

SENATE BILL REPORT

2SHB 1166

As Reported by Senate Committee On:
Law & Justice, March 21, 2019
Ways & Means, April 5, 2019

Title: An act relating to supporting sexual assault survivors.

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).

Brief History: Passed House: 3/06/19, 97-0.

Committee Activity: Law & Justice: 3/18/19, 3/21/19 [DP-WM].

Ways & Means: 3/28/19, 4/05/19 [DP].

Brief Summary of Bill

- Transfers administrative responsibility for the Joint Legislative Task Force on Sexual Assault Forensic Examination Best Practices to the Office of the Attorney General and extends the task force to December 31, 2021.
- Establishes storage requirements for unreported sexual assault kits (SAKs), and places a temporary moratorium on destroying untested SAKs.
- Sets deadlines for submitting and testing SAKs.
- Extends the statute of limitations applying to suspect identification from DNA testing or photograph from one to two years.
- Establishes specified rights for sexual assault survivors.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Kuderer and Salomon.

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: Melissa Burke-Cain (786-7755)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Lias, Palumbo, Pedersen, Schoesler, Van De Wege, Wagoner and Warnick.

Staff: Claire Goodwin (786-7736)

Background: Sexual Assault Kits. A victim of a sexual assault may undergo a forensic examination to collect evidence related to the assault. A health care practitioner conducts the examination, gathers, and preserves the evidence using a SAK. The evidence collected may include clothing fibers, hairs, saliva, blood, semen, and skin debris. After the examination, a law enforcement agency may take custody of the SAK for use during an investigation and subsequent criminal prosecution. The evidence may contain deoxyribonucleic acid (DNA) for laboratory testing and may identify the perpetrator from DNA test results.

In 2015, the state established mandatory SAK testing requirements. 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 if the victim consents to the testing. The law enforcement agency may send a SAK collected from a non-emancipated minor to the crime laboratory without the victim's consent. The 2015 requirement to test SAKs only applies to SAKs received on or after July 24, 2015.

The WSP developed and now operates the statewide SAK tracking system to follow the location and status of all SAKs from collection through the criminal justice process. Beginning June 1, 2018, all local law enforcement agencies, prosecutors, hospitals, and the WSP must participate in the statewide SAK tracking system.

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) reviews best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested SAKs in Washington. There are 19 members on the SAFE task force including legislators and others, 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 the 2018 supplemental operating budget extended the task force until June 30, 2019.

Statute of Limitations. The statute of limitations is the time limit for initiating litigation. In criminal cases, it is the time limit for prosecuting a crime after it is committed. The statute of limitation bars a prosecutor from bringing charges when it expires. For most sex offenses, the statute of limitations varies depending on the victim's age when the crime occurred, or when the victim reports the crime. In certain cases DNA or photo identification evidence extends the statute of limitations. State law provides that the time limit for sex offenses runs

from the date of the crime, or one year from the date on which DNA testing or photo evidence conclusively identifies the suspect, whichever is later.

Law Enforcement Training for Sexual Assault Investigations. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for new recruits and advanced training for certified law enforcement officers. As of 2018, the CJTC must provide ongoing specialized training for investigators of sexual assault cases involving adult victims. The training must teach investigators to use a victim-centered, trauma-informed approach to law enforcement's sexual assault response.

Summary of Bill: A law enforcement agency must submit a SAK for testing only when it relates to a reported sexual assault or other crime. An unreported SAK means a SAK collected from a victim who consents to the collection of the SAK, but has not reported an alleged crime to the law enforcement. The entity responsible for collecting the SAK must store unreported SAKs collected before an applicable effective date. The WSP crime laboratory must receive and store unreported SAKs collected on or after an applicable effective date. A collecting entity may contract for storage of unreported SAKs with a local law enforcement agency or other third party. The storage requirement expires June 30, 2020. The WSP must modify the statewide SAK tracking system to identify SAKs as reported or unreported.

Until June 30, 2020, the entity storing untested SAKs may not destroy them, but must preserve them for future testing and use in a criminal investigation. Law enforcement agencies must submit all SAKs collected prior to July 24, 2015 to the WSP crime laboratory for testing no later than October 1, 2019 unless:

- a previous forensic analysis on the SAK occurred;
- documentation shows an adult or emancipated minor victim does not want their SAK tested; or
- the SAK is not for an investigative purpose and a law enforcement agency is storing it under an agreement with a hospital or other medical provider.

The WSP crime laboratory may consult with local law enforcement agencies to coordinate submitting kits for forensic analysis, but submitters must complete all forensic analysis requests and all data input into the tracking system by October 1, 2019. The WSP crime laboratory or an accredited contracting laboratory must process the SAKs by December 1, 2021. The failure of local law enforcement agencies or the WSP crime laboratory to meet these deadlines is not a basis for setting aside a criminal conviction or sentence.

Beginning May 1, 2022, the WSP must complete SAK testing within 45 days of receipt. The State Auditor's Office must conduct a performance audit of the statewide SAK tracking system and the WSP crime laboratory's SAK testing. The audit commences January 1, 2022 and concludes by December 31, 2022.

The statute of limitation allows for prosecuting a sex offense two years following a DNA test or photo identification of the suspect. The CJTC must provide specialized training for officers investigating adult sexual assault cases on best practices for informing victims of laboratory results and other significant events in the investigation.

In addition to any other legal rights, a sexual assault victim has specific rights regardless of the victim's participation in the criminal justice system, or a forensic examination to collect evidence. If a party denies a victim's rights, the sole remedy is a court order directing the party to comply. The victim has the right to:

- a medical forensic examination at no cost;
- assistance from a sexual assault survivor's advocate during the medical examination, and interviews with law enforcement investigators, prosecutors, or defense counsel, unless an advocate is not available and whether or not the survivor previously waived the right to an advocate's assistance;
- information upon request about the forensic analysis of their SAK and other physical evidence, and whether the testing yielded a DNA match, so long as the information does not compromise an on-going investigation;
- notice before disposal or destruction of their SAK;
- a copy of the police report at no charge; and
- an opportunity to review their statement before law enforcement refers their case to the prosecutor.

The SAFE task force is renamed the Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE advisory group) and continues to December 31, 2021. The Attorney General's Office administers the group. The task force no longer includes representatives from the Washington State Forensic Investigations Council, a public higher education institution, and a private higher education institution. The task force will now include a sexual assault nurse examiner. The previous co-chairs may recommend the attorney general replace appointees who have been absent or inactive. The advisory group's duties expand to include:

- monitoring changes in state and federal laws;
- developing recommendations for storage, retention, and destruction of unreported SAKs;
- collaborating with state agencies, medical facilities, local law enforcement agencies, and the Legislature on federal grant requirements; and
- recommending institutional reforms in the criminal justice system to prevent sexual assaults and improve the experiences of survivors.

Appropriation: The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: Yes.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony (Law & Justice): PRO: The state Sexual Assault Forensic Evidence task force (SAFE) accomplished a lot since it was created in 2015. Older SAKs sat untested for ten years. In our efforts to clear the backlog of untested kits, one has led to an arrest of a perpetrator still living in the community. Another untested case identified a rapist who had multiple offenses. The statistics show that four of five serial rapists are still living in the community where they committed their crimes. We have looked

at what other states have accomplished with testing their backlog and found that kits can be rapidly tested using high throughput equipment. Oregon and Ohio both use high throughput systems and Oregon is able to test SAKs it receives within 30 days; Ohio test its SAKs in 25 days. We want to encourage sexual assault survivors to be tested and make reports to law enforcement. That is one of the reasons we call for examinations at no cost to the victim, and why we want to solve the problem of SAKs sitting untested on the shelf. Our goal is to make Washington a zero backlog state. If a survivor is brave enough to go through the examination, their SAK should not be destroyed. This is a bipartisan issue and we want a swift response to the program. Changing the statute of limitations for a DNA hit from one to two years will help provide the time needed to investigate these older cold cases. The crime lab has struggled with staffing shortages and with getting the high throughput equipment in place. Every component of this bill will help address the problem of sexual violence in this state. Survivors believe they do not matter because of the testing backlog. This bill changes that message. The express statement of victim's rights gives a pathway to survivors to ensure that their rights are protected. It is important to continue the work of the task force, and especially important that a sexual assault nurse examiner is added to the task force. Hospitals are not the best place to store untested SAKs in the long run, but we support the moratorium against destroying untested kits in the short run. The 10,000 untested kits are wrongs done by the state to the victims, but the state has the chance to right those wrongs. The untested SAKs are the tip of the iceberg compared with the number of sexual assaults that are completely unreported and the high incidence of sexual violence. The WSP supports the bill. When the 2015 bill passed we had no information about how many untested kits there were. The backlog is still 10,000. The Attorney General's Office was able to obtain a federal grant that allowed for a more precise number of backlogged SAKs. Each untested kit is a survivor's story left untold. The Governor supports doing what is necessary to test all of the untested kits. Until the high throughput laboratory facility is on line, the back log will continue to grow. Approximately 250 kits are sent to the WSP lab for testing each month, but the lab only has capacity to test 213 kits. With additional full-time employees the capacity will increase.

Persons Testifying (Law & Justice): PRO: Representative Tina Orwall, Prime Sponsor; Zosia Stanley, Washington State Hospital Association; Andrea Piper-Wentland, Washington. Coalition of Sexual Assault Programs; Nicole Stephens; James McMahan, Washington Association of Sheriffs & Police Chiefs; Emilia Jones, Attorney General's Office; Monica Alexander, WSP; Sonja Hallum, Governor's Policy Office.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The investment listed on the fiscal note funds \$600 per kit. The sexual assault kit backlog is 10,000. The high-throughput lab will include robotic equipment for efficiencies. The WSP does not have the resources to the address the backlog. The Governor's Office and WSP got together, and asked, what would it take to get rid if the backlog over two years? By testing the kits we prevent future crimes from happening. Kit testing finds serial rapists. When there is a hit on CODIS, the perpetrator gets brought back for prosecution in the jurisdiction where the crime occurred.

Clearing a sexual assault backlog is a priority for the Attorney Generals' Office. Every survivor deserves to have their case closed. We cannot put a price tag on justice.

The investments in scientists at the crime lab and the extension of statute of limitations will help local law enforcement. The hospitals struggle about how long to keep SAKs. This bill puts a temporary moratorium on the destruction of the kits.

This bill will better meet the needs of survivors. The kits have been languishing on shelves. The state owes an apology to survivors.

Persons Testifying (Ways & Means): PRO: Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; James McMahan, Washington Association of Sheriffs and Police Chiefs; Monica Alexander, WSP; Brittany Gregory, Attorney General's Office, Deputy Legislative Director.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.