



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-044

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In the rule summary’s listing of statutory authority, the department could remove the reference to s. 227.11 (2) (a), Stats. The other citation, to s. 165.776 (4), Stats., provides a more precise citation to rulemaking authority, and a citation to the more general authority is not necessary.

2. Form, Style and Placement in Administrative Code

a. In the rule summary, review and revise the plain language analysis to provide a present tense summary of the text of the proposed rule, rather than what the rule “would” do.

b. Throughout the proposed rule, various references are made to “the required fields defined by the Wisconsin Sexual Assault Kit Tracking System”. However, s. 165.776 (3) (a) and (b), Stats., require entry of “information required in the department’s rules”. While such fields may vary over time depending on the specific electronic technologies used by the department to comply with s. 165.776 (2), Stats. (which requires the department to use electronic technologies to allow continuous, ongoing access to certain information), it may be helpful to identify certain minimum required information by rule, rather than defer that requirement wholly to the system’s defined fields. For example, the department could consider clarifying that a health care professional must, at a minimum, enter the date of receipt or other data points contemplated by the language of s. 165.776 (2) (a), Stats.

c. In s. Jus 21.03, the designation for sub. (1) should be removed, as it is the only subunit in the section. Whenever a unit is divided into smaller subunits, at least two subunits must be created. [s. 1.10 (1) (a), Manual.]

d. Section Jus 21.04 (2) references situations in which a sexual assault kit does not contain the system’s barcodes. However, ch. Jus 21 does not contain any other provisions addressing the administration of such barcodes. Because s. 165.776 (4), Stats., requires the department to

promulgate rules to administer the tracking system, it may be appropriate for ch. Jus 21 to include, at a minimum, a requirement that the barcodes be used as part of the tracking system.

e. Section Jus 21.04 (3) and (4) both require a law enforcement agency to notify the state crime laboratories of certain information to either “assist” or “allow” the state crime laboratories in updating information in the system. The department could consider including an affirmative obligation for the state crime laboratories to enter such updates among the requirements applicable to the state crime laboratories under s. Jus 21.05.

f. In s. Jus 21.04 (4), the abbreviation “s.” should be inserted before the reference to “Jus 20.03 (2)”.

g. To avoid redundancy, the department could consider reorganizing s. Jus 21.05 with an introductory statement that reads, “The state crime laboratories shall enter the information for a sexual assault kit in the required fields defined by the Wisconsin Sexual Assault Kit Tracking System in all of the following circumstances:”.

h. Under s. 165.776 (2), Stats., one of the purposes of the tracking system is to provide a victim access to information about the status of any sexual assault kit that the victim has provided. Specifically, the statute requires that the database allow a victim to anonymously track, and receive information relating to, the location and status of the victim’s kit. However, ch. Jus 21 does not contain any provisions regarding victims. While s. 165.776 (2), Stats., does not cross-reference the rulemaking authority under sub. (4), as done in sub. (3), it seems the general rulemaking authority under sub. (4) applies, as rules may be necessary to administer a victim’s access afforded under the statute.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Throughout the proposed rule, the department could consider cross-referencing the authority for kit transfers under ch. Jus 20. For example, in s. Jus 21.05 (3), consider adding “as required under s. Jus 20.05 (2)” immediately prior to the comma.

b. In s. Jus 21.05 (4), the department may consider an additional cross-reference to the alternate storage periods contemplated under s. 165.775 (5), Stats., to govern tracking system entries for the circumstances addressed in that provision.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. Jus 21.03 (intro.), the plural term “health care professionals” should be revised to the singular. When regulating classes of people, the obligation to comply with the regulation is on each individual member of the group, not the group as a whole. [s. 1.05 (1) (c), Manual.] The same comment applies in s. Jus 21.04 (intro.) to the plural term “law enforcement agencies”.

b. In s. Jus 21.03 (1), consider inserting “reporting” immediately prior to “victim’s” in order to use the defined term created in s. Jus 21.02 (2).

c. In s. Jus 21.04 (2), consider replacing the term “evidence” with the term “sexual assault kit”, a term defined as “evidence collected from a sexual assault forensic examination”.