

# HOUSE BILL REPORT

## ESHB 1109

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### As Amended by the Senate

**Title:** An act relating to supporting victims of sexual assault.

**Brief Description:** Supporting victims of sexual assault.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Orwall, McCabe, Griffey, Hayes, McBride, Frame, Goodman, Klippert, Stanford, Stambaugh, Jinkins, Fey, Harmsworth, Dolan, Sells, Muri, Gregerson, McDonald, Wylie, Kilduff, Kloba, Tarleton, Pollet, Farrell, Kagi, Riccelli, Senn, Peterson, Bergquist and Doglio).

### Brief History:

#### Committee Activity:

Public Safety: 1/17/17, 1/19/17 [DP];  
Appropriations: 2/8/17, 2/23/17 [DPS].

#### Floor Activity:

Passed House: 3/6/17, 96-2.  
Senate Amended.  
Passed Senate: 4/11/17, 49-0.  
House Refused to Concur.  
Senate Insisted on Its Position.  
House Insisted on Its Position.  
Senate Receded.  
Senate Amended.  
Passed Senate: 4/20/17, 49-0.

### Brief Summary of Engrossed Substitute Bill

- Creates the Washington Sexual Assault Kit Initiative (SAKI) Pilot Project to fund the creation of locally based multidisciplinary community response teams to conduct cold case investigations tied to previously unsubmitted sexual assault kits (SAKs).
- Authorizes the Office of the Attorney General to assist law enforcement officials and prosecutors with investigations and prosecutions of cold cases tied to previously unsubmitted SAKs.

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*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.*

- Requires the Criminal Justice Training Commission to incorporate into existing training and develop new training with a victim-centered, trauma-informed approach.
- Eliminates the expiration date for the 6.2 percent fee on most liquor licenses and permits issued by the Liquor and Cannabis Board, and directs revenue from the 6.2 percent fee to the Sexual Assault Prevention and Response Account to fund the Washington SAKI Pilot Project and other specified services for victims.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

**Staff:** Kelly Leonard (786-7147).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Sullivan, Tharinger, Vick, Volz and Wilcox.

**Minority Report:** Do not pass. Signed by 1 member: Representative Taylor.

**Staff:** Meghan Morris (786-7119).

### **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 was 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 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 (SHB 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.

Substitute House Bill 1068 also created the Sexual Assault Forensic Examination (SAFE) Best Practices Task Force to review best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested SAKs in Washington. The SAFE Best Practices Task Force is composed of four legislators and 14 stakeholders representing specified interests and organizations.

*Criminal Justice Training Commission.* The Criminal Justice Training Commission (CJTC) provides basic law enforcement training, and educational programs for law enforcement, corrections, and other public safety professionals in Washington. The CJTC also certifies, and when necessary de-certifies, peace officers.

Basic law enforcement officer training is generally required of all law enforcement officers, with the exception of volunteers, and reserve officers employed in Washington. The Basic Law Enforcement Academy (BLEA) consists of a 720-hour program covering a wide variety of subjects including: criminal law and procedures, traffic enforcement, cultural awareness, communication and writing skills, emergency vehicle operations, firearms, crisis intervention, patrol procedures, and criminal investigation and defensive tactics.

In addition to the BLEA, the CJTC provides specialized training to commissioned officers on a range of subjects, including, for example, interviewing children in child abuse cases and neglect cases.

*Additional Nonrefundable Liquor Fee.* The Liquor and Cannabis Board (Board) issues various licenses and permits relating to the production, distribution, and retail sale of beer, wine, and spirits. It also issues licenses for the production, processing, and retail sale of marijuana under the Controlled Substances Act. Each license and permit issued by the Board carries a fee, which is either fixed (as in the case of microbrewery licenses) or varied depending on sales (as in the case of the spirits retail license fee).

In 2015, the Legislature established an additional temporary nonrefundable fee imposed on all applications and renewals of licenses and permits relating to spirits, beer, and wine. The fee is equal to 6.2 percent of the licensing or permit fee that is otherwise due. The 17-percent spirits retail license fee and the 5- to 10-percent spirits distributor license fee are exempt from the additional fee. A similar fee was created for marijuana-related licenses. The fee funds the costs of replacing and modernizing the Board's licensing, enforcement, and imaging systems.

The 6.2 percent fee expires June 30, 2017.

*Private Funds for Sexual Assault Kits.* The Washington SAK Program accepts private funds until June 1, 2022, for the Washington SAK Account. Funds are used exclusively for the following:

- 85 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 Office of Crime Victim Advocacy (OCVA) for Sexual Assault Nurse Examiner services and training.

### **Summary of Engrossed Substitute Bill:**

*Unsubmitted Sexual Assault Kits.* "Unsubmitted sexual assault kits" are SAKs that have not been submitted to a forensic laboratory for testing with the CODIS-eligible DNA (Combined DNA Index System) methodologies as of July 24, 2015, the effective date of the mandatory testing law in SHB 1068 (2015). Unsubmitted SAKs may include partially tested SAKs, which are SAKs that have only been subjected to serological testing, or that have previously been tested only with non-CODIS-eligible DNA methodologies. The term does not include untested SAKs that have been submitted to forensic labs for testing with CODIS-eligible DNA methodologies but are delayed for testing as a result of a backlog of work in the laboratory.

*Washington Sexual Assault Kit Initiative Pilot Project.* Subject to the availability of amounts appropriated for this specific purpose, the Washington Sexual Assault Kit Initiative (SAKI) Pilot Project is created for the purpose of providing funding through a competitive grant program to fund multidisciplinary community response teams seeking resolutions to cases tied to previously unsubmitted SAKs. The Office of the Attorney General (AGO) is required to administer the SAKI Pilot Project.

Two grants must be given, one in western Washington and one in eastern Washington, to:

- a law enforcement agency;
- a unit of local government;
- a combination of units of local government;
- a prosecutor's office; or
- a governmental non-law enforcement agency acting as fiscal agent for one of the previously listed types.

A combination of jurisdictions, including contiguous jurisdictions of multiple towns, cities, or counties, may create a task force or other entity for the purposes of applying for and receiving a grant, provided that the relevant prosecutors and law enforcement agencies are acting in partnership in complying with the grant requirements.

Grant recipients must perform an inventory of all unsubmitted SAKs in the jurisdiction's possession and submit those SAKs for testing. Grant recipients must establish multidisciplinary cold case or sexual assault investigation units for follow-up investigations and prosecutions resulting from evidence from the testing of previously unsubmitted SAKs. Cold case or sexual assault investigative units must include prosecutors, law enforcement, and victim advocates for the duration of the project. The cold case or sexual assault investigative units must also use victim-centered, trauma-informed protocols and other protocols established by the AGO. The grant funds may support personnel costs, including hiring and overtime, to allow for adequate follow-up investigations and prosecutions. Grant awards must be prioritized for eligible applicants with a commitment to co-locate assigned prosecutors, law enforcement, and victim advocates for the duration of the grant program.

Participants in the SAKI Pilot Project must complete specialized training for victim-centered, trauma-informed investigation and prosecutions. The AGO must also facilitate the hosting of a SAKI Summit in Washington, subject to the availability of funds. Other requirements for administering and participating in the SAKI Pilot Project are included in the bill.

The AGO is added to the membership of the SAFE Best Practices Task Force. Meetings of the SAFE Best Practices Task Force are subject to approval by the Senate and the House of Representatives.

*Attorney General's Cold Case Investigations.* The AGO is authorized to assist law enforcement and prosecutors with investigations and prosecutions of cold cases involving sexual assault, as long as the applicable agency or prosecutor agrees to the assistance. "Cold case" refers to any criminal investigation where initial investigative leads have been exhausted or where significant time has passed without investigative results or the filing of charges. "Cold case" includes, but is not limited to, cases tied to previously unsubmitted SAKs.

An agreement may also authorize the AGO to conduct the investigations or prosecutions on behalf of the agency or prosecuting attorney. In those circumstances, the AGO has the same powers as would otherwise be vested in the prosecuting attorney under the law.

The AGO is encouraged to seek federal and other grant funds to support investigations and prosecutions of cold cases involving sexual assault, particularly those cases tied to unsubmitted SAKs.

*Training.* By July 1, 2018, the CJTC must incorporate victim-centered, trauma-informed approaches to policing in the BLEA curriculum.

By July 1, 2018, the CJTC must provide ongoing specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Among other subjects, the training must include content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques. Officers assigned to regularly investigate sexual assault involving adult victims must complete the training within one year of being assigned or by July 1, 2020, whichever is later.

By July 1, 2018, the CJTC must develop training on a victim-centered, trauma-informed approach to interacting with victims and responding to sexual assault calls. Among other components, the curriculum must be designed for commissioned patrol officers not regularly assigned to investigate sexual assault cases and be designed for deployment and use within individual law enforcement agencies. All law enforcement agencies shall annually host the training.

*Additional Nonrefundable Liquor Fee.* The expiration date for the 6.2 percent fee on most liquor licenses and permits is removed, thereby requiring the fee on an ongoing basis. Revenues from the fee must be deposited into the Sexual Assault Response and Prevention Account.

The Legislature must prioritize appropriations from the account for:

- the Washington SAKI Pilot Project;
- the OCVA for the purpose of providing support and services, including educational and vocational training, to victims of sexual assault and trafficking;
- victim-centered, trauma-informed training for prosecutors, law enforcement, and victim advocates, including, but not limited to, the training created in the bill; and
- the WSP for the purpose of funding the statewide SAK tracking system and funding the forensic analysis of SAKs.

*Private Funds for Sexual Assault Kits.* Disbursements of private funds in the Washington SAK Account are changed to the following:

- 30 percent for the Washington SAKI Pilot Project;
- 30 percent for the CJTC for the training requirements in the bill;
- 10 percent for the OCVA for services to victims of sexual assault and training for professionals interacting with and providing services to victims of sexual assault; and
- 30 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, unless the WSP deems the funds are not necessary, in which case the funds shall be divided equally to the other purposes above.

A grantor of funds may enter into an agreement with the Department of Commerce for a different allocation of funds, provided that the funds are distributed for the purpose of the SAK Program. Within 30 days of entering into an agreement, the Department of Commerce must notify the SAFE Best Practices Task Force and the appropriate committees of the Legislature.

The disbursement requirements of public funds in the account are unchanged.

#### **EFFECT OF SENATE AMENDMENT(S):**

The SAKI Pilot Project (Project) is modified. References to the project as a "pilot project" are removed. The Senate amendment provides that more than two grants may be awarded. The administrator of the Project is changed from the AGO to the Washington Association of Sheriffs and Police Chiefs (WASPC). The WASPC receives the state funds for the Project, and administers and distributes the grants.

All provisions pertaining to the AGO's authority to assist with cold sexual assault cases are removed from the bill, including the authorization to enter into agreements to conduct investigations and prosecutions on behalf of agencies agreeing to assistance. The Senate amendment also removes provisions encouraging the AGO to seek federal and other grants to support cold case investigations and prosecutions.

The development of new law enforcement training and related requirements are subject to specific appropriations.

The provisions pertaining to the additional 6.2 percent nonrefundable liquor fee are removed from the bill, including both the extension of the fee and the reallocation of its revenues to fund SAK related policies.

A null and void clause is added.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 10, relating to the revenue from the 6.2 percent fee, which contains an emergency clause and takes effect June 30, 2017.

**Staff Summary of Public Testimony (Public Safety):**

(In support) Many of the policies in the bill are based on recommendations from the SAFE Best Practices Task Force. This bill is the next step toward providing justice to victims of sexual assault, especially for those whose SAKs remained untested for many years. Victims deserve more than to have their SAKs tested, they deserve to have their cases investigated. The SAFE Best Practice Task Force has reviewed other state's approaches for addressing unsubmitted SAKs, and it is clear that specialized cold case teams assigned to investigate these cases will produce more successful outcomes.

The bill is laudable for its emphasis on training to improve outcomes for victims. The cold case teams will have specialized training with a victim-centered, trauma-informed approach, which is particularly important in the context of notifying victims several years after an incident occurred. The bill is facilitating broad system improvements in support of sexual assault victims.

The AGO looks forward to administering the SAKI Pilot Project and assisting with cold case investigations. The AGO is in a good position to take this on, as they already work with law enforcement on cold cases every day.

While the patron fee in the bill is not based on the SAFE Best Practice Task Force recommendations, it is necessary in order to fund the bill's other provisions. There is a seriousness connection between trafficking and the adult entertainment clubs. Many women working in the clubs are assaulted and victimized.

There are some concerns with funding these programs with the patron fee, as it is not a sustainable and reliable source of funding to address the epidemic of sexual violence. The state should consider different sources of funding to build a robust system to respond to sexual violence.

(Opposed) The adult entertainment industry opposes the bill due to the funding source. The patron fee, while called a fee, is actually an unconstitutional tax and is being inappropriately applied to the industry. In Texas, where a similar tax exists, the state courts upheld the law based on the connection between alcohol and sexual assault. However, alcohol is not served

in establishments in Washington. There is not a sufficient nexus between the industry and sexual violence. The bill assumes negative secondary effects without taking into account the women working in the establishments.

The adult entertainment industry in Washington is composed of legitimate, well-run businesses. Women working in the clubs are not sex workers or prostitutes. They are performers. Women need to get business licenses from the state and have a valid ID.

The patron fee in the bill promotes an unhealthy view of women. Sexual assault is not based on how women present themselves. Sexual assault is about power. However, in these establishments, women have the power. Women choose what they will and will not do. It is false to assume that men who patronize these establishments commit these horrible crimes.

There is only a fraction of clubs in Washington compared to Texas, and the tax is likely to decrease the volume of customers and will not generate the anticipated revenue.

(Other) The low reporting and conviction rate for violent sexual assault is truly shocking – an average of 0.6 percent of perpetrators are brought to justice. All SAKs should be tested and all of the cases should be investigated. It takes money to do these things, but the patron fee in the bill is not the proper funding source. There is not sufficient evidence to support a connection between strip clubs and sexual assault. This bill is not a content-neutral restriction on free speech.

The SAKI Pilot Project and SAK policies in the bill are praiseworthy, but there are concerns with the patron fee. Women working in the adult entertainment industry are independent contractors paying nightly fees to work at these facilities, and many even need to tip security to be escorted to their vehicles. They are not treated well, and typically make minimum wage after costs. The women believe the fee will be passed onto them. Many of these women experience higher levels of sexual violence, and it would be disappointing for them to end up bearing the burden of the fee. The bill should be funded through the General Fund.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) Washington leads the nation on testing and tracking sexual assault kits. The next step in the process is to investigate cases, prosecute perpetrators, and provide justice for victims. Our jurisdictions are starting to test kits and reopen cold cases, which could be five, 10, or 15 years old. Law enforcement training is imperative so officers use victim-centered approaches and understand trauma so survivors are not revictimized. The bill promotes best practices in victim notification and law enforcement responses.

The patron fee is important because the sex industry has a strong connection to the trafficking of women and children. Many trafficking victims are coerced into prostitution, which does happen in some strip clubs. Exotic dancers are more likely to be victims of assault overall, including sexual assault. Last year, a Seattle club was shut down due to a prostitution ring. Dancers were coerced into sexual acts, and money was taken from them. Research by the Psychiatric Times shows after interviewing 845 women working in strip clubs, massage parlors, and street prostitution, 80 percent were sexually abused as children, 60 percent were raped during prostitution acts, and 85 percent were trying to escape the industry. There is a

nexus between the sex industry as a whole and sexual assault.

The new authority provided to the Office of the Attorney General (AGO) is discretionary and dependent on new grant funding. The AGO is currently seeking out federal funding. The AGO's Criminal Justice Division and Homicide Investigative Tracking Unit will administer the Washington Sexual Assault Kit Initiative (SAKI). Legal services will require approximately \$240,000 per fiscal year.

The fee is not a sustainable source of funding for core responses to sexual assault. The state needs strong, sustainable infrastructure that is not reliant on a fee so there is a well-informed and consistent statewide approach to sexual assault.

(Opposed) It is not possible to compare clubs statewide to one club that operates poorly. Washington needs an appropriate funding source for addressing sexual assault. The patron fee, while called a fee, is actually an unconstitutional tax and a restriction on free speech and women's rights. Broad generalizations about adult entertainment clubs do not reflect the reality in Washington. According to the Washington Department of Health, alcohol is a key risk factor for sexual assault. Several states passed similar taxes, but clubs in all of those states serve alcohol. In Texas, where a similar tax exists, the state courts upheld the law based on the connection between alcohol and sexual assault. However, alcohol is not served in establishments in Washington. There is not a sufficient nexus between the industry and sexual violence.

The bill assumes negative secondary effects without taking into account the women working in the establishments. The adult entertainment industry in Washington is composed of legitimate, well-run businesses. Women working in the clubs are not sex workers or prostitutes; they are performers following the law. These are legal businesses in Washington, and entertainers need to get state business licenses. The patron fee promotes unhealthy attitudes and views of women. Instead, we should have the conversations about consent with our sons and daughters. The fee sets a precedence for charging a tax with the thought of what someone may do.

**Persons Testifying (Public Safety):** (In support) Representative Orwall, prime sponsor; Mike Webb, Office of the Attorney General; Nicole Stephens; Jessie Turner, National Organization for Women of Washington State; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Opposed) Sheila Stickel, Eric Forbes, and Winter Fink, Déjà Vu & Dreamgirls.

(Other) Arthur West; and David Ward, Legal Voice.

**Persons Testifying (Appropriations):** (In support) Representative Orwall, prime sponsor; Representative Griffey; Mike Webb, Office of the Attorney General; Monica Alexander, Washington State Patrol; and Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs.

(Opposed) Eric Forbes and Winter Finck, Dream Girls and Déjà Vu.

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

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