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## Public Safety Committee

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### HB 2353

**Brief Description:** Supporting sexual assault survivors.

**Sponsors:** Representative Orwall.

#### Brief Summary of Bill

- Requires the submission and analysis of all sexual assault kits (SAKs) collected prior to July 24, 2015, and in the possession of law enforcement agencies.
- Creates a \$4 fee per admission collected from patrons of a sexually oriented live adult entertainment establishments for the purpose of funding certain programs relating to SAKs as well as training for operators and employees of those establishments.
- Expands the duties, membership, and duration of the Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices.
- Modifies specialized training for sexual assault investigators to include victim notification practices.
- Enumerates rights for sexual assault survivors.

**Hearing Date:** 1/9/18

**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 was left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault kit (SAK), also commonly referred to as a 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.

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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.*

In 2015 legislation was passed requiring 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 is in the process of creating and operating the Statewide SAK Tracking System (system) for the purpose of tracking the location and status of all SAKs, from the point of collection and then throughout the criminal justice process. Local law enforcement agencies, prosecutors, hospitals, and the WSP are required to participate in the system no later than June 1, 2018.

In 2017 the Washington Sexual Assault Kit Initiative (SAKI) Project was created for the purpose of providing competitive grants to fund multidisciplinary community response teams seeking resolutions to cases tied to previously unsubmitted SAKs. Subject to an appropriation, the Washington Association of Sheriffs and Police Chiefs (WASPC) is required to administer the SAKI Project. The project was not funded in the 2017-19 Operating Budget.

*Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices.* The Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices (Task Force) is required to review best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested SAKs in Washington. To that end, the duties of the Task Force include, but are not limited to:

- determining the number of untested SAKs in Washington;
- researching the locations where the untested SAKs are stored;
- researching, reviewing, and making recommendations regarding legislative policy options for reducing the number of untested SAKs;
- researching in-state and out-of-state best practice models for collaborative responses to victims of sexual assault (from the point a SAK is collected to the conclusion of the investigation), and providing recommendations regarding any existing gaps in Washington and resources that may be necessary to address those gaps; and
- researching, identifying, and making recommendations for securing non-state funding for testing SAKs, and reporting on progress made toward securing such funding.

The Task Force currently includes nineteen members, including legislators and non-legislators, appointed by the House and Senate. Since its creation in 2015, the Task Force has submitted three reports to the Legislature and the Governor. The Task Force expires on June 30, 2018.

*Law Enforcement Training.* The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for new recruits prior to certification as well as advanced training and educational programming for certified law enforcement officers. As of 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. 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.

*Victim, Witness, and Survivor Rights.* The Washington State Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. Among those enumerated rights, a victim has a right to attend the criminal trial and related court proceedings, and to make a statement at sentencing or any proceeding where the defendant's release is considered. A sexual assault victim is specifically afforded the right to have a personal representative accompany him or her to the hospital or other health care facility and to criminal proceedings concerning the assault.

State law prohibits hospitals and other emergency medical facilities from billing or charging a victim, directly or indirectly, for the costs of a sexual assault forensic examination. Hospitals and other emergency medical facilities may seek payment from the state through the Crime Victim Compensation Program.

### **Summary of Bill:**

*Sexual Assault Kits.* Law enforcement agencies must submit requests for forensic analysis of all SAKs collected prior to July 24, 2015, no later than January 1, 2019, except submission for forensic analysis is not required when:

- forensic analysis has previously been conducted;
- there is documentation of an adult victim or emancipated minor victim expressing that he or she does not want his or her SAK submitted for forensic analysis; or
- a SAK is non-investigatory and held by a law enforcement agency pursuant to an agreement with a hospital or other medical provider.

The WSP Crime Laboratory must facilitate the forensic analysis of all SAKs collected prior to July 24, 2015, by December 1, 2021.

The failure of a law enforcement agency to submit a SAK for testing is not a basis to exclude the related evidence from a court proceeding or to overturn a conviction or sentence, and it does not create a private right of action against the agency.

*Summit.* The Attorney General's Office (AGO) is authorized and encouraged to facilitate the hosting of the SAK Initiative Summit in Washington, in conjunction with any conditions of federal funds granted to the state through the federal SAK Initiative.

*Sexually Oriented Live Entertainment Patron Fee.* After October 1, 2018, 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 Live Entertainment Patron Fee Account. The Legislature must prioritize appropriations from the account for:

- the Washington SAKI Project operated by WASPC;
- the WSP for the purpose of funding the statewide SAK tracking system and funding the forensic analysis of SAKs; and

- the establishment of training for operators and employees of sexually oriented live adult entertainment establishments to improve awareness, reduce the occurrence, and increase reporting of sexual assault and sex trafficking directly or indirectly associated with those establishments.

*Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices.* The Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices (Task Force) is modified. A sexual assault nurse examiner is added to the membership. The duties of the Task Force are expanded to include:

- monitoring implementation of state and federal legislative changes;
- collaborating with the Attorney General's Office to implement reforms pursuant to federal grant requirements; and
- making recommendations for institutional reforms necessary to prevent sexual assault and improve the experiences of sexual assault survivors in the criminal justice system;

The Task Force is extended to September 30, 2020.

*Law Enforcement Training.* The specialized training provided by the CJTC for investigators assigned to adult sexual assault cases is modified. The training must educate investigators on the best practices for notifying victims of the results of forensic analysis of SAKs and other significant events in the investigative process, including for active investigations and cold cases.

*Survivors'/Victims' Rights.* In addition to all other rights provided in law, a sexual assault survivor has the right to:

- receive a medical forensic examination at no cost;
- consult with a sexual assault survivor's advocate during any medical evidentiary examination and during any interview by law enforcement officers, prosecuting attorneys, or defense attorneys, unless an advocate cannot be summoned in a timely manner, and regardless of whether a survivor has waived the right in a previous examination or interview;
- be informed, upon the request of a survivor, of when the forensic analysis of his or her SAK and other related physical evidence will be or was completed, the results of the forensic analysis, and whether the analysis yielded a DNA profile and match, provided that such disclosure is made at an appropriate time so as to not impede or compromise an ongoing investigation;
- receive notice prior to the destruction or disposal of his or her SAK;
- receive a copy of the police report related to the investigation without charge; and
- review his or her statement before law enforcement refers a case to the prosecuting attorney.

The rights are retained regardless of whether the survivor agrees to participate in the criminal justice system and regardless of whether the survivor agrees to receive a forensic examination to collect evidence. The rights do not provide grounds for error in favor of a criminal defendant, and they do not grant a new cause of action against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys.

**Appropriation:** None.

**Fiscal Note:** Requested on January 3, 2018.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.