

HOUSE BILL REPORT

HB 2530

As Reported by House Committee On:
Public Safety

Title: An act relating to protecting victims of sex crimes.

Brief Description: Protecting victims of sex crimes.

Sponsors: Representatives Orwall, McCabe, Appleton, Wylie, Tarleton, Senn, McBride, Kagi, Ryu, Hudgins, S. Hunt, Gregerson, Reykdal, Farrell, Pollet, Ortiz-Self, Harris, Bergquist, Lytton, Kochmar, Blake, Cody, Stambaugh, Wilson, Jinkins, Kuderer, Muri, Van De Wege, Frame, Hargrove, Ormsby, Sells, Pettigrew and Stanford.

Brief History:

Committee Activity:

Public Safety: 1/19/16, 1/26/16 [DPS].

Brief Summary of Substitute Bill

- Requires the Washington Association of Sheriffs and Police Chiefs (WASPC) to create and operate a statewide sexual assault kit (SAK) tracking system.
- Requires the Washington State Patrol to increase its capacity to conduct forensic analysis of SAKs to the extent necessary to expeditiously test all SAKs in the possession of law enforcement agencies but not submitted for testing as of July 24, 2015.
- Requires the WASPC to establish and administer a five-year grant program for local law enforcement agencies to reinvestigate cases where a SAK was in the possession of a law enforcement agency but not submitted for forensic testing as of July 24, 2015.
- Creates a \$4 fee per admission collected from patrons by operators of sexually oriented live adult entertainment establishments to fund testing of SAKs and other programs and services for victims.
- Authorizes the Department of Commerce to accept private donations to fund testing of SAKs, the WASPC grant program, and training for sexual assault nurse examiners.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

Staff: Kelly Leonard (786-7147).

Background:

Sexual Assault Kits. After a person has been the victim of a sexual assault, the person may undergo a forensic examination for the purpose of collecting any evidence that may have been left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault forensic examination kit, also commonly referred to as a sexual assault kit (SAK) or rape kit. After the examination, custody of a SAK may be transferred to a law enforcement agency to be utilized during an investigation and subsequent criminal prosecution.

Prior to 2015, law enforcement agencies and prosecutors had the discretion to send SAKs to forensic laboratories for testing, but were not required to do so. In 2015 the Legislature passed Substitute House Bill 1068, which requires a law enforcement agency to submit a SAK to the Washington State Patrol (WSP) Crime Laboratory within 30 days of receiving it, provided that the victim has consented to the testing. Consent is not a condition of submission if the SAK was collected from a non-emancipated minor. The requirement to test SAKs is prospective as of July 24, 2015, meaning it does not apply to previously unsubmitted SAKs.

The WSP Crime Laboratory must, subject to available funding, give priority to testing of SAKs for:

- active investigations and cases with impending court dates;
- active investigations where public safety is an immediate concern;
- violent crimes investigations, including active sexual assault investigations;
- postconviction cases; and
- other criminal investigations and nonactive investigations, such as previously unsubmitted older SAKs or recently collected SAKs that the submitting agency has determined to be lower priority based on their initial investigation.

SAFE Best Practices Task Force. Substitute House Bill 1068 (2015) also created the Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices (SAFE Best Practices Task Force) to study best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested SAKs in Washington. Among other specified duties, the SAFE Best Practices Task Force must research, review, and make recommendations regarding legislative policy options for reducing the number of untested SAKs. The SAFE Best Practices Task Force expires on June 30, 2018.

Washington Association of Sheriffs and Police Chiefs. The Washington Association of Sheriffs and Police Chiefs (WASPC) is an independent organization consisting of sheriffs,

police chiefs, the WSP, the Washington Department of Corrections, and representatives of a number of federal agencies. The WASPC is governed by its executive board. The 1975 Legislature made the WASPC a statutory entity by designating the association as a "combination of units of local government," and it currently receives state funding to manage certain programs. This includes, for example, the Jail Booking and Reporting System.

Office of Crime Victims Advocacy. The Office of Crime Victims Advocacy (OCVA) is a program of the Department of Commerce, which performs victims' advocacy at the direction of the state. Among other functions, the OCVA administers grant funding for certain programs and assists communities in planning and implementing services for crime victims.

Sexual Assault Nurse Examiners. Sexual assault nurse examiners (SANE) are registered nurses who have completed specialized education and clinical preparation in the medical forensic care of patients who have experienced sexual assault or abuse. In addition to other services, they can provide medical assistance while also assessing, documenting, and preserving evidence for potential prosecutions. The SANEs conduct forensic examinations where the SAKs are collected. However, nurses without SANE training or certification can also conduct such examinations.

Public Records Act. Under the Public Records Act (PRA), all state and local agencies must make available for public inspection and copying all public records, unless a record falls within a specific statutory exemption. Agencies governed by the PRA include all state offices, departments, divisions, bureaus, boards, or commissions, and every county, city, town, or special purpose district, as well as their associated offices, departments, divisions, bureaus, boards, or commissions. The PRA's provisions requiring disclosure must be interpreted liberally and its exemptions must be narrowly construed to effectuate a general policy favoring disclosure.

Summary of Substitute Bill:

Tracking Sexual Assault Kits. When funded, the WASPC must create and operate a statewide sexual assault kit tracking system (system). The system must:

- track the location and status of SAKs throughout the criminal justice process;
- allow certain entities in the custody of SAKs to update and track the status and location of SAKs; and
- allow victims of sexual assault to anonymously track or receive updates regarding the status of their SAKs.

Local law enforcement agencies, prosecutors, hospitals, and the WSP are required to participate in the system. Any records and information contained within the system are not subject to disclosure under the PRA. Certain public entities as well as hospitals are immune from liability for any release of information or the failure to release information related to the system, so long as the release was without gross negligence.

Beginning on January 31, 2017, the WASPC must submit quarterly reports on the system to the SAFE Best Practices Task Force, the appropriate committees of the Legislature, and the Governor.

Testing of Previously Unsubmitted SAKs and Grants to Law Enforcement Agencies. The WSP Crime Laboratory must increase its capacity to conduct forensic analysis of SAKs to the extent necessary to expeditiously test all SAKs in the possession of law enforcement agencies but not submitted for testing as of July 24, 2015. The increased capacity must accommodate the receipt and analysis of 1,500 SAKs between the effective date of the bill and June 30, 2017, and an additional 4,500 SAKs between July 1, 2017, and June 30, 2022. The requirement to increase capacity does not modify the statutory priorities for testing. The WSP may contract with private laboratories in order to increase its capacity for testing. Furthermore, the WSP must develop budget submissions to the Office of Financial Management sufficient to increase capacity to test all evidence submitted from crimes against persons by 2020 and all evidence submitted from property crimes by 2025.

When funded, the WASPC must establish and administer a five-year grant program for local law enforcement agencies for the purpose of reinvestigating all cases where a SAK was in the possession of a law enforcement agency but not submitted for forensic testing as of July 24, 2015. Grant awards may not be used to supplant pre-existing funding for investigations of sexual assaults. Grant recipients must:

- submit for testing all SAKs in the possession of the law enforcement agency but not submitted for testing as of July 24, 2015;
- conduct investigations or reinvestigations of cases where a SAK was in the possession of a law enforcement agency but not submitted for testing as of July 24, 2015;
- use a community sexual assault victims' advocate for investigations funded by the grant;
- develop and use protocols, in consultation with the SAFE Best Practices Task Force and the Washington Coalition of Sexual Assault Programs, for the notification of victims regarding results of forensic testing of SAKs; and
- consult and coordinate with local prosecutors regarding investigations, filing of charges, and prosecution of cases arising from the grant program.

Beginning on January 31, 2017, the WASPC must submit quarterly reports on the grant program to the SAFE Best Practices Task Force, the appropriate committees of the Legislature, and the Governor. The grant program expires on June 1, 2022.

Private Funds for SAKs. The Washington Sexual Assault Kit Program is created within the Department of Commerce for the purpose of accepting private funds until June 1, 2022. Donated funds must be used exclusively for the following:

- 45 percent for the WSP for testing SAKs in the possession of a law enforcement agency but not submitted for forensic testing as of July 24, 2015;
- 40 percent for the WASPC for the grant program created in the bill; and
- 15 percent for the OCVA for funding grants for SANE services and training.

Sexually Oriented Business Fee. After October 1, 2016, operators of sexually oriented live adult entertainment establishments must collect \$4 per admission from patrons and submit

the funds to the Department of Revenue. Live adult entertainment establishments include adult cabarets, erotic dance venues, strip clubs, or any other commercial premises where live adult entertainment is provided during at least 30 days within a calendar year or a proportional number of days if the establishment was not open for a full calendar year. Receipts from the fee are deposited in the Sexually Oriented Business Fee Account administered by the OCVA. From 2017 to 2021, funds are distributed as follows:

- 50 percent to the WSP for testing of SAKs not tested by July 24, 2015;
- 25 percent to the OCVA for services or support to victims of sexual abuse; and
- 25 percent to the OCVA for services or support to victims of trafficking.

From 2022 and onward, funds are distributed as follows:

- 30 percent to the WSP for ongoing testing of SAKs;
- 35 percent to the OCVA for services or support to victims of sexual abuse; and
- 35 percent to the OCVA for services or support to victims of trafficking.

Of the funds designated for services or support to victims of sexual abuse, \$150,000 must be directly allocated annually to the Harborview Center for Sexual Assault and Traumatic Stress for the sole purpose of conducting SANE trainings for health care professionals.

SAFE Best Practices Task Force. The expiration date for the SAFE Best Practices Task Force is extended to October 1, 2022. The bill requires the SAFE Best Practices Task Force to: review and recommend best practices for notifying victims regarding the status of SAKs and testing results; review the information and recommendations reported by the WASPC regarding the grant program; consult with law enforcement, victims' advocates, and forensic professionals to evaluate the lessons learned from the grant program; and evaluate other issues relating to improving the best practices for tracking and testing SAKs and conducting related investigations in Washington.

Substitute Bill Compared to Original Bill:

The WASPC must submit quarterly reports on the statewide SAK system to the SAFE Best Practices Task Force, the appropriate committees of the Legislature, and the Governor.

The substitute bill adds provisions requiring the WSP to increase its capacity to conduct forensic analysis of SAKs to the extent necessary to expeditiously test all SAKs in the possession of law enforcement agencies but not submitted for testing as of July 24, 2015.

The requirements for grant recipients are modified by: requiring recipients to submit all sexual assault kits for forensic analysis; requiring recipients to use a community sexual assault victims' advocate for investigations rather than employ a victims' advocate; requiring victim notification protocols to be developed in consultation with the SAFE Best Practices Task Force and the Washington Coalition of Sexual Assault Programs; and requiring grant recipients to consult and coordinate with local prosecutors. The substitute bill modifies the WASPC reports on the grant program by requiring reports to be submitted quarterly rather than annually.

The substitute bill requires the OCVA to directly allocate \$150,000 annually from the Sexually Oriented Business Fee Account to the Harborview Center for Sexual Assault and

Traumatic Stress for the sole purpose of conducting statewide SANE trainings for health care professionals in order to facilitate the providing of forensic sexual assault examination services.

The Washington SAK Account and the Sexually Oriented Business Fee Account created in the bill are in the custody of the State Treasurer (rather than located in the State Treasury). The expiration dates for the grant program and Washington SAK Account created in the bill are extended from June 1, 2022, to June 30, 2022.

The substitute bill adds the provisions pertaining to the SAFE Best Practices Task Force, which is extended from June 30, 2018, to October 1, 2022.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 14 through 17, relating to the fee collected by sexually oriented live adult entertainment establishments, which take effect on October 1, 2016.

Staff Summary of Public Testimony:

(In support) Testing all SAKs is critical to keeping our society safe from sexual predators. The Legislature took a significant step last year by requiring all SAKs to be tested going forward; however, there are an estimated 6,000 untested SAKs from prior to 2015. Testing all SAKs is critical to show respect for survivors of sexual assault.

The bill requires the testing of previously unsubmitted SAKs and creates a grant program for law enforcement to conduct related investigations. The law enforcement community has been getting this issue wrong for a long time, but it understands it is time to do things differently. Other jurisdictions that have gone back and tested previously unsubmitted kits have successfully identified suspects and closed cases. This is a critical bill for the people of Washington. It is time to move forward and fund testing and investigations.

Testing all SAKs is an effective policy for law enforcement and public safety. Testing may not only result in identifying rape suspects, but it can also identify serial offenders and provide necessary investigative leads in unsolved homicide cases. Most law enforcement agencies do not have additional resources for cold case investigations. Recent efforts to review cold cases and conduct forensic analysis have yielded powerful results. This is particularly the case when testing has been completed at private laboratories. The state should designate resources to this issue.

The bill also creates a tracking system, which will track the status of each SAK as it moves through the system. The tracking system will create accountability and transparency.

The sexually oriented business fee is important to funding the policies in the bill. It is appropriate for patrons of the live adult entertainment establishments to pay the fee. Research shows that trafficked persons are frequently trafficked into the commercial sex industry, including as exotic dancers in these types of businesses. Exotic dancers are more likely to be victims of sexual violence, including sexual assault and rape. The bill should be amended to designate a portion of the fee revenues for SANE training and services. The Harborview Center for Sexual Assault and Traumatic Stress is the only provider of SANE training in Washington, and it has previously cobbled together funding for the program. The fee could provide a stable funding source for SANE training and services.

There are some concerns about the sexually oriented business fee. Such businesses contribute to the objectification of women, but they are not the root cause of sexual violence against women. Some women working in these establishments have experienced violence, but some women are working in these establishments by choice as a means to have economic stability and to express their sexuality. Furthermore, it is possible that the fee could be passed on to dancers working as independent contractors at these businesses. The state should not rely on the fee to fund SAK testing. The state has an obligation to create a sustainable source of funding for testing SAKs and supporting victims, and such funding should be independent from the fee.

(Opposed) None.

Persons Testifying: Representative Orwall, prime sponsor; David Ward, Legal Voice; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; Mitch Barker, Washington Association of Sheriffs and Police Chiefs; Lindsey Wade, City of Tacoma Police Department; and Ian Goodhew, University of Washington Medicine Center.

Persons Signed In To Testify But Not Testifying: None.