
Public Safety Committee

HB 1109

Brief Description: Concerning victims of sexual assault.

Sponsors: Representatives Orwall, Mosbrucker, Simmons, Goodman, Leavitt, Valdez, Kloba, Graham, Morgan, Caldier, Rule and Macri.

Brief Summary of Bill

- Requires law enforcement agencies and prosecutors to report to the Office of the Attorney General any changes in case status for an investigation and prosecution of a case tied to a previously unsubmitted sexual assault kit (collected prior to July 24, 2015) where forensic analysis has resulted in a hit in the Combined DNA Indexing System.
- Requires the Criminal Justice Training Commission to conduct an annual case review program to review sexual assault investigations and prosecutions for the purposes of improving training and case outcomes.
- Expands the statutory rights for sexual assault survivors.

Hearing Date: 1/21/21

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. In some cases, forensic analysis conducted on the contents of a SAK can yield a DNA (deoxyribonucleic acid) profile of a potential suspect. The profile is uploaded into the Combined DNA Indexing System (CODIS)

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where it might match profiles collected from other investigations or from arrested or convicted persons. A match, or "CODIS hit," functions as an investigative lead for the investigation of the sexual assault.

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, with some exceptions. The requirement to test SAKs is prospective as of July 24, 2015, meaning it did not apply to previously unsubmitted SAKs. In 2019 the state required all law enforcement agencies to submit all SAKs collected prior to July 24, 2015, for testing at the WSP Crime Laboratory no later than October 1, 2019, with some exceptions. The WSP Crime Laboratory must facilitate the forensic analysis of these SAKs by December 1, 2021.

In October 2017 the Office of the Attorney General (AGO) received a federal grant to establish the Washington Sexual Assault Kit Initiative to address the accumulation of unsubmitted SAKs in the possession of local law enforcement agencies and hospitals.

Law Enforcement Training and Case Review Program Proposal. 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.

In 2020 the state required and provided funding for the CJTC to develop a proposal for a case review program. The CJTC was required to research, design, and develop case review strategies designed to optimize outcomes in sexual assault investigations through improved training and investigatory practices.

Rights of Sexual Assault Survivors. The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. There are also statutory rights specifically afforded to sexual assault survivors. 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.

If a sexual assault 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.

Summary of Bill:

Sexual Assault Kits. For any previously unsubmitted SAK (collected prior to July 24, 2015) where forensic analysis has generated a profile resulting in a CODIS hit, the applicable law enforcement agency and prosecuting attorney must, upon request of the AGO, report changes in case status as to any related criminal investigation and prosecution to the AGO. The AGO must submit semiannual reports on the status of investigations and prosecutions for sexual assault cases to the Sexual Assault Forensic Examination Best Practices Advisory Group, Legislature, and Governor.

Case Review Program. The case review program proposal is modified to be an annual, ongoing program conducted by the CJTC. The program must review case files from law enforcement agencies and prosecuting attorneys selected by the CJTC in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. In addition to current requirements, the program must include an analysis of the impact that race and ethnicity have on sexual assault case outcomes.

Requirements are established for access to case files. The case review program may review and access files, including all reports and recordings, pertaining to closed cases involving allegations of adult sexual assault only. Any law enforcement agency or prosecuting attorney selected for the program must provide any requested case files and other documents necessary to conduct case reviews, provided that the case is not linked to an ongoing, open investigation and that redactions may be made where appropriate and necessary. Agencies and prosecuting attorneys must include available information on the race and ethnicity of all sexual assault victims in the relevant case files. Case files and other documents must be provided according to appropriate deadlines established by the CJTC in consultation with the agency or prosecuting attorney.

If a law enforcement agency has not participated in the CJTC's specialized training for conducting sexual assault investigations, the CJTC may prioritize the agency for selection to participate in the case review program.

Rights of Sexual Assault Survivors. The statutory rights of sexual assault survivors are

expanded. The right to consult with a sexual assault survivor's advocate is modified to provide that it applies throughout the investigatory process and prosecution of the case. The exception for the inability to summon an advocate is removed. The following rights are added:

- the right to receive written notice of benefits under the Crime Victim Compensation Program;
- the right to receive a referral to an accredited community sexual assault program and, in the case of a survivor who is a minor, a referral to a children's advocacy center;
- the right to receive timely notifications as to the status of the investigation and any related prosecution of the survivor's case;
- the right to be informed as to the expected and appropriate time frames for receiving responses to the survivor's inquiries regarding the status of the investigation and any related prosecution of the survivor's case; and further, receive responses to the survivor's inquiries in a manner consistent with those time frames;
- the right to access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and
- where the sexual assault survivor is a minor, the right to have the prosecutor consider and discuss the survivor's requests for remote video testimony, and the right to have the court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom.

Appropriation: None.

Fiscal Note: Requested on January 15, 2021.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.