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**SECOND SUBSTITUTE HOUSE BILL 1028**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Orwall, Mosbrucker, Ryu, Simmons, Goodman, Reed, Lekanoff, Pollet, Callan, Doglio, Macri, Caldier, Reeves, Wylie, Gregerson, Davis, Ormsby, and Fosse)

AN ACT Relating to supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system; amending RCW 43.101.272, 43.101.276, 43.101.278, and 9A.04.080; adding a new section to chapter 43.10 RCW; adding new sections to chapter 43.101 RCW; adding a new section to chapter 70.02 RCW; creating a new section; providing an effective date; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  A new section is added to chapter 43.10 RCW to read as follows:

(1)(a) The sexual assault forensic examination best practices advisory group is established within the office of the attorney general for the purpose of reviewing best practice models for managing all aspects of sexual assault investigations and for reducing the number of untested sexual assault kits in Washington state.

(i) The caucus leaders from the senate shall appoint one member from each of the two largest caucuses of the senate.

(ii) The caucus leaders from the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(iii) The attorney general, in consultation with the legislative members of the advisory group, shall appoint:

(A) One member representing each of the following:

(I) The Washington state patrol;

(II) The Washington association of sheriffs and police chiefs;

(III) The Washington association of prosecuting attorneys;

(IV) The Washington defender association or the Washington association of criminal defense lawyers;

(V) The Washington association of cities;

(VI) The Washington association of county officials;

(VII) The Washington coalition of sexual assault programs;

(VIII) The office of crime victims advocacy;

(IX) The Washington state hospital association;

(X) The office of the attorney general; and

(XI) The criminal justice training commission;

(B) Two members representing survivors of sexual assault;

(C) One member who is a sexual assault nurse examiner;

(D) Two members who are law enforcement officers, one from a rural area and one from an urban area of the state;

(E) One member who is a prosecuting attorney serving in a county in a rural area of the state; and

(F) Two members who are community-based advocates, one from a rural area and one from an urban area of the state.

(b) When appointing members under (a)(iii)(D) of this subsection, the office of the attorney general shall solicit recommendations from statewide labor organizations representing law enforcement officers.

(2) The duties of the advisory group include, but are not limited to:

(a) Researching the best practice models both in state and from other states for collaborative responses to victims of sexual assault from the point the sexual assault kit is collected to the conclusion of the investigation and prosecution of a case, and providing recommendations regarding any existing gaps in Washington and resources that may be necessary to address those gaps;

(b) Researching and making recommendations on opportunities to increase access to, and availability of, critical sexual assault nurse examiner services;

(c) Monitoring the testing of the backlog of sexual assault kits and the supply chain and distribution of sexual assault kits;

(d) Monitoring implementation of state and federal legislative changes;

(e) Collaborating with the legislature, state agencies, medical facilities, and local governments to implement reforms pursuant to federal grant requirements; and

(f) Making recommendations for institutional reforms necessary to prevent sexual assault and improve the experiences of sexual assault survivors in the criminal justice system.

(3) The office of the attorney general shall administer and provide staff support to the advisory group.

(4) Legislative members of the advisory group must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The advisory group must meet no less than twice annually.

(6) The advisory group shall report its findings and recommendations to the appropriate committees of the legislature and the governor by December 15th of each year.

(7) This section expires July 1, 2026.

NEW SECTION. **Sec.**  A new section is added to chapter 43.101 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall administer a grant program for establishing a statewide resource prosecutor for sexual assault cases.

(2) The grant recipient must be a statewide organization or association representing prosecuting attorneys. The grant recipient shall hire a resource prosecutor for the following purposes:

(a) To provide technical assistance and research to prosecutors for prosecuting sexual assault cases;

(b) To provide additional training and resources to prosecutors to support a trauma-informed, victim-centered approach to prosecuting sexual assault cases;

(c) To meet regularly with law enforcement agencies and prosecutors to explain legal issues and prosecutorial approaches to sexual assault cases and provide and receive feedback to improve case outcomes;

(d) To consult with the commission, the office of the attorney general, and the sexual assault forensic examination best practices advisory group under section 1 of this act with respect to developing and implementing best practices for prosecuting sexual assault cases across the state; and

(e) To comply with other requirements established by the commission under this section.

(3) The commission may, in consultation with the sexual assault forensic examination best practices advisory group under section 1 of this act, establish additional appropriate conditions for any grant awarded under this section. The commission may adopt necessary policies and procedures to implement and administer the grant program, including monitoring the use of grant funds and compliance with the grant requirements.

**Sec.**  RCW 43.101.272 and 2019 c 93 s 5 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall provide ongoing specialized, intensive, and integrative training for persons responsible for investigating sexual assault ((~~cases~~)) and other gender-based violence involving adult victims, and the highest ranking supervisors and commanders overseeing sexual assault and other gender-based violence investigations. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Among other subjects, the training must include content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques.

(2) The training must: Be based on research-based practices and standards; offer participants an opportunity to practice interview skills and receive feedback from instructors; minimize the trauma of all persons who are interviewed during abuse investigations; provide methods of reducing the number of investigative interviews necessary whenever possible; assure, to the extent possible, that investigative interviews are thorough, objective, and complete; recognize needs of special populations; recognize the nature and consequences of victimization; require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; address record retention and retrieval; address documentation of investigative interviews; and educate investigators on the best practices for notifying victims of the results of forensic analysis of sexual assault kits and other significant events in the investigative process, including for active investigations and cold cases.

(3) In developing the training, the commission shall seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault, gender-based violence, and the neurobiology of trauma. The commission shall consult with the Washington association of prosecuting attorneys in an effort to design training containing consistent elements for all professionals engaged in interviewing and interacting with sexual assault victims in the criminal justice system.

(4) ((~~The commission shall develop the training and begin offering it by July 1, 2018.~~)) Officers assigned to regularly investigate sexual assault and other gender-based violence involving adult victims and the highest ranking supervisors and commanders overseeing those investigations shall complete the training within one year of being assigned ((~~or by July 1, 2020, whichever is later~~)).

**Sec.**  RCW 43.101.276 and 2017 c 290 s 5 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall develop peace officer training on a victim-centered, trauma-informed approach to interacting with victims and responding to ((~~sexual assault~~)) calls involving gender-based violence. The curriculum must: Be ((~~designed for commissioned patrol officers not regularly assigned to investigate sexual assault cases; be~~)) designed for deployment and use within individual law enforcement agencies; include features allowing for it to be used in different environments, which may include multimedia or video components; and allow for law enforcement agencies to host it in small segments at different times over several days or weeks, including roll calls. The training must include components on available resources for victims including, but not limited to, material on and references to community-based victim advocates.

(2) In developing the training, the commission shall seek advice from the Washington association of sheriffs and police chiefs, the Washington coalition of sexual assault programs, and experts on sexual assault, gender-based violence, and the neurobiology of trauma.

(3) ((~~Beginning in 2018, all law enforcement agencies shall annually host the training for commissioned peace officers. All law enforcement agencies shall, to the extent feasible, consult with and feature local community-based victim advocates during the training.~~)) All peace officers shall complete the training under this section at least once every three years.

**Sec.**  RCW 43.101.278 and 2021 c 118 s 3 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall conduct an annual case review program. The program must review case files from law enforcement agencies and prosecuting attorneys selected by the commission in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. The program must include:

(a) An evaluation of whether current training and practices foster a trauma-informed, victim-centered approach to victim interviews and that identifies best practices and current gaps in training and assesses the integration of the community resiliency model;

(b) A comparison of cases involving investigators and interviewers who have participated in training to cases involving investigators and interviewers who have not participated in training;

(c) A comparison of cases involving prosecutors who have participated in the training described in section 6 of this act to cases involving prosecutors who have not participated in such training;

(d) Randomly selected cases for a systematic review to assess whether current practices conform to national best practices for a multidisciplinary approach to investigating and prosecuting sexual assault cases and interacting with survivors; and

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

(2) 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 by the commission shall make requested case files and other documents available to the commission, provided that the case files are not linked to ongoing, open investigations and that redactions may be made where appropriate and necessary. Agencies and prosecuting attorneys shall include available information on the race and ethnicity of all sexual assault victims in the relevant case files provided to the commission. Case files and other documents must be made available to the commission according to appropriate deadlines established by the commission in consultation with the agency or prosecuting attorney.

(3) If a law enforcement agency has not participated in the training under RCW 43.101.272 ((~~by July 1, 2022~~)) or 43.101.276 within the previous 24 months, the commission may prioritize the agency for selection to participate in the program under this section.

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

(5) The commission shall submit a report with a summary of its work to the governor and the appropriate committees of the legislature by December 1st of each year.

NEW SECTION. **Sec.**  A new section is added to chapter 43.101 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall, in partnership with the special resource prosecutor under section 2 of this act, develop and conduct specialized, intensive, and integrative training for persons responsible for prosecuting sexual assault cases involving adult victims.

(2) The training must:

(a) Use a victim-centered, trauma-informed approach to prosecuting sexual assaults including, but not limited to, the following goals: Recognizing the nature and consequences of victimization; prioritizing the safety and well-being of victims; and recognizing the needs of special populations;

(b) Include content on the neurobiology of trauma and trauma-informed interviewing, counseling, investigative, and prosecution techniques;

(c) Offer participants an opportunity to practice interview and trial skills, including receiving feedback from instructors;

(d) Share best practices for communicating with victims throughout the criminal justice process;

(e) Include additional content relevant to and informed by best practices for improving outcomes in sexual assault prosecutions, as deemed appropriate by the commission;

(f) Take into account the training under RCW 43.101.272 in order to provide consistent and complimentary training for investigators and prosecutors;

(g) Be designed to qualify for some continuing legal education credits through the Washington state bar association; and

(h) Be offered at least once per calendar year and be deployed in different locations across the state, or through some other broadly accessible means, in order to improve access to the training for prosecutors serving in small offices or rural areas.

**Sec.**  RCW 9A.04.080 and 2022 c 282 s 4 are each amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4));

(vii) Rape in the first degree (RCW 9A.44.040) if the victim is under the age of sixteen;

(viii) Rape in the second degree (RCW 9A.44.050) if the victim is under the age of sixteen;

(ix) Rape of a child in the first degree (RCW 9A.44.073);

(x) Rape of a child in the second degree (RCW 9A.44.076);

(xi) Rape of a child in the third degree (RCW 9A.44.079);

(xii) Sexual misconduct with a minor in the first degree (RCW 9A.44.093);

(xiii) Custodial sexual misconduct in the first degree (RCW 9A.44.160);

(xiv) Child molestation in the first degree (RCW 9A.44.083);

(xv) Child molestation in the second degree (RCW 9A.44.086);

(xvi) Child molestation in the third degree (RCW 9A.44.089); and

(xvii) Sexual exploitation of a minor (RCW 9.68A.040).

(b) Except as provided in (a) of this subsection, the following offenses may not be prosecuted more than twenty years after its commission:

(i) Rape in the first degree (RCW 9A.44.040);

(ii) Rape in the second degree (RCW 9A.44.050); or

(iii) Indecent liberties (RCW 9A.44.100).

(c) The following offenses may not be prosecuted more than ten years after its commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results;

(iii) Rape in the third degree (RCW 9A.44.060);

(iv) Attempted murder; or

(v) Trafficking under RCW 9A.40.100.

(d) A violation of any offense listed in this subsection (1)(d) may be prosecuted up to ten years after its commission or, if committed against a victim under the age of eighteen, up to the victim's thirtieth birthday, whichever is later:

(i) RCW 9.68A.100 (commercial sexual abuse of a minor);

(ii) RCW 9.68A.101 (promoting commercial sexual abuse of a minor);

(iii) RCW 9.68A.102 (promoting travel for commercial sexual abuse of a minor); or

(iv) RCW 9A.64.020 (incest).

(e) The following offenses may not be prosecuted more than six years after its commission or discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;

(ii) Any felony violation of chapter 9A.83 RCW;

(iii) Any felony violation of chapter 9.35 RCW;

(iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception;

(v) Theft from a vulnerable adult under RCW 9A.56.400;

(vi) Trafficking in stolen property in the first or second degree under chapter 9A.82 RCW in which the stolen property is a motor vehicle or major component part of a motor vehicle as defined in RCW 46.80.010; or

(vii) Violations of RCW 82.32.290 (2)(a)(iii) or (4).

(f) The following offenses may not be prosecuted more than five years after its commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(g) Bigamy may not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(h) A violation of RCW 9A.56.030 may not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(i) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(j) No gross misdemeanor may be prosecuted more than two years after its commission.

(k) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or ((~~two~~)) four years from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing or by photograph as defined in RCW 9.68A.011, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

NEW SECTION. **Sec.**  A new section is added to chapter 70.02 RCW to read as follows:

A disclosure authorization to a health care provider or health care facility authorizing disclosure of information to law enforcement regarding a forensic examination performed for the purposes of gathering evidence for possible prosecution of a criminal offense must be valid until the end of all related criminal proceedings or a later event selected by the provider, facility, patient, or patient's representative, unless the patient or patient's representative requests a different expiration date or event for the disclosure authorization.

NEW SECTION. **Sec.**  Section 4 of this act takes effect July 1, 2024.

NEW SECTION. **Sec.**  If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2023, in the omnibus appropriations act, this act is null and void.

**--- END ---**