

NOTICE OF PROPOSED GUIDANCE DOCUMENT

Pursuant to Wis. Stat. § 227.112, the Wisconsin Department of Justice is hereby seeking comment on the following proposed guidance document:

WSCL Toxicology Evidence Submission Guidelines

PUBLIC COMMENT AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Justice until June 16, 2020, by emailing the agency contact person listed below.

AGENCY CONTACT PERSON

Anthony Russomanno
Assistant Attorney General
russomannoad@doj.state.wi.us



WISCONSIN STATE CRIME LABORATORIES

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WSCL Toxicology Evidence Submission Guidelines

Effective XX/XX/2020

The Wisconsin State Crime Laboratories (WSCL) works to provide quality forensic results to assist agencies throughout Wisconsin. To be both as effective and efficient as possible, we have the following policies for all Toxicology case submissions.

PACKAGING REQUIREMENTS

Upon receipt, evidence items must be packaged to protect them from loss, cross contamination, and/or deleterious change.

- Specimen kits for evidence in Operating While Intoxicated (OWI) cases can be obtained from the Wisconsin State Laboratory of Hygiene (WSLH).
- Specimen kits for evidence in Drug Facilitated Sexual Assault (DFSA) or Drug Facilitated Crime (DFC) cases can be ordered from <https://docsales.wi.gov> (part number 1207D).
- Samples in other containers may also be submitted, provided they are appropriately packaged (i.e., protected from breakage and leakage). Outer containers should be marked as a biohazard.
- Samples submitted via mail must meet the requirements for shipping Category A – Infectious Substance, Affecting Humans. (Note: OWI and DFSA kits meet these requirements.)
- All evidence packages must be sealed and initialed prior to submission to the WSCL.

LABORATORY REQUEST DETAILS

- I. Provide a Transmittal of Criminal Evidence form and a synopsis of the case facts, including the information listed below. This information may be captured on paperwork included inside the OWI or DFSA kit:
 - The person from whom the specimen (i.e., blood, urine, vitreous humor, etc.) was collected.
 - The date and time of specimen collection.
 - The date and time of the incident (if DFSA or other violent crime is suspected).
 - Copy of the Drug Recognition Expert (DRE) Face Sheet if applicable. This can also be emailed to Toxicology@doj.state.wi.us.
- II. To accommodate timely results for all agencies throughout Wisconsin, WSCL works evidence in the order of submission. Rush requests impede the process; therefore, they will be accepted on a limited basis. Consult with a WSCL Chemistry Supervisor or Forensic Case Manager with any rush request.

EVIDENCE ITEM ACCEPTANCE

Submission of items of evidence shall relate to **felony** investigations (WI Statute §165.75).

Examples of acceptable cases submitted for Toxicology:

- Operating while intoxicated – felony charges only
- Death investigations
- Non-traffic related crimes
 - Bail jumping (misdemeanor or felony)
 - Crimes of violence (misdemeanor or felony)
 - DFSA
 - DFC
 - Endangering safety
 - Reckless weapons

- Intoxicated use of a firearm

The following cases will not be accepted for Toxicology:

- Traffic accidents in which impairment by alcohol and/or drugs is NOT suspected.
- Misdemeanor crimes (except for the non-traffic crimes listed above).
- A second blood draw collected from the same individual in order to establish an ethanol elimination rate. Only the earliest appropriate sample will be analyzed for ethanol.
- Targeted analysis for synthetic cannabinoids or fentanyl analogs in biological samples.

Submissions: Hygiene Lab vs. Crime Lab

Offense	Hygiene Lab	Crime Lab
Operating While Intoxicated: impaired by alcohol and/or other drugs. Includes snowmobiles, motorboats, and ATVs.	ALL OFFENSES Including great bodily harm, vehicular homicide.	ONLY FELONIES ACCEPTED
Death investigations	ACCEPTED	Death is suspicious and possible FELONY CHARGES pending.
Len Bias cases	NOT ACCEPTED	Suspect has been identified and FELONY CHARGES are pending.
Probation and Parole violations	NOT ACCEPTED	ACCEPTED
Crimes of violence: domestic abuse, weapon charges, drug facilitated sexual assaults.	NOT ACCEPTED	ACCEPTED
Toxicology samples for controlled substance cases	NOT ACCEPTED	ONLY FELONIES ACCEPTED with prior approval from the WSCL.*

*For testing of toxicology samples in controlled substance cases, a request with an acceptable justification from the District Attorney's Office to the laboratory and laboratory approval are required prior to submission of evidence.

If alcohol concentration is 0.100 g/100mL or greater, no further analysis (i.e., drug analysis) will be performed. Exceptions: homicides, sexual assaults, special circumstances (please contact a WSCL Chemistry Supervisor or Forensic Case Manager to discuss).

For DFSA and DFC crimes, specimens must be collected within a defined collection period:

- Blood – within 24 hours of the incident
- Urine – within 4 days of the incident

GHB analysis will only be performed on blood samples that are collected within 6 hours and urine samples that are collected within 12 hours of the incident.

The WSCL requires at least two months prior to the jury trial date to allow the Toxicology Unit time to complete analysis before the court date.

Based on the circumstances of the case, the possibility of additional testing may be warranted. In such cases, the evidence items and testing requested should be discussed with the Forensic Case Manager of the WSCL for consideration of acceptance:

Kathy Mahnke
 WSCL Forensic Case Manager
 (608) 609-6125
 mahnkeka@doj.state.wi.us

Any questions concerning the policy should be directed to:

Nicole Roehm, M.S.
 Administrator
 WI Division of Forensic Sciences
 (414) 216-8769
 roehmnl@doj.state.wi.us

Thank you for your cooperation in helping the WSCL provide consistent, quality service to agencies throughout Wisconsin. We look forward to working with you.

CERTIFICATION OF PROPOSED GUIDANCE DOCUMENT

I have reviewed this guidance document or proposed guidance document and I certify that it complies with sections 227.10 and 227.11 of the Wisconsin Statutes. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is not explicitly permitted by a statute or a rule that has been lawfully promulgated. I further certify that the guidance document or proposed guidance document contains no standard, requirement, or threshold that is more restrictive than a standard, requirement, or threshold contained in the Wisconsin Statutes.

On behalf of the Attorney General

A handwritten signature in blue ink, appearing to read "Charlotte Gibson", is written over a horizontal line.

CHARLOTTE GIBSON

Division of Legal Services Administrator