

ESHB 1109 - S COMM AMD

By Committee on Law & Justice

NOT ADOPTED 03/29/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 5.70
4 RCW to read as follows:

5 (1) Subject to the availability of amounts appropriated for this
6 specific purpose, the association must, in consultation with the
7 office of the attorney general, collect information on the
8 investigational status of any sexual assault case where the sexual
9 assault kit was in the possession of the law enforcement agency and a
10 request for forensic examination had not been submitted by the law
11 enforcement agency to the Washington state patrol crime laboratory as
12 of July 24, 2015. The association must work with law enforcement
13 agencies to update the investigational status of each open case not
14 less than semiannually. Beginning in 2022, the association must
15 submit reports on the information collected pursuant to this section
16 to the governor and appropriate committees of the legislature by
17 January 1st and July 1st of each year.

18 (2) For the purposes of this section:

19 (a) "Association" means the Washington association of sheriffs
20 and police chiefs.

21 (b) "Investigational status" means:

22 (i) The agency case or incident number;

23 (ii) The date the request for forensic examination of the sexual
24 assault kit was submitted to the Washington state patrol crime
25 laboratory;

26 (iii) The date the forensic examination was complete and reported
27 to the law enforcement agency;

28 (iv) Whether the case is open or closed;

29 (v) For open cases, whether the case remains:

30 (A) An active investigation;

31 (B) Open pending forensic examination results; or

1 (C) Open and inactive, in which case the agency must include a
2 brief description as to why the case is inactive; and

3 (vi) For closed cases, whether the case was closed as a result
4 of:

5 (A) A referral for prosecution where charges were filed or the
6 prosecutor is reviewing the case;

7 (B) A referral for prosecution where the prosecutor declined to
8 file charges based on the case being legally insufficient;

9 (C) A referral for prosecution where the prosecutor declined to
10 file charges because the case failed to meet prosecutorial charging
11 standards;

12 (D) After reviewing the results of the forensic examination,
13 there was no evidence that a crime occurred, or there was lack of
14 probable cause that a crime occurred;

15 (E) The inability to locate the victim or lack of victim
16 participation; or

17 (F) Any other reason, in which case the agency must include a
18 brief description as to why the case closed.

19 (3) Nothing in this section may be interpreted to require any law
20 enforcement agency to disclose any information that would jeopardize
21 an active criminal investigation.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 5.70 RCW
23 to read as follows:

24 (1) For any sexual assault kit under RCW 5.70.050 where forensic
25 analysis has generated a profile that has resulted in a hit in the
26 combined DNA index system, the office of the attorney general may
27 request information from the applicable law enforcement agency and
28 prosecuting attorney as to the case status of any related criminal
29 investigation and prosecution, including information as provided
30 under section 1(2)(b) of this act as well as any other relevant
31 information. The law enforcement agency and prosecuting attorney
32 shall provide requested case status updates to the office of the
33 attorney general. The office of the attorney general shall consult
34 with the Washington association of sheriffs and police chiefs when
35 developing any procedures for requesting and collecting case status
36 updates under this section.

37 (2) Nothing in this section may be interpreted to require any law
38 enforcement agency or prosecuting attorney to disclose any

1 information that would jeopardize an active criminal investigation or
2 prosecution.

3 **Sec. 3.** RCW 43.101.278 and 2020 c 26 s 8 are each amended to
4 read as follows:

5 (1) Subject to the availability of amounts appropriated for this
6 specific purpose, the commission shall ~~((develop a proposal for a))~~
7 conduct an annual case review program. The ~~((commission shall~~
8 ~~research, design, and develop case review strategies designed to~~
9 ~~optimize outcomes in sexual assault investigations through improved))~~
10 program must review case files from law enforcement agencies and
11 prosecuting attorneys selected by the commission in order to identify
12 changes to training and investigatory practices necessary to optimize
13 outcomes in sexual assault investigations and prosecutions involving
14 adult victims. The ~~((proposed))~~ program must ~~((evaluate))~~ include:

15 (a) An evaluation of whether current training and practices
16 foster a trauma-informed, victim-centered approach to victim
17 interviews and that identifies best practices and current gaps in
18 training and assesses the integration of the community resiliency
19 model ~~((The program will include a))~~;

20 (b) A comparison of cases involving investigators and
21 interviewers who have participated in training to cases involving
22 investigators and interviewers who have not participated in
23 training ~~((The program will also include other randomly))~~;

24 (c) Randomly selected cases for a systematic review to assess
25 whether current practices conform to national best practices for a
26 multidisciplinary approach to investigating sexual assault cases and
27 interacting with survivors; and

28 (d) An analysis of the impact that race and ethnicity have on
29 sexual assault case outcomes.

30 (2) The case review program may review and access files,
31 including all reports and recordings, pertaining to closed cases
32 involving allegations of adult sexual assault only. Any law
33 enforcement agency or prosecuting attorney selected for the program
34 by the commission shall make requested case files and other documents
35 available to the commission, provided that the case files are not
36 linked to ongoing, open investigations and that redactions may be
37 made where appropriate and necessary. Agencies and prosecuting
38 attorneys shall include available information on the race and
39 ethnicity of all sexual assault victims in the relevant case files

1 provided to the commission. Case files and other documents must be
2 made available to the commission according to appropriate deadlines
3 established by the commission in consultation with the agency or
4 prosecuting attorney.

5 (3) If a law enforcement agency has not participated in the
6 training under RCW 43.101.272 by July 1, 2022, the commission may
7 prioritize the agency for selection to participate in the program
8 under this section.

9 (4) In designing and conducting the program, the commission shall
10 consult and collaborate with experts in trauma-informed and victim-
11 centered training, experts in sexual assault investigations and
12 prosecutions, victim advocates, and other stakeholders identified by
13 the commission. The commission may form a multidisciplinary working
14 group for the purpose of carrying out the requirements of this
15 section.

16 ~~((3))~~ (5) The commission shall submit a report with a summary
17 of its ~~((proposal))~~ work to the governor and the appropriate
18 committees of the legislature by December ~~((1, 2020))~~ 1st of each
19 year.

20 ~~((4) This section expires July 1, 2021.))~~

21 **Sec. 4.** RCW 70.125.110 and 2019 c 93 s 9 are each amended to
22 read as follows:

23 (1) In addition to all other rights provided in law, a sexual
24 assault survivor has the right to:

25 (a) Receive a medical forensic examination at no cost;

26 (b) Receive written notice of the right under (a) of this
27 subsection and that he or she may be eligible for other benefits
28 under the crime victim compensation program, through a form developed
29 by the office of crime victims advocacy, from the medical facility
30 providing the survivor medical treatment relating to the sexual
31 assault;

32 (c) Receive a referral to an accredited community sexual assault
33 program or, in the case of a survivor who is a minor, receive a
34 connection to services in accordance with the county child sexual
35 abuse investigation protocol under RCW 26.44.180, which may include a
36 referral to a children's advocacy center, when presenting at a
37 medical facility for medical treatment relating to the assault and
38 also when reporting the assault to a law enforcement officer;

1 (d) Consult with a sexual assault survivor's advocate throughout
2 the investigatory process and prosecution of the survivor's case,
3 including during ((any)): Any medical evidentiary examination ((and
4 during)) at a medical facility; any interview by law enforcement
5 officers, prosecuting attorneys, or defense attorneys((, unless an
6 advocate cannot be summoned in a timely manner,)); and court
7 proceedings, except while providing testimony in a criminal trial, in
8 which case the advocate may be present in the courtroom. Medical
9 facilities, law enforcement officers, prosecuting attorneys, defense
10 attorneys, courts and other applicable criminal justice agencies,
11 including correctional facilities, are responsible for providing
12 advocates access to facilities where necessary to fulfill the
13 requirements under this subsection. The right in this subsection
14 applies regardless of whether a survivor has waived the right in a
15 previous examination or interview;

16 ~~((e))~~ (e) Be informed, upon the request of a survivor, of when
17 the forensic analysis of his or her sexual assault kit and other
18 related physical evidence will be or was completed, the results of
19 the forensic analysis, and whether the analysis yielded a DNA profile
20 and match, provided that the disclosure is made at an appropriate
21 time so as to not impede or compromise an ongoing investigation;

22 ~~((d))~~ (f) Receive notice prior to the destruction or disposal
23 of his or her sexual assault kit;

24 ~~((e))~~ (g) Receive a copy of the police report related to the
25 investigation without charge; ((and

26 +f)) (h) Review his or her statement before law enforcement
27 refers a case to the prosecuting attorney;

28 (i) Receive timely notifications from the law enforcement agency
29 and prosecuting attorney as to the status of the investigation and
30 any related prosecution of the survivor's case;

31 (j) Be informed by the law enforcement agency and prosecuting
32 attorney as to the expected and appropriate time frames for receiving
33 responses to the survivor's inquiries regarding the status of the
34 investigation and any related prosecution of the survivor's case; and
35 further, receive responses to the survivor's inquiries in a manner
36 consistent with those time frames;

37 (k) Access interpreter services where necessary to facilitate
38 communication throughout the investigatory process and prosecution of
39 the survivor's case; and

40 (l) Where the sexual assault survivor is a minor, have:

1 (i) The prosecutor consider and discuss the survivor's requests
2 for remote video testimony under RCW 9A.44.150 when appropriate; and
3 (ii) The court consider requests from the prosecutor for
4 safeguarding the survivor's feelings of security and safety in the
5 courtroom in order to facilitate the survivor's testimony and
6 participation in the criminal justice process.

7 (2) A sexual assault survivor retains all the rights of this
8 section regardless of whether the survivor agrees to participate in
9 the criminal justice system and regardless of whether the survivor
10 agrees to receive a forensic examination to collect evidence.

11 (3) If a survivor is denied any right enumerated in subsection
12 (1) of this section, he or she may seek an order directing compliance
13 by the relevant party or parties by filing a petition in the superior
14 court in the county in which the sexual assault occurred and
15 providing notice of such petition to the relevant party or parties.
16 Compliance with the right is the sole remedy available to the
17 survivor. The court shall expedite consideration of a petition filed
18 under this subsection.

19 (4) Nothing contained in this section may be construed to provide
20 grounds for error in favor of a criminal defendant in a criminal
21 proceeding. Except in the circumstances as provided in subsection (3)
22 of this section, this section does not grant a new cause of action or
23 remedy against the state, its political subdivisions, law enforcement
24 agencies, or prosecuting attorneys. The failure of a person to make a
25 reasonable effort to protect or adhere to the rights enumerated in
26 this section may not result in civil liability against that person.
27 This section does not limit other civil remedies or defenses of the
28 sexual assault survivor or the offender.

29 (5) For the purposes of this section:

30 (a) "Law enforcement officer" means a general authority
31 Washington peace officer, as defined in RCW 10.93.020, or any person
32 employed by a private police agency at a public school as described
33 in RCW 28A.150.010 or an institution of higher education, as defined
34 in RCW 28B.10.016.

35 (b) "Sexual assault survivor" means any person who is a victim,
36 as defined in RCW 7.69.020, of sexual assault. However, if a victim
37 is incapacitated, deceased, or a minor, sexual assault survivor also
38 includes any lawful representative of the victim, including a parent,
39 guardian, spouse, or other designated representative, unless the
40 person is an alleged perpetrator or suspect.

1 (c) "Sexual assault survivor's advocate" means any person who is
2 defined in RCW 5.60.060 as a sexual assault advocate, or a crime
3 victim advocate.

4 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of
6 the state government and its existing public institutions, and takes
7 effect immediately."

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8 On page 1, line 1 of the title, after "assault;" strike the
9 remainder of the title and insert "amending RCW 43.101.278 and
10 70.125.110; adding new sections to chapter 5.70 RCW; and declaring an
11 emergency."

EFFECT: (1) Corrects a typographic error.
(2) Adds an emergency clause.

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