

FINAL BILL REPORT

2SHB 1166

C 93 L 19
Synopsis as Enacted

Brief Description: Supporting sexual assault survivors.

Sponsors: House Committee on Appropriations (originally sponsored by 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).

House Committee on Public Safety
House Committee on Appropriations
Senate Committee on Law & Justice
Senate Committee on Ways & Means

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.

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.

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:

Sexual Assault Kits.

Reported and Unreported SAKs. The mandatory testing requirements are modified to clarify that a law enforcement agency must submit a SAK for testing only when there is a related report of a sexual assault or other crime to a law enforcement agency.

"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 April 23, 2019, 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 storage requirements expire June 30, 2020.

The Statewide SAK Tracking System must be modified to designate SAKs as reported or unreported.

Preservation of Untested 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, 2021.

Testing Deadlines. Beginning May 1, 2022, 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, 2022, and conclude by December 31, 2022.

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 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.

Votes on Final Passage:

House	97	0
Senate	45	0

Effective: July 28, 2019
April 23, 2019 (Sections 1, 2, and 8)