

HOUSE BILL REPORT

HB 1166

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, Mosbrucker, Lovick, Griffey, Dolan, Doglio, Valdez, Wylie, Tarleton, Cody, Jinkins, Dent, Ortiz-Self, Van Werven, Stonier, Fitzgibbon, Fey, Walen, Bergquist, Leavitt, Macri, Kloba and Stanford.

Brief History:

Committee Activity:

Public Safety: 1/22/19, 1/31/19 [DPS].

Brief Summary of Substitute Bill

- Prohibits the destruction of untested sexual assault kits (SAKs) until June 30, 2020.
- Establishes storage requirements for unreported SAKs.
- Establishes deadlines for the submission and testing of SAKs.
- Extends the statute of limitations that applies to suspect identification from DNA testing or photograph from one to two years.
- Modifies specialized training for sexual assault investigators to include victim notification practices.
- Enumerates rights for sexual assault survivors.
- Transfers the responsibilities of administering the Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices to the Office of the Attorney General, and extends it to December 31, 2021.

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; Davis, Vice Chair; Klippert,

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.

Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Appleton, Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

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 evidence 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 used during an investigation and subsequent criminal prosecution.

In 2015 the state established mandatory testing requirements for SAKs. A law enforcement agency is required to submit a SAK to the Washington State Patrol (WSP) Crime Laboratory for testing 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 required to create and operate the Statewide SAK Tracking 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 Statewide SAK Tracking System no later than June 1, 2018.

Statute of Limitations.

A statute of limitations is a time limit for initiating prosecution after a crime is committed. Once a statute of limitations has expired, a prosecutor is barred from bringing charges against an alleged perpetrator.

For most felony sex offenses, the statute of limitations varies depending on the age of the victim at the time of the offense or when the offense was reported to law enforcement. However, the statute of limitations may be extended in certain cases involving deoxyribonucleic acid (DNA) or photographic identification. State law provides that the periods of limitation for sex offenses run either from the date of commission or one year from the date on which the identity of the suspect is conclusively established by DNA testing or by photograph, whichever is later.

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 at any proceeding where the defendant's release is considered. A sexual assault victim has 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.

Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices.

The Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices (SAFE 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.

The SAFE Task Force is currently composed of 19 members, including legislators and nonlegislators, appointed by the House of Representatives and Senate. Since its creation in 2015, the SAFE Task Force has submitted four reports to the Legislature and the Governor. The SAFE Task Force was due to expire on June 30, 2018, but was extended until June 30, 2019, by the 2018 Supplemental Operating Budget.

Summary of Substitute Bill:

Sexual Assault Kits.

Preservation of SAKs. Until June 30, 2020, untested SAKs may not be disposed of or destroyed, and must be adequately preserved for the purpose of testing and potential use in a criminal investigation.

Previously Unsubmitted SAKs. Law enforcement agencies must submit all SAKs collected prior to July 24, 2015, for testing at the WSP Crime Laboratory no later than October 1, 2019, except that submission 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 noninvestigatory 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, 2020.

Unreported SAKs. "Unreported SAK" refers to a SAK collected from a victim who has consented to the collection of the SAK but who has not reported the alleged crime to law enforcement.

Unreported SAKs collected prior to the applicable effective date must be stored by the entity responsible for the collection. Unreported SAKs collected on or after the applicable effective date must be transferred to and stored by the WSP Crime Laboratory. However, a collecting entity may enter into an agreement with a local law enforcement agency or other third party for the storage of unreported SAKs.

The Statewide SAK Tracking System must be modified to designate SAKs as reported or unreported for the purpose of implementing the storage requirements.

Testing Deadlines. Beginning January 1, 2021, the WSP must complete testing of a SAK within 45 days of receipt of the request for testing.

Performance Audit. The Office of the State Auditor must conduct a performance audit of the Statewide SAK Tracking System and the WSP Crime Laboratory with respect to the processing of SAKs. The performance audit must commence after January 1, 2021, and conclude by December 31, 2021.

Statute of Limitations.

The statute of limitations allowing for the prosecution of a sex offense following the identification of a suspect by DNA testing or photograph is extended from one year to two years.

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.

Victim, Witness, and Survivor 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 the 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.

These 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. If a survivor is denied a right, he or she may seek a court order directing compliance by the relevant party. Compliance with the right is the sole remedy available to the survivor.

Sexual Assault Forensic Examination Best Practices Advisory Group.

The responsibilities for administering, providing staff support for, and appointing nonlegislative members to the SAFE Task Force are transferred to the Office of the Attorney General, and it is renamed the "Sexual Assault Forensic Examination Best Practices Advisory Group" (SAFE Advisory Group).

The current appointed membership generally transfers to the SAFE Advisory Group. However, the membership composition is modified. Representatives of the Washington State Forensic Investigations Council, a public institution of higher education, and a private institution of higher education are removed. A sexual assault nurse examiner is added. The previous co-chairs may recommend that the Attorney General replace appointees who have been inactive or absent from meetings.

The duties of the SAFE Advisory Group are expanded to include:

- developing recommendations on the storage, retention, and destruction of unreported SAKs;
- monitoring implementation of state and federal legislative changes;
- collaborating with the Legislature, state agencies, medical facilities, and local governments 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 SAFE Advisory Group is extended to December 31, 2021.

Substitute Bill Compared to Original Bill:

The due date for the Office of the State Auditor to complete the performance audit of the Washington State Patrol is extended from July 1, 2021, to December 31, 2021.

The requirement for storing unreported SAKs after the applicable effective date is modified. Unreported SAKs must be transferred to and stored by the WSP Crime Laboratory instead of the local law enforcement agency. The definition of "unreported sexual assault kits" in the underlying bill is modified by removing the reference to sexual assault kits where victims have not provided consent for testing.

The responsibilities for administering, providing staff support for, and appointing nonlegislative members to the SAFE Task Force are transferred to the Office of the Attorney General, and it is renamed the "Sexual Assault Forensic Examination Best Practices Advisory Group."

Appropriation: None.

Fiscal Note: Requested on January 16, 2019.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 1, 2, and 8 relating to the SAFE Task Force, statute of limitations, the destruction of SAKs, and unreported SAKs, which contain an emergency clause and take effect immediately.

Staff Summary of Public Testimony:

(In support) Every year, tens of thousands of persons are victims of sexual violence. Sexual assault is the most heinous crime that can be committed, short of murder. The state needs to take victims seriously. The state should show victims respect by testing sexual assault kits (SAKs).

A sexual assault forensic examination is an extremely invasive, and even traumatic, process. In one instance, a survivor was turned away from one hospital and told to go to another. At the second hospital, she underwent a six-hour examination over a 10-hour period. All of the survivor's clothes were removed and collected, and then the examiner swabbed every inch of her body, including inside the rectum, vagina, and cervix. Clippings and samples were taken. Every part of her body was photographed. Then she waited and waited for law enforcement to test the SAK and conduct an investigation. She asked for it to be tested, but they did nothing. She had to call the local news station to pressure law enforcement to submit the SAK for testing. It took nine months. The average waiting period under the new mandatory testing law is 14 months. During this period, a survivor is waiting for answers—waiting for the case to even begin. This is a detriment to the healing process. Rape victims do not have a lobbyist. They show up to the Legislature year after year asking for this problem to be addressed. Each year the wounds are reopened.

In 2015 the state and advocates uncovered thousands of untested SAKs and began the hard work of addressing these complex issues. Other jurisdictions that have tested all of their previously unsubmitted SAKs have identified hundreds of serial rapists. Research shows that

most people do not engage in these crimes; it is a small number of people who do this over and over again. Testing SAKs is critical to stopping them.

While there has been progress, there are some serious gaps remaining in our current system. The mandatory testing law has created a testing backlog. Even recently, there was a case where a SAK was untested for several months, and the day before it was finally tested, the perpetrator assaulted someone else. He could have been stopped. This is an urgent issue.

This bill reflects best practices and promising practices for ways to move forward with responding to and preventing sexual assault. The bill establishes critical and necessary deadlines for the testing of SAKs. Meeting these deadlines will require funding a high-throughput laboratory where everything can be tested faster using new technology.

Law enforcement may have some issues with the bill's requirements pertaining to unreported SAKs and storage. We can work on addressing those issues. However, something must be done now to ensure justice and put this chapter behind us. Federal law mandates that the state allow someone to get an examination without immediately reporting to law enforcement. This allows important evidence to be collected. A survivor needs time to think about their next step. Should they report to law enforcement? Will they be believed? Is this a safe time and a safe place for them to share what happened? However, our current system is not providing survivors consistent or accurate information as to how long their SAK will be kept before being destroyed. Survivors do not know what to expect. Practices are varying by facility and jurisdiction. There should be consistent procedures across the state. It is incumbent on the Legislature to find a solution.

Medical facilities are not the appropriate place to store unreported SAKs. Medical facilities are not equipped to handle chain-of-custody and evidence requirements. Having law enforcement or another entity store unreported SAKs is a preferred solution. The moratorium on destroying untested SAKs will help give the state time to address the issue of unreported SAKs and other issues. The definition of "unreported SAKs" should be modified to clarify it does not include "anonymous SAKs," which are not currently authorized under state law.

The change to the statute of limitations is very important. The current one-year time frame is not sufficient to handle the influx of testing results from the crime laboratory.

The survivors rights enumerated in the bill are part of the healing process. These rights, including the ability to enforce them in court, are critically important to changing the current system.

We have come a long way; we still have a long way to go. This bill helps get us there.

(Opposed) Sexual assault is underreported and difficult to investigate, yet it is one of the most heinous of crimes. There are many good things in this bill, but there are some concerns about the requirements for storing unreported SAKs. Law enforcement should not be storing property that is not associated with a reported crime. It is not appropriate. Current laws and procedures have created confusion on this issue. The state should develop a different

solution that maintains the chain of custody, but does not require law enforcement to store unreported SAKs.

Survivors do need time after an examination to contemplate whether to report the crime to law enforcement. Improving access to trained sexual assault nurse examiners and community advocates can help with this process.

Persons Testifying: (In support) Representative Orwall, prime sponsor; Leah Griffin; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; David Ward, Legal Voice; Terri Lindeke, Washington National Organization for Women; Zosia Stanley, Washington State Hospital Association; Emilia Jones, Office of the Attorney General; and Monica Alexander, Washington State Patrol.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.