

HOUSE BILL REPORT

2SHB 2530

As Amended by the Senate

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

Brief Description: Protecting victims of sex crimes.

Sponsors: House Committee on Appropriations (originally sponsored by 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, Jenkins, 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];

Appropriations: 2/8/16, 2/9/16 [DP2S(w/o sub PS)].

Floor Activity:

Passed House: 2/16/16, 83-14.

Senate Amended.

Passed Senate: 3/3/16, 48-0.

Brief Summary of Second Substitute Bill

- Requires the Washington State Patrol to create and operate a Statewide Sexual Assault Kit Tracking System.
- Creates a \$4 fee per admission collected from patrons by operators of sexually oriented live adult entertainment establishments to fund the Statewide Sexual Assault Kit Tracking System as well as other prioritized policies.
- Authorizes the Department of Commerce to accept private donations to fund the testing of previously unsubmitted sexual assault kits and training for sexual assault nurse examiners.

HOUSE COMMITTEE ON PUBLIC SAFETY

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.

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).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Public Safety. Signed by 27 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Cody, Fitzgibbon, Hansen, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Robinson, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Haler and Taylor.

Minority Report: Without recommendation. Signed by 2 members: Representatives Condotta and Dent.

Staff: Rachelle Harris (786-7137).

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.

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 Second Substitute Bill:

Tracking Sexual Assault Kits. The WSP must create and operate a Statewide SAK Tracking System (system). The WSP may contract with state or nonstate entities including, but not limited to, private software and technology providers, for the creation, operation, and maintenance of the system. The system must:

- track the location and status of SAKs from the point of collection and then throughout the criminal justice process;
- allow participants in the system to update and track the status and location of SAKs;
- allow victims of sexual assault to anonymously track or receive updates regarding the status of their SAKs; and
- use electronic technology or technologies allowing continuous access.

Local law enforcement agencies, prosecutors, hospitals, and the WSP are required to participate in the system. The WSP may use a phased implementation process in order to launch the system and facilitate entry and use of the system for required participants. All entities in the custody of SAKs must fully participate in the system no later than June 1, 2018.

Any personally identifiable records and information contained within the system are not subject to disclosure under the PRA. Personally identifiable records and information include: a person's name, initials, address, location, phone number, email address, date of birth, social security number, driver's license number, or emergency and familial contact information; and any barcode or other identifier associated with a specific SAK or its contents. 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.

The WSP must submit quarterly reports on the status of SAKs in the system to the appropriate committees of the Legislature and the Governor.

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:

- 25 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; and
- 15 percent for the OCVA 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. The Legislature must appropriate account funds for the creation, maintenance, and operation of the system. If additional funds are available in the account, the Legislature may appropriate funds for the following, with priority according to their order:

- SANE trainings for health care professionals through the Harborview Center for Sexual Assault and Traumatic Stress;
- services and support for victims of human trafficking, including educational and vocational training opportunities, through the OCVA;
- forensic analysis of SAKs in the possession of law enforcement agencies but not submitted to the WSP for forensic analysis as of July 24, 2015; and
- forensic analysis of SAKs, regardless of the date of submission to the WSP.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendments remove the fee charged to patrons of sexually oriented live adult entertainment establishments, which funds the system.

The Senate amendments make the following changes to the system: (1) requires the WSP to submit an implementation plan for launching the system to the Legislature and the Governor no later than July 1, 2017; (2) expands the exemption for disclosure of public records to include all records and information contained within the system; (3) requires the WSP to

submit semiannual reports on the system instead of quarterly reports; (4) removes the requirement pertaining to combining jurisdictional data for reports on jurisdictions with low numbers of SAK collections; and (5) requires the WSP to submit the first report on July 31, 2018, instead of July 31, 2017.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 29, 2016.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 10 through 13, relating to the fee collected by sexually oriented live adult entertainment establishments, which take effect on October 1, 2016.

Staff Summary of Public Testimony (Public Safety):

(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.

Staff Summary of Public Testimony (Appropriations):

(In support) Our state has 6,000 untested sexual assault kits. That means there are 6,000 victims who have presented evidence and await justice. This bill allocates resources for those kits and establishes a tracking system for the kits. Without the tracking system, victims have no way to know the status of their kits. This bill allows increased transparency for victims. Protection of victims' privacy information is also key; this bill does that effectively. We want to make sure neither the name of a victim or even the barcode of a kit is identifiable. Harborview Center for Sexual Assault is the only location for sexual assault nurse examiner training. This is intensive training and takes a lot of work to maintain accreditation. Previous funding has been patched together from federal and local money, but there has not been a stable funding source. The WSP is in support of the bill but wants clarity on the timing of the funding and the language surrounding the funding source.

We lost the grants to fund the investigation of prior cases with the second substitute bill. We need meaningful access to the kits as they move through the system, so that we can quantify and track the kits. Access to that information is critical; we need a meaningful quarterly report.

(Opposed) Modern adult entertainment is essentially burlesque without any alcohol. Owners of modern clubs make lower profits because they've cracked down on human trafficking. They are dedicated to making sure nothing bad is going on. The entertainment business is not responsible for rapes or assaults that happen. This bill represents a huge increase in fees for patrons.

Persons Testifying (Public Safety): 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 Testifying (Appropriations): (In support) Rebecca Johnson, Washington State Coalition for Sexual Assault Prevention; James McMahan, Washington Association of Sheriffs and Police Chiefs; Ian Goodhew, University of Washington Medicine - Harborview Medical Center; Melissa Van Gorkom, Washington State Patrol; and Rowland Thompson, Allied Daily Newspapers of Washington.

(Opposed) R. E. Ray, AEQUUS Corporation.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.