault  
14 evidence collection kit.

15 **SECTION 3.** 165.25 (20) of the statutes is created to read:

16 **165.25 (20) SEXUAL ASSAULT VICTIM NOTICE.** Ensure that law enforcement  
17 agencies notify a sexual assault victim from whom a sexual assault kit, as defined  
18 in s. 165.775 (1) (e), was collected, of all of the following:

19 (a) If the sexual assault kit is analyzed, the results of the analysis.

20 (b) If the sexual assault kit is analyzed and analysis identifies a foreign  
21 deoxyribonucleic acid profile, the occurrence of any future sexual assault kit analysis  
22 that identifies a matching foreign deoxyribonucleic acid profile.

23 (c) At least 60 days before the end of the storage period under s. 165.775 (5),  
24 the date on which the person’s sexual assault kit will be destroyed.

25 **SECTION 4.** 165.77 (7) of the statutes is repealed.

1           **SECTION 5.** 165.775 of the statutes is created to read:

2           **165.775 Sexual assault kits. (1)** In this section:

3           (a) “Department” means the department of justice.

4           (b) “Health care professional” has the meaning given in s. 154.01 (3).

5           (c) “Sex offense” has the meaning given in s. 949.20 (7).

6           (d) “Sexual assault forensic examination” means an examination performed by  
7 a health care professional to gather evidence regarding a sex offense.

8           (e) “Sexual assault kit” means the evidence collected from a sexual assault  
9 forensic examination.

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

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

15           (a) If the victim chooses to report the sexual assault to a Wisconsin law  
16 enforcement agency, or if reporting is required under s. 48.981 (2), notify a Wisconsin  
17 law enforcement agency within 24 hours after collecting the sexual assault kit.

18           (b) If the victim chooses not to report the sexual assault to a Wisconsin law  
19 enforcement agency, and reporting is not required under s. 48.981 (2), send the  
20 sexual assault kit to the state crime laboratories for storage in accordance with the  
21 procedures specified in the rules promulgated under sub. (7) no more than 2 business  
22 days after collecting the sexual assault kit.

23           **(3)** If a Wisconsin law enforcement agency receives notification under sub. (2)  
24 (a), it shall do all of the following:

1           (a) Take possession of the sexual assault kit from the health care professional  
2 within 72 hours after receiving the notification.

3           (b) Except as provided in par. (c), send the sexual assault kit to the state crime  
4 laboratories for processing in accordance with the procedures specified in the rules  
5 promulgated under sub. (7) within 14 days after taking possession of the sexual  
6 assault kit.

7           (c) If the Wisconsin law enforcement agency, after taking possession of the  
8 sexual assault kit under par. (a) but before sending the sexual assault kit under par.  
9 (b), receives notification from the victim that the victim does not want to proceed with  
10 the analysis of his or her sexual assault kit, send the sexual assault kit to the state  
11 crime laboratories for storage in accordance with the procedures specified in the  
12 rules promulgated under sub. (7) within 14 days after taking possession of the sexual  
13 assault kit.

14           **(4)** If the state crime laboratories takes possession of a sexual assault kit, it  
15 shall do all of the following:

16           (a) If the victim chooses not to report the sexual assault to a Wisconsin law  
17 enforcement agency and thus has not consented to the analysis of his or her sexual  
18 assault kit, securely store the sexual assault kit for 50 years, during which time the  
19 sexual assault victim may choose to report the assault to a Wisconsin law  
20 enforcement agency.

21           (b) If the victim chooses to report the sexual assault to a Wisconsin law  
22 enforcement agency and thus has consented to the analysis of his or her sexual  
23 assault kit, process the kit in accordance with the procedures specified in the rules  
24 promulgated under sub. (7) within 90 days after taking possession of the sexual  
25 assault kit.

1           **(5)** If a law enforcement agency takes possession of a sexual assault kit after  
2 it has been processed by the state crime laboratories, notwithstanding s. 968.205, it  
3 shall securely store the sexual assault kit for a period of 50 years, until the date of  
4 the expiration of the statute of limitations, or until the end of the term of  
5 imprisonment or probation of a person who was convicted in the sexual assault case,  
6 whichever is longest.

7           **(6)** (a) The department shall establish a database, which shall be known as the  
8 Wisconsin Sexual Assault Kit Tracking System, for the purpose of providing victims  
9 of sexual assault access to information about the status of any sexual assault kit the  
10 victim has provided. The database shall use electronic technologies to allow  
11 continuous, ongoing access to do all of the following:

12           1. Allow health care professionals collecting sexual assault kits, forensic  
13 laboratories, law enforcement agencies, prosecutors, and the department to update  
14 and track the location and status of sexual assault kits, including the initial  
15 collection of evidence, receipt and storage at law enforcement agencies, receipt and  
16 analysis at forensic laboratories, and destruction.

17           2. Allow a victim of sexual assault to anonymously track the location and status  
18 of the victim's sexual assault kit. Notwithstanding s. 165.79 (1), a victim may receive  
19 information relating to the location and status of the victim's sexual assault kit.

20           (b) Whenever a Wisconsin law enforcement agency or a health care professional  
21 collects evidence in a case of sexual assault, the agency or professional shall enter  
22 the information required in the department's rules under sub. (7) into the Wisconsin  
23 Sexual Assault Kit Tracking System.

24           (c) Whenever the crime laboratories perform deoxyribonucleic acid analysis of  
25 a sexual assault kit, the crime laboratories shall enter the information required in

1 the department's rules under sub. (7) into the Wisconsin Sexual Assault Kit Tracking  
2 System.

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

4 **SECTION 6.** 165.776 of the statutes is created to read:

5 **165.776 Sexual assault victim notification.** The state crime laboratories  
6 shall notify a sexual assault victim from whom a sexual assault kit, as defined in s.  
7 165.775 (1) (e), was collected at least 60 days before the end of the storage period  
8 under s. 165.775 (4) (a).

9 **SECTION 7.** 165.845 (title) of the statutes is amended to read:

10 **165.845 (title) Collect crime and criminal justice data.**

11 **SECTION 8.** 165.845 (1) (a) of the statutes is amended to read:

12 165.845 (1) (a) Collect information concerning the number and nature of  
13 offenses known to have been committed in this state, concerning sexual assault kits,  
14 as defined in s. 165.775 (1) (e), collected in this state, and concerning such other  
15 information as may be useful in the study of crime and the administration of justice.  
16 The department of justice may determine any other information to be obtained  
17 regarding crime, evidence, and justice system data or statistics. The information  
18 shall include data requested by federal agencies under the U.S. department of  
19 justice, including but not limited to the federal bureau of investigation under its  
20 system of uniform crime reports for the United States.

21 **SECTION 9.** 165.845 (1) (b) of the statutes is amended to read:

22 165.845 (1) (b) Furnish all reporting officials with forms or instructions or both  
23 that specify the nature of the information required under par. (a), the time it is to be  
24 forwarded, the process for submitting the information, the method of classifying and  
25 any other matters that facilitate collection and compilation.

1           **SECTION 10.** 165.845 (1) (d) of the statutes is created to read:

2           165.845 (1) (d) Publish data at least annually on law enforcement agency  
3 compliance with the reporting requirement under par. (a) relating to sexual assault  
4 kits.

5           **SECTION 11.** 165.845 (2) of the statutes is amended to read:

6           165.845 (2) All persons in charge of law enforcement agencies and other  
7 criminal and juvenile justice system agencies shall supply the department of justice  
8 with the information described in sub. (1) (a) on the basis of the forms or instructions  
9 or both to be supplied by the department under sub. (1) ~~(a)~~ (b). The department may  
10 conduct an audit to determine the accuracy of the data and other information it  
11 receives from law enforcement agencies and other criminal and juvenile justice  
12 system agencies.

13           **SECTION 12.** 165.847 of the statutes is created to read:

14           **165.847 Report on status of sexual assault kits.** On an annual basis, using  
15 information collected under s. 165.845 (1) (a), the department of justice shall submit  
16 to the legislature for distribution under s. 13.172 (2) a report that includes all of the  
17 following information for that year:

18           (1) The total number of sexual assault kits collected in Wisconsin.

19           (2) The date that each sexual assault kit was collected.

20           (3) The number of sexual assault kits submitted to the crime laboratories for  
21 analysis.

22           (4) The date of submission of each sexual assault kit submitted to the crime  
23 laboratories.

24           (5) The date of analysis of each sexual assault kit submitted to the crime  
25 laboratories.

1           (6) The number of sexual assault kits that were submitted to the crime  
2 laboratories for analysis that have not yet been analyzed.

3           (7) For each unanalyzed sexual assault kit, the reason the kit has not been  
4 analyzed.

5           (8) The number of sexual assault kits that identified a foreign deoxyribonucleic  
6 acid profile, the number of such profiles uploaded into the combined deoxyribonucleic  
7 acid index system, and the number of such profiles that match a profile in the system.

8           (9) The number of sexual assault kits associated with further investigations.

9           (10) The number of criminal cases filed, the number of such active cases, and  
10 the number of such cases with dispositions resulting from the analysis of sexual  
11 assault kits.

12           (11) Any recommendations for statutory changes necessary to ensure that  
13 department practices regarding sexual assault kits conform with changes in  
14 technology and scientific best practices.

15           **SECTION 13.** 175.405 of the statutes is repealed.

16           **SECTION 14.** 895.537 of the statutes is created to read:

17           **895.537 Liability exemption; sexual assault evidence collection.** (1) In  
18 this section:

19           (a) “Health care professional” has the meaning given in s. 154.01 (3).

20           (b) “Sexual assault forensic examination” has the meaning given in s. 165.775

21 (1) (d).

22           (2) Any health care professional conducting a sexual assault forensic  
23 examination pursuant to informed consent or a court order is immune from any civil  
24 or criminal liability for the act, except for civil liability for negligence in the  
25 performance of the act.



1           **(3)** Any employer of the person under sub. (2) or any health care facility where  
2 the sexual assault forensic examination is conducted by that person has the same  
3 immunity from liability under sub (2).

4           **SECTION 15.** 949.20 (3) of the statutes is amended to read:

5           949.20 **(3)** “Examination costs” means the costs of an examination that is done  
6 to gather evidence regarding a sex offense;~~;~~ any procedure during that examination  
7 process that tests for or prevents a sexually transmitted disease,~~and;~~ any medication  
8 provided or prescribed, during that examination process, that prevents or treats a  
9 sexually transmitted disease that the person performing the examination or  
10 procedure believes could be a consequence of the sex offense, including  
11 post-exposure prophylaxis; and a pregnancy test, to be administered at a time when  
12 a pregnancy could be detected, if the person performing the examination or  
13 procedure believes that pregnancy could be a consequence of the sex offense.

14 “Examination costs” does not include any processing or administrative costs,  
15 attorney fees, or other expenses.

16           **SECTION 16.** 949.23 of the statutes is created to read:

17           **949.23 Victims rights.** A health care provider conducting an examination to  
18 gather evidence regarding a sex offense shall do all of the following:

19           **(1)** Inform the victim, orally and, using a form provided by the department of  
20 justice, in writing, of his or her rights under ss. 950.04 (1v) (ag), (bm), (c), (d), and (em)  
21 and 950.043.

22           **(2)** If facilities are available, provide to the victim an opportunity to bathe  
23 immediately following the examination.

24           **SECTION 17.** 950.02 (3t) of the statutes is created to read:

1           950.02 (3t) “Sexual assault victim” means an individual against whom a crime  
2 has been committed under s. 940.22, 940.225 (1) to (3m), 948.02 (1) or (2), 948.025,  
3 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.08, 948.085, 948.095, 948.10,  
4 948.11 (2) (a) or (am), or 948.12, or s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

5           **SECTION 18.** 950.03 of the statutes is renumbered 950.03 (1).

6           **SECTION 19.** 950.03 (2) of the statutes is created to read:

7           950.03 (2) Notwithstanding sub. (1), a sexual assault victim has the rights and  
8 is eligible for the services under this chapter regardless of whether the crime has  
9 been reported to law enforcement authorities. A victim of sexual assault is under no  
10 obligation to seek medical attention, to have a sexual assault forensic examination  
11 administered, or to report the sexual assault to law enforcement authorities.

12           **SECTION 20.** 950.04 (1v) (dL) of the statutes is renumbered 950.043 (10).

13           **SECTION 21.** 950.043 of the statutes is created to read:

14           **950.043 Bill of rights for victims of sexual assault.** In addition to the  
15 rights of victims under ss. 950.04 and 950.045, sexual assault victims have all of the  
16 following rights:

17           (1) To receive at no charge a sexual assault forensic examination performed by  
18 a department-certified sexual assault nurse or another health care professional  
19 with similar training.

20           (2) To receive oral and written information about his or her rights as a sexual  
21 assault victim at the time he or she seeks medical attention following a sexual  
22 assault, as provided under ss. 50.378 (1m) and 949.23 (1).

23           (3) If facilities are available, to bathe immediately following a sexual assault  
24 forensic examination.

25           (4) To report or decline to report the sexual assault to a law enforcement agency.

1           (5) To have any evidence collected in a sexual assault forensic examination  
2 transported to the state crime laboratories for storage or testing or both, as provided  
3 under s. 165.775.

4           (6) If the victim chooses not to cooperate with a law enforcement agency, as  
5 defined in s. 949.20 (1), to have all evidence collected in a sexual assault forensic  
6 examination stored for 50 years, during which time the sexual assault victim may  
7 choose to report the assault to a law enforcement agency.

8           (7) If the victim chooses to cooperate with a law enforcement agency, as defined  
9 in s. 949.20 (1), and no conviction results from the sexual assault forensic  
10 examination, state crime laboratory testing, and subsequent law enforcement  
11 agency investigation, to have all evidence collected in the sexual assault forensic  
12 examination stored for 50 years.

13           (8) If the victim chooses to cooperate with a law enforcement agency, as defined  
14 in s. 949.20 (1), and a conviction results from the sexual assault forensic  
15 examination, state crime laboratory testing, and subsequent law enforcement  
16 agency investigation, to have all evidence collected in the sexual assault forensic  
17 examination stored until the end of the term of imprisonment or probation of the  
18 person who was convicted of the sexual assault.

19           (9) To have notification in writing 60 days prior to the destruction of any  
20 evidence acquired from a sexual assault forensic examination, as provided in ss.  
21 165.25 (20) and 165.776.

22           **SECTION 22.** 968.205 (3) (intro.) of the statutes is amended to read:

23           968.205 (3) (intro.) Subject Except in sexual assault cases, subject to sub. (5),  
24 a law enforcement agency may destroy evidence that includes biological material

1 before the expiration of the time period specified in sub. (2) if all of the following  
2 apply:

3 **SECTION 23.** 973.06 (1) (i) of the statutes is created to read:

4 973.06 (1) (i) The cost of administration of any sexual assault kit under s.  
5 165.775 that was administered in the case.

6 **SECTION 24. Nonstatutory provisions.**

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

16 (2) Within 180 days of the effective date of this subsection, the department of  
17 justice shall conduct an audit of all sexual assault kits and submit to the legislature  
18 for distribution under s. 13.172 (2) a report that includes all of the following  
19 information: the number of sexual assault kits submitted to the state crime  
20 laboratories that have not yet been analyzed, the number of sexual assault kits not  
21 submitted to the state crime laboratories that remain in law enforcement custody,  
22 and the reasons those sexual assault kits were not submitted for analysis.

23 **SECTION 25. Effective dates.** This act takes effect on the day after publication,  
24 except as follows:

1           (1) The treatment of ss. 165.25 (20), 165.77 (7), 165.775 (1) to (6), 165.776,  
2           165.845 (title), (1) (a), (b), and (d), and (2), 165.847, 175.405, 895.537, 949.23 (5) and  
3           (9), and 973.06 (1) (i) takes effect on the first day of the 7th month beginning after  
4           publication.

5

(END)