



2019 ASSEMBLY BILL 352

July 31, 2019 - Introduced by Representatives BRANDTJEN, HORLACHER, KULP, PRONSCHINSKE, RAMTHUN and WICHGERS, cosponsored by Senator JACQUE. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to renumber* 950.03 and 950.04 (1v) (dL); *to amend* 50.375 (2) (b)
2 (intro.), 165.77 (7), 175.405 (title), 175.405 (2) and 968.205 (3) (intro.); and *to*
3 **create** 50.375 (2) (b) 4., 50.375 (2) (d), 50.378 (1m), 165.25 (20), 950.02 (3t),
4 950.03 (2) and 950.043 of the statutes; **relating to:** creating a sexual assault
5 victim bill of rights.

Analysis by the Legislative Reference Bureau

This bill creates a sexual assault victim bill of rights. In addition to the rights extended to crime victims under Wisconsin's basic bill of rights for victims and witnesses, this bill adds the following rights for victims of sexual assault, regardless of whether or not they choose to cooperate with a law enforcement agency: the right to be provided with accurate written information about his or her rights as a sexual assault victim; the right to choose whether or not to undergo a sexual assault forensic examination; the right to bathe immediately following a sexual assault forensic examination; the right to choose whether or not to cooperate with a law enforcement agency; the right to have any examination evidence stored for 50 years or until the end of the prison term of the person convicted of the assault against him or her; and the right to be notified in writing 60 days prior to the destruction of any evidence obtained in a sexual assault forensic examination.

The bill also requires the Department of Justice to test the sexual assault kit of a person who is cooperating with law enforcement within 90 days of collection and requires DOJ to store all sexual assault kits for 50 years or until the end of the term of imprisonment or probation of a person convicted in the sexual assault case.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 50.375 (2) (b) (intro.) of the statutes is amended to read:

2 50.375 (2) (b) (intro.) ~~Orally inform~~ Inform the victim orally and in writing of
3 all of the following:

4 **SECTION 2.** 50.375 (2) (b) 4. of the statutes is created to read:

5 50.375 (2) (b) 4. All of his or her rights under ch. 950.

6 **SECTION 3.** 50.375 (2) (d) of the statutes is created to read:

7 50.375 (2) (d) If facilities are available, provide to the victim an opportunity to
8 bathe immediately following any examination to gather evidence regarding the
9 sexual assault.

10 **SECTION 4.** 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 shall inform the victim of all of his or her rights under ch. 950
13 orally and in writing.

14 **SECTION 5.** 165.25 (20) of the statutes is created to read:

15 165.25 (20) SEXUAL ASSAULT VICTIM NOTICE. On behalf of the state crime
16 laboratories, notify a sexual assault victim 60 days prior to the destruction of any
17 evidence obtained through a sexual assault forensic examination that has been
18 stored by the state crime laboratories.

19 **SECTION 6.** 165.77 (7) of the statutes is amended to read:

20 165.77 (7) Whenever a Wisconsin law enforcement agency or a health care
21 professional collects evidence in a case of alleged or suspected sexual assault, the

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1 agency or professional shall follow the procedures specified in the department's rules
2 under sub. (8). The laboratories shall store the specimen for a period of 50 years in
3 a case where the victim declines to cooperate with a law enforcement agency. The
4 laboratories shall perform, in a timely manner within 90 days, deoxyribonucleic acid
5 analysis of specimens a specimen provided by a law enforcement agencies agency
6 under sub. (2) in a case where the victim cooperates with the agency, then store the
7 specimen for a period of 50 years or until the end of the term of imprisonment or
8 probation of a person who is convicted of the sexual assault. The laboratories shall
9 not include data obtained from deoxyribonucleic acid analysis of those specimens in
10 the data bank under sub. (3).

11 **SECTION 7.** 175.405 (title) of the statutes is amended to read:

12 **175.405 (title) Sexual assault; evidence where no suspect has been**
13 **identified.**

14 **SECTION 8.** 175.405 (2) of the statutes is amended to read:

15 175.405 (2) Whenever a Wisconsin law enforcement agency collects, in a case
16 of alleged or suspected sexual assault, evidence upon which deoxyribonucleic acid
17 analysis can be performed, ~~and the person who committed the alleged or suspected~~
18 ~~sexual assault has not been identified,~~ the agency shall follow the procedures
19 specified in s. 165.77 (8) and shall, in a timely manner, submit the evidence it collects
20 to a crime laboratory, as identified in s. 165.75, for storage or testing or both.

21 **SECTION 9.** 950.02 (3t) of the statutes is created to read:

22 950.02 (3t) "Sexual assault victim" means an individual against whom a crime
23 has been committed under s. 940.22, 940.225 (1) to (3m), 948.02 (1) or (2), 948.025,
24 948.05, 948.051, 948.055, 948.06, 948.07 (1) to (4), 948.08, 948.085, 948.095, 948.10,
25 948.11 (2) (a) or (am), or 948.12, or s. 940.302 (2) if s. 940.302 (2) (a) 1. b. applies.

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1 **SECTION 10.** 950.03 of the statutes is renumbered 950.03 (1).

2 **SECTION 11.** 950.03 (2) of the statutes is created to read:

3 950.03 (2) Notwithstanding sub. (1), a sexual assault victim has the rights and
4 is eligible for the services under this chapter regardless of whether the crime has
5 been reported to law enforcement authorities. A victim of sexual assault is under no
6 obligation to seek medical attention, to have a sexual assault forensic examination
7 administered, or to report the sexual assault to law enforcement authorities.

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

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

10 **950.043 Bill of rights for victims of sexual assault.** In addition to the
11 rights of victims under ss. 950.04 and 950.045, sexual assault victims have all of the
12 following rights:

13 (1) To receive a sexual assault forensic examination at no charge.

14 (2) To receive oral and written information about his or her rights as a sexual
15 assault victim at the time he or she seeks medical attention following a sexual
16 assault, as provided under ss. 50.375 (2) and 50.378 (1m).

17 (3) To receive or decline to receive a sexual assault forensic examination
18 performed by a department-certified sexual assault nurse.

19 (4) If facilities are available, to bathe immediately following a sexual assault
20 forensic examination.

21 (5) To report or decline to report the sexual assault to a law enforcement agency.

22 (6) To have any evidence collected in a sexual assault forensic examination
23 transported to the state crime laboratories for storage or testing or both, as provided
24 under ss. 165.77 (7) and 175.405.

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

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

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

16 (10) To have the department of justice make a reasonable attempt to notify him
17 or her in writing 60 days prior to the destruction of any evidence acquired from a
18 sexual assault forensic examination, as provided in s. 165.25 (20).

19 **SECTION 14.** 968.205 (3) (intro.) of the statutes is amended to read:

20 968.205 (3) (intro.) Subject Except in sexual assault cases, subject to sub. (5),
21 a law enforcement agency may destroy evidence that includes biological material
22 before the expiration of the time period specified in sub. (2) if all of the following
23 apply:

24 (END)