

HOUSE BILL REPORT

HB 2353

As Reported by House Committee On:
Public Safety

Title: An act relating to supporting sexual assault survivors.

Brief Description: Supporting sexual assault survivors.

Sponsors: Representatives Orwall, McCabe, Van Werven, Goodman, Hansen, Peterson, Johnson, Morris, Wylie, Kilduff, Chapman, Sells, Kagi, Senn, McDonald, Kirby, Stanford, Blake, Reeves, Macri, Stambaugh, Jinkins, Steele, Appleton, Doglio, Griffey, Kraft, Pollet, Valdez, Riccelli, Young, Dolan and Gregerson.

Brief History:

Committee Activity:

Public Safety: 1/9/18, 1/25/18 [DPS].

Brief Summary of Substitute 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.
- Authorizes the Washington State Patrol to adopt rules to implement the statewide SAK tracking system.
- 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.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

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.

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.

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.

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 19 members, including legislators and non-legislators, appointed by the House of Representatives and the 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 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 Victims Compensation Program.

Summary of Substitute 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.

The WSP is authorized to adopt rules to implement the statewide system.

Summit. The Office of the Attorney General (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.

Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices. The 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 AGO 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 whether the survivor agrees to receive a forensic examination to collect evidence.

A survivor who is denied a right enumerated in the bill may seek a court order directing compliance by the relevant party or parties. Compliance with the right is the sole remedy available to the survivor.

The rights do not provide grounds for error in favor of a criminal defendant. Except for a specific court order enforcing a right, the provisions do not grant a new cause of action against the state, its political subdivisions, law enforcement agencies, or prosecuting attorneys.

Substitute Bill Compared to Original Bill:

The \$4 fee collected from patrons of sexually oriented live adult entertainment establishments is removed from the underlying bill.

The WSP is authorized to adopt rules to implement the system.

A remedy is created for violations of the survivors' rights enumerated in the bill. A survivor who is denied a right enumerated in the bill may seek a court order directing compliance by the relevant party or parties.

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.

Staff Summary of Public Testimony:

(In support) With previous legislation the state has made significant strides in serving victims and addressing violence in a meaningful way. However, there are still significant issues to tackle. For previously unsubmitted SAKs, the initial estimate was 6,000 remaining at law enforcement agencies. Recent efforts by the WSP revealed there are actually 10,000. The WSP has made progress toward testing many of those SAKs, but it will require additional resources and time to get through the additional 4,000.

Testing is only the beginning. The state and local agencies need to review cases connected with previously unsubmitted SAKs. There needs to be state funding for these investigations, which may cost up to \$25 million.

The bill requires certain existing training to include victim notification protocols, which is a critical piece for minimizing trauma to victims. The changes to the Task Force are also crucial in order for the Legislature to collaborate with the AGO in connection with its federal grant. The Task Force is moving from focusing on SAKs towards developing a system that is trauma-informed and responsive to victims. The survivors' rights are a positive component of the bill, but the bill should include remedies in order to make those rights effective.

The patron fee is an appropriate funding mechanism for testing and other sexual assault-related policies. There is a significant link between these establishments and sexual assault and trafficking.

There are some concerns with the patron fee. The patron fee may be passed onto the dancers in these establishments, which are already an inherently coercive environment. Dancers are treated as independent contractors, and they rent space in order to perform. The patron fee may make a difficult environment even more difficult. The state should look at other funding sources, and should otherwise focus on addressing the safety of these establishments more directly.

(Opposed) None.

(Other) The patron fee is not an appropriate funding source for the bill. Vital programs and services need regular, reliable funding, rather than fees or taxes that are constitutionally questionable. Even though the Texas Supreme Court (court) upheld a similar fee, it was on the basis of alcohol being served in the establishments. The court even stated that the establishments could avoid the fee by not serving alcohol. Adult entertainment establishments do not serve alcohol in Washington.

In Washington, these are legitimate businesses. There are distance and hour restrictions, and all of the dancers must have a license, verified identity, and be fingerprinted. The establishments already participate in awareness training on trafficking with the Department of Homeland Security. There are only 14 of these establishments in this state, compared to hundreds in Texas and more than 50 in Portland, Oregon. The patron fee would have a significant and negative impact on business, as revenue sources are already limited.

The bill fosters a negative view of women. Sexual assault is everyone's problem, and it should not fall upon the adult entertainment industry to address it. It is easy to use these businesses as a scapegoat, but doing so promotes toxic masculinity. Not only is this an infringement on freedom of expression, there is no nexus between adult entertainment and sexual assault. Club owners go to great lengths to create safe spaces. Despite what it says in the bill, dancers do not need to pay security to walk them to their cars.

Other legislation proposing fees and fines on criminal convictions are a better option. It is not fair to have one kind of business pay for something that all men are responsible for. Perhaps the state should consider charging all men \$1.

The Task Force has done incredible work to promote reform in recent years. However, there are concerns that the patron fee will impact the livelihood of women working in these establishments. If these programs are a priority for the state, then they should be funded through the General Fund. In addition, the bill enumerates important rights for victims, but there should be an enforcement mechanism or remedy available when violations occur.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Monica Alexander, Washington State Patrol; Rebecca Johnson, Washington Coalition of Sexual Assault Programs; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

(Other) Eric Forbes and Winter Finck, Consolidated Bookkeeping and Management Services; and David Ward, Legal Voice.

Persons Signed In To Testify But Not Testifying: None.