



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBs0257/1
MLJ:cdc

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 67**

November 2, 2021 - Offered by Representative STEFFEN.

1 **AN ACT** *to repeal* 165.77 (7) and 175.405; *to amend* 165.845 (title), 165.845 (1r)
2 (a) (intro.), 165.845 (1r) (a) 1. and 165.845 (1r) (b); and *to create* 165.775,
3 165.845 (1g) (g), 165.845 (1r) (a) 3., 165.845 (1r) (e) and 895.537 of the statutes;
4 **relating to:** storage and processing of sexual assault kits and requiring the
5 exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

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 within 45 days if the suspect is unknown by the victim or 150 days if the suspect is known by the victim, 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 the Department of Justice. 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.

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

1 **SECTION 1.** 165.77 (7) of the statutes is repealed.

2 **SECTION 2.** 165.775 of the statutes is created to read:

3 **165.775 Sexual assault kits. (1)** In this section:

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

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

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

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

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

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

12 (c).

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

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

7 (b) If the victim chooses not to report the sexual assault to a Wisconsin law
8 enforcement agency, and reporting is not required under s. 48.981 (2), send the
9 sexual assault kit to the state crime laboratories for storage in accordance with the
10 procedures specified in the rules promulgated under sub. (6) within 72 hours after
11 collecting the sexual assault kit.

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

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

16 (b) Except as provided in par. (c), within 14 days after taking possession of the
17 sexual assault kit, send the sexual assault kit to the state crime laboratories for
18 processing in accordance with the procedures specified in sub. (4) (b).

19 (c) If the Wisconsin law enforcement agency, after taking possession of the
20 sexual assault kit under par. (a) but before sending the sexual assault kit under par.
21 (b), receives notification from the victim that the victim does not want to proceed with
22 the analysis of his or her sexual assault kit, send the sexual assault kit to the state
23 crime laboratories for storage in accordance with the procedures specified in the
24 rules promulgated under sub. (6) within 14 days after taking possession of the sexual
25 assault kit.

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

3 (a) If the victim chooses not to report the sexual assault to a Wisconsin law
4 enforcement agency and thus has not consented to the analysis of his or her sexual
5 assault kit, securely store the sexual assault kit for a period of 10 years, during which
6 time the sexual assault victim may choose to report the assault to a Wisconsin law
7 enforcement agency.

8 (b) If the victim chooses to report the sexual assault to a Wisconsin law
9 enforcement agency at any time and thus has consented to the analysis of his or her
10 sexual assault kit, process the kit within 45 days if the suspect is unknown by the
11 victim or 150 days if the suspect is known by the victim, in accordance with the
12 procedures specified in the rules promulgated under sub. (6).

13 (5) If a law enforcement agency takes possession of a sexual assault kit after
14 it has been processed by the state crime laboratories, notwithstanding s. 968.205, it
15 shall securely store the sexual assault kit for a period of 50 years, or until the date
16 of the expiration of the statute of limitations, or until the end of the term of
17 imprisonment or probation of a person who was convicted in the sexual assault case,
18 whichever is longer.

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

20 **SECTION 3.** 165.845 (title) of the statutes, as affected by 2021 Wisconsin Act 50,
21 is amended to read:

22 **165.845 (title) Collection and reporting of crime and criminal justice**
23 **data.**

24 **SECTION 4.** 165.845 (1g) (g) of the statutes is created to read:

1 165.845 (1g) (g) “Sexual assault kit” has the meaning given in s. 165.775 (1)
2 (e).

3 **SECTION 5.** 165.845 (1r) (a) (intro.) of the statutes, as affected by 2021
4 Wisconsin Act 50, is amended to read:

5 165.845 (1r) (a) (intro.) Collect information concerning the number and nature
6 of offenses known to have been committed in this state and such other information
7 as may be useful in the study of crime and the administration of justice. The
8 department of justice may determine any other information to be obtained regarding
9 crime, evidence, and justice system data or statistics. The information shall include
10 all of the following:

11 **SECTION 6.** 165.845 (1r) (a) 1. of the statutes, as affected by 2021 Wisconsin Act
12 50, is amended to read:

13 165.845 (1r) (a) 1. Data requested by federal agencies under the U.S.
14 department of justice, including but not limited to the federal bureau of investigation
15 under its system of uniform crime reports for the United States.

16 **SECTION 7.** 165.845 (1r) (a) 3. of the statutes is created to read:

17 165.845 (1r) (a) 3. Data concerning sexual assault kits collected in this state.

18 **SECTION 8.** 165.845 (1r) (b) of the statutes, as affected by 2021 Wisconsin Act
19 50, is amended to read:

20 165.845 (1r) (b) Furnish all reporting officials with instructions that specify
21 the nature of the information required under par. (a), the process for submitting the
22 information, a simple format in which to submit the information, the time it is to be
23 forwarded, the method of classifying it, and any other matters that facilitate
24 collection and compilation. The format provided under this paragraph shall, to the

1 greatest extent feasible, minimize the time required by each law enforcement officer
2 to submit the required information.

3 **SECTION 9.** 165.845 (1r) (e) of the statutes is created to read:

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

7 **SECTION 10.** 175.405 of the statutes is repealed.

8 **SECTION 11.** 895.537 of the statutes is created to read:

9 **895.537 Liability exemption; sexual assault evidence collection. (1)** In
10 this section:

11 (a) "Health care professional" has the meaning given in s. 154.01 (3).

12 (b) "Sexual assault forensic examination" has the meaning given in s. 165.775
13 (1) (d).

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

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

21 **SECTION 12. Nonstatutory provisions.**

22 (1) Within 180 days of the effective date of this subsection, the department of
23 justice shall promulgate emergency rules under s. 227.24 to implement s. 165.775 for
24 the period before the effective date of the permanent rules but not to exceed the
25 period authorized under s. 227.24 (1) (c), subject to extension under s. 227.24 (2).

1 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to
2 provide evidence that promulgating a rule under this subsection as an emergency
3 rule is necessary for the preservation of the public peace, health, safety, or welfare
4 and is not required to provide a finding of emergency for a rule promulgated under
5 this subsection.

6 **SECTION 13. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The treatment of ss. 165.77 (7), 165.775 (1) to (5), 165.845 (title), (1g) (g),
9 (1r) (a) (intro.), 1., and 3., (b), and (e), 175.405, and 895.537 takes effect on the first
10 day of the 7th month beginning after publication.

11 (END)