



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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Report From Agency

DATE: November 21, 2022

TO: Michael J. Queensland
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FROM: Josh Kaul, Attorney General
Wisconsin Department of Justice

SUBJECT: **Notice and Report for Final Draft Form of Proposed Rule
Clearinghouse Rule 22-060 – chapter Jus 20 (relating to the storage and
processing of sexual assault kits)**

Pursuant to s. 227.19 (2), Stats., the Department of Justice (DOJ) is submitting for legislative review the attached proposed rule in final draft form for Clearinghouse Rule 22-060, creating chapter Jus 20, relating to the storage and processing of sexual assault kits. DOJ submitted the final draft rule to the Governor on November 7, 2022. The Governor approved the final draft rule on November 10, 2022. The analysis required under s. 227.14 (2), Stats., is included in the proposed rule. Also attached is the Fiscal Estimate & Economic Impact Analysis and the Rules Clearinghouse report and comments.

Basis and Purpose

DOJ is promulgating the rule in chapter Jus 20, relating to the storage and processing of sexual assault kits, to comply with s. 165.775 (6), Stats, which states: “The department shall promulgate rules to administer this section.”

Public Hearings

On October 13, 2022, DOJ held a public hearing on the proposed rule and received comments from one commenter. Her comments and DOJ’s responses are summarized in the

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attached comments summary. DOJ did not make any changes to the proposed rule in response to the commenter's comments.

Changes to the Analysis or Fiscal Estimate

DOJ revised the analysis to indicate the deadline for comments of October 13, 2022, (the date of the public hearing) and to reflect modifications DOJ made to the rule in response to the Rules Clearinghouse. DOJ made no other changes to the analysis or fiscal estimate.

Responses to Rules Clearinghouse

The Rules Clearinghouse made recommendations and comments relating to the following:

Form, Style and Placement in the Administrative Code: DOJ revised the proposed rule as recommended by the Rules Clearinghouse.

Adequacy of References to Related Statutes, Rules and Forms: DOJ revised the proposed rule as recommended by the Rules Clearinghouse.

Clarity, Grammar, Punctuation and Use of Plain Language: DOJ revised the proposed rule as recommended by the Rules Clearinghouse in comments 5.a., 5.b., 5.c., 5.d., 5.e., 5.f., and 5.g. DOJ's response to the remaining comments are as follows:

Comment 5.h.: Section 165.775 (6), Stats., requires the department to promulgate rules to administer s. 165.775, Stats., as set forth in the rule summary's explanation of agency authority. In addition, the department's rulemaking authority in s. 165.775 (6), is referenced throughout s. 165.775, Stats., in that certain acts – such as the sending, processing, and storage of sexual assault kits – are required to be performed “in accordance with the procedures specified in the rules promulgated under sub. (6)”. [See, s. 165.775 (2) (b), (3) (b) and (c), and (4) (b), Stats.] The department should consider whether the proposed rule provides the level of detail contemplated by Act 116 with respect to these procedures. For example, the department could consider whether ch. Jus 20 should address more specific procedural aspects of sending, processing, and storing sexual assault kits – by what method, in what manner, to whom, etc.

DOJ's response: DOJ has considered whether the proposed rule provides the level of detail contemplated by 2021 Wis. Act 116 with respect to these procedures. DOJ did not revise the rule to address this comment for the following reasons. First, the requirements of Act 116 are reasonably specific. They set forth what is required of law enforcement agencies, health care providers, and the crime laboratories. DOJ sees a benefit to allowing these laws to be implemented

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and to then, to the extent necessary, promulgate additional procedures. Second, technology in the field can and does change over time, and the rule allows for an adaptive approach, and DOJ may pursue further rulemaking, if necessary.

Comment 5.i.: Similarly, consider clarifying the procedures for actions required under s. Jus 20.05, such as storage and destruction of sexual assault kits. For example, is there a manner in which such kits must be properly stored to ensure preservation or security? If a kit is to be destroyed, is there a proper method or procedure for such destruction?

DOJ's response: DOJ has considered whether it should clarify the procedures for action required under s. Jus 20.05, such as the storage and destruction of sexual assault kits. DOJ did not revise the rule to address this comment. This is primarily because the best available practice governing storage and destruction of sexual assault kit evidence is likely to change over time. The proposed rule therefore allows for an adaptive approach, and DOJ can pursue rules changes if they become necessary. Further, less specificity in the rule provides more flexibility so that the crime laboratories can best match the available technology with any budgetary and staffing limitations.

Final Regulatory Flexibility Analysis and Response to SBRRB

The proposed rule does not have an effect on small businesses, as defined in s. 227.114 (1), Stats. Therefore, DOJ did not submit the proposed rule to the Small Business Regulatory Review Board (SBRRB), and a final regulatory analysis is not required.