
Wisconsin Legislative Council

ACT MEMO



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2021 Wisconsin Act 116
[2021 Senate Bill 71]

**Storage and Processing of Sexual
Assault Kits**

2021 WISCONSIN ACT 116

2021 Act 116 creates statutory procedures and requirements related to transmitting, processing, and storing sexual assault kits. The act also grants health care professionals who conduct sexual assault forensic examinations immunity from civil and criminal liability under certain circumstances, requires the Department of Justice (DOJ) to collect certain information, and directs DOJ to promulgate rules implementing the act's provisions.

Transmission, Processing, and Storage of Sexual Assault Kits

The act creates procedures that govern the transmission, processing, and storage of sexual assault kits. These procedures impose requirements on health care professionals who collect sexual assault kits, law enforcement agencies, and the state crime laboratories.

Health Care Professionals

The act requires a health care professional, whenever conducting a sexual assault forensic examination and collecting a sexual assault kit, to either notify a law enforcement agency or send the kit to the state crime laboratories within specified timeframes, as follows. If the victim chooses to report the sexual assault to a Wisconsin law enforcement agency or if reporting is required under the child abuse and neglect reporting statute, the health care professional must notify a Wisconsin law enforcement agency within 24 hours after collecting the sexual assault kit. If the victim chooses not to report the sexual assault to a Wisconsin law enforcement agency and reporting under the child abuse and neglect reporting statute is not required, the health care provider must send the sexual assault kit to the state crime laboratories for storage.

Law Enforcement Agencies

Under the act, when a Wisconsin law enforcement agency is notified by a health care professional who has conducted a sexual assault forensic examination that the victim chooses to report the assault, the law enforcement agency must take possession of the sexual assault kit from the health care professional within 72 hours after receiving notification. The law enforcement agency must then send the kit to the state crime laboratories for processing within 14 days after taking possession of the kit. If the law enforcement agency receives notification after receiving the kit but before sending it to the state crime laboratories that the victim does not want to proceed with the analysis of the kit, the law enforcement agency must send the kit to the state crime laboratories for storage.

The State Crime Laboratories

The act requires the state crime laboratories to either process or store a sexual assault kit it receives from a law enforcement agency, depending on whether the victim has chosen to report the assault to a Wisconsin law enforcement agency. If the victim chooses to report the sexual assault to a Wisconsin law

enforcement agency and thus has consented to the analysis of his or her sexual assault kit, the state crime laboratories must process the kit in accordance with DOJ rules. If the victim has chosen not to report the sexual assault and thus has not consented to an analysis, the crime laboratories must securely store the sexual assault kit for a period of 10 years, during which time the sexual assault victim may choose to report the assault to a Wisconsin law enforcement agency.

Immunity From Liability

The act provides that any health care professional conducting a sexual assault forensic examination pursuant to informed consent or a court order is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act. Under the act, the immunity extends to any employer of the health care professional or any health care facility where the sexual assault forensic examination is conducted.

Data Collection

Wisconsin law requires DOJ to collect information concerning the number and nature of offenses committed in this state and such other information as may be useful in the study of crime and the administration of justice. The act expands the scope of information DOJ is required to collect to also include information concerning sexual assault kits collected in this state. Under the act, all persons in charge of law enforcement agencies and other criminal and juvenile justice system agencies must supply DOJ with this information, and DOJ must publish data at least annually on law enforcement compliance with this reporting requirement.

Rule Promulgation

The bill directs DOJ to promulgate rules to administer the act's provisions related to transmitting, processing, and storing sexual assault kits. Under the act, DOJ must promulgate emergency rules within 180 days of the act's effective date to implement these provisions.

Effective date: The provisions of 2021 Wisconsin Act 116 directing DOJ to promulgate rules implementing the act took effect on December 8, 2021; the remainder of the act takes effect on July 1, 2022.

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