

HOUSE BILL REPORT

HB 1028

As Reported by House Committee On:
Community Safety, Justice, & Reentry

Title: An act relating to supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

Brief Description: Supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

Sponsors: Representatives Orwall, Mosbrucker, Ryu, Simmons, Goodman, Reed, Lekanoff, Pollet, Callan, Doglio, Macri, Caldier, Reeves, Wylie, Gregerson, Davis, Ormsby and Fosse.

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 1/9/23, 1/19/23 [DPS].

Brief Summary of Substitute Bill

- Requires law enforcement agencies to initiate an investigation of a reported sexual assault, or document why an investigation could not be initiated, within 90 days when the testing of a sexual assault kit (SAK) generates a hit in the Combined DNA (deoxyribonucleic acid) Indexing System (CODIS).
- Requires the Crime Victim Compensation Program to reimburse a Washington resident who is billed for a sexual assault examination by an out-of-state facility.
- Provides that a medical disclosure authorization to a health care provider or facility regarding a forensic examination remains valid until the end of all related criminal proceedings, subject to certain exceptions.
- Modifies certain reporting requirements imposed on the Washington State Patrol related to statewide SAK testing and tracking.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

- Extends the statute of limitations that applies to the prosecution of sex offenses where the suspect is identified by DNA testing or photograph.
- Reestablishes the Sexual Assault Forensic Examination Best Practices Advisory Group.
- Modifies the curriculum and requirements for certain training programs offered through the Criminal Justice Training Commission (CJTC) and requires the CJTC to develop and conduct specialized training for persons responsible for prosecuting sexual assault cases involving adult victims.
- Modifies the operating requirements for the Department of Children, Youth, and Families' receiving center programs for commercially sexually exploited youth.
- Expands the statutory rights of crime victims, survivors, and witnesses to apply to any judicial proceeding.
- Creates programs related to the prosecution and resolution of sexual assault cases, and counseling services for certain victims of sexual assault.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

Staff: Corey Patton (786-7388).

Background:

Sexual Assault Kits.

A person who has been the victim of a sexual assault may undergo a forensic examination for the purpose of collecting evidence left behind during the assault. Hospitals and other emergency facilities in Washington may not charge a state resident for the costs of a sexual assault forensic examination, but they may seek payment from the Department of Labor and Industries through the Crime Victim Compensation Program. The doctor or nurse conducting the examination preserves the evidence using a sexual assault kit (SAK). In some cases, testing conducted on a SAK may result in a DNA (deoxyribonucleic acid) profile of a potential suspect. The profile is uploaded into the Combined DNA Indexing System (CODIS) where it may match profiles collected from other investigations or from arrested or convicted persons. A match, or "CODIS hit," may function as an investigative

lead for the assault.

A law enforcement agency that receives a SAK must submit it to the Washington State Patrol (WSP) Crime Laboratory or another qualifying laboratory for testing within 30 days, subject to certain exceptions. When the WSP receives the SAK, it must conduct a laboratory examination and enter relevant information into the CODIS within 45 days. The WSP must also:

- operate a statewide SAK tracking system and submit a semiannual report related to the system to the Legislature and the Governor by January 31 and July 31 of each year;
- compile the number of requests for SAK testing, the law enforcement agencies that submitted the requests, and the progress made towards SAK testing, until June 30, 2023; and
- make recommendations for increasing the progress on SAK testing and submit an annual report to the Legislature and the Governor by December 1 of each year.

Uniform Health Care Information Act.

The state Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or written authorization by the patient. To be valid, a disclosure authorization to a health care provider or health care facility must:

- be in writing, dated, and signed by the patient;
- identify the nature of the information to be disclosed;
- identify the name and institutional affiliation of the person to whom the information will be disclosed;
- identify the provider making the disclosure;
- identify the patient; and
- contain an expiration date or an expiration event that relates to the patient or the purpose of the disclosure.

Statute of Limitations for Sex Offenses.

A statute of limitations provides an authorized period of time for initiating a prosecution after a crime is committed. Once the applicable statute of limitations has expired, a prosecutor is barred from bringing charges against the alleged perpetrator. Statutes of limitations vary depending on the crime.

In a prosecution for a sex offense, the applicable statute of limitation runs from whichever of the following dates is later:

- the date the crime was committed; or
- two years from the date the identity of the suspect is conclusively established by DNA testing or by photograph.

Sexual Assault Forensic Examination Best Practices Advisory Group.

In 2019 the state established the Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE Advisory Group) within the Attorney General's Office and directed the SAFE Advisory Group to reduce the number of untested SAKs and review best practice models for managing all aspects of sexual assault investigations. The SAFE Advisory Group expired on December 31, 2021.

Criminal Justice Training Commission.

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 officers, including the following:

- training for officers who do not regularly investigate sexual assault cases on a victim-centered, trauma-informed approach to interacting with sexual assault victims; and
- specialized training for officers who are responsible for investigating sexual assault cases involving adult victims, which applicable officers must complete within one year of being assigned.

The CJTC must conduct an annual, ongoing case review program to review case files from select law enforcement agencies and prosecuting attorneys in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. If a law enforcement agency has not participated in the CJTC's specialized training for officers who are responsible for investigating sexual assault cases involving adult victims by July 1, 2022, the CJTC may prioritize the agency for selection to participate in the case review program.

Receiving Centers for Commercially Exploited Youth.

The Department of Children, Youth, and Families administers funding for two receiving centers for youth ages 12–17, of all genders, who have been or are at risk for being commercially sexually exploited. The receiving centers must:

- provide ongoing case management for youth served by the programs;
- include a short-term evaluation function accessible 24 hours per day, seven days per week;
- assess youth for mental health and substance use disorder needs and provide referrals;
- utilize existing facilities and not require the construction of new facilities; and
- provide individual and group counseling.

A law enforcement officer must take a child into custody if the officer reasonably believes, considering specific factors, that the child is in circumstances which constitute a danger to the child's safety or that the child is violating a local curfew ordinance. If the officer takes such a child into custody and reasonably believes that the child may be the victim of sexual exploitation, the officer must transport or coordinate the transportation of the child to:

- an evaluation and treatment facility, such as a receiving center; or
- another appropriate youth-serving entity or organization.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. A reasonable effort must be made to ensure that victims, survivors of victims, and witnesses of crimes have various rights in criminal court and juvenile court proceedings. Examples of statutory rights include the following:

- with respect to victims of violent and sex crimes, the right to have a crime victim advocate from a crime victim or witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim;
- with respect to victims and survivors of victims, the right to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified; and
- with respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor.

Summary of Substitute Bill:

Sexual Assault Kits.

When a law enforcement agency submits a sexual assault kit (SAK) for forensic analysis and the SAK generates a hit in the Combined DNA (deoxyribonucleic acid) Indexing System (CODIS), the agency must, within 90 days of receiving the analysis, initiate a criminal investigation of any report connected to the SAK or document why the investigation could not be initiated, unless the investigation has already been initiated.

The provision requiring the Washington State Patrol (WSP) to compile certain information about statewide SAK testing is expanded to include additional information and reporting requirements. The WSP must submit a report to the Legislature and the Governor annually, by July 31 of each year, that contains the following information:

- the total number of requests for SAK testing, and the number of requests occurring in the previous 12 months;
- the law enforcement agencies that submitted the requests;
- the progress made towards SAK testing; and
- the total number of CODIS hits connected to submitted SAKs, and the number of hits occurring in the previous 12 months.

The WSP's report on its statewide SAK tracking system is modified to be due annually on July 31 of each year.

Hospitals and other emergency medical facilities located in Washington may not charge for the examination of a victim of a sexual assault, regardless of whether the victim is a state resident, when such examination is performed for the purposes of gathering evidence for possible prosecution. Such hospitals and facilities may seek reimbursement from the Crime

Victim Compensation Program (CVCP). The CVCP must also reimburse a state resident for any costs billed to them for a sexual assault forensic examination by an out-of-state hospital or facility. The CVCP may establish arrangements with any out-of-state hospital or facility to allow costs for examinations of state residents to be paid according to the same procedures for hospital and facilities in Washington.

Uniform Health Care Information Act.

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 is 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.

Statute of Limitations for Sex Offenses.

The authorized period for commencing the prosecution of certain sex offenses is expanded. In a prosecution for a sex offense, the applicable statute of limitations runs from whichever of the following dates is later:

- the date the crime was committed; or
- four years from the date the identity of the suspect is conclusively established by DNA testing or by photograph.

Sexual Assault Forensic Examination Best Practices Advisory Group.

The Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE Advisory Group) is reestablished in the Attorney General's Office. The membership is expanded by an additional six persons with certain specified roles or expertise. The duties of the SAFE Advisory Group are modified, including by removing issues relating to the testing and storage of untested or unreported SAKs. The SAFE Advisory Group must research and make recommendations on opportunities to increase access to and availability of critical sexual assault nurse examiner services, and to continue monitoring the testing of SAKs and the supply chain and distribution of SAKs. The SAFE Advisory Group expires on July 1, 2026.

Criminal Justice Training Commission.

The Criminal Justice Training Commission's (CJTC) trauma-informed training for officers who do not regularly investigate sexual assault cases is expanded to include training on all gender-based violence. All peace officers must complete the trauma-informed training every three years. The CJTC's specialized training for officers investigating sexual assault cases involving adult victims is expanded to include training for investigators of gender-based violence cases, commanding officers overseeing investigations of sexual assault and gender-based violence, and prosecutors responsible for prosecuting sexual assault cases involving adult victims. The CJTC's case review program is modified to specify that:

- the CJTC may prioritize case reviews for agencies that did not participate in required specialized training in the previous two years; and

- the program must include a comparison of cases involving prosecutors who have participated in the CJTC's specialized training to cases involving prosecutors who have not participated in such training.

Receiving Centers for Commercially Exploited Youth.

The Department of Children, Youth, and Families' receiving centers for commercially sexually exploited youth must provide shelter and services within the receiving center for up to seven days. The provision requiring the receiving centers to utilize existing facilities and not require the construction of new facilities is eliminated.

The list of locations an officer may take a child to if the officer reasonably believes the child to be the victim of sexual exploitation is expanded to include a parent or legal guardian.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The statutory rights of crime victims, survivors, and witnesses apply to any adult or juvenile criminal proceeding and any sexually violent predator commitment proceeding. If a victim, survivor of a victim, or witness of a crime is denied a right, that person may seek an order directing compliance by the relevant party. Compliance with the right is the sole available remedy.

New Programs.

The CJTC must, subject to appropriation, administer a grant program for establishing a statewide resource prosecutor for sexual assault cases. The grant recipient must be a statewide organization or association representing prosecuting attorneys. The grant recipient must hire a resource prosecutor for specified purposes. The CJTC may, in consultation with the SAFE Advisory Group, establish additional conditions for any grant awarded. The CJTC and statewide resource prosecutor must, subject to appropriation, partner to develop and conduct specialized, intensive, and integrative training meeting specified criteria for persons responsible for prosecuting sexual assault cases involving adult victims.

The Department of Labor and Industries must, subject to appropriation, establish a program to provide counseling services to victims of sexual assault who underwent a forensic examination prior to July 24, 2015, and whose SAK collected during the examination was tested on or after July 24, 2015. A person who is eligible for benefits may receive up to six counseling sessions in the 12 months following the person's application to receive benefits. The Department of Labor and Industries must pay for the costs charged, or otherwise provide reimbursement. The counseling program is exempt from certain statutory requirements related to secondary coverage. The counseling program expires on July 1, 2028.

Substitute Bill Compared to Original Bill:

The substitute bill: (1) provides that when a forensic analysis of a sexual assault kit (SAK) generates a Combined DNA (deoxyribonucleic acid) Indexing System (CODIS) hit, the applicable law enforcement agency shall, within 90 days of receiving the analysis, initiate an investigation of any report connected to the SAK or document why the investigation could not be initiated, rather than conduct an investigation; (2) eliminates the provision requiring law enforcement agencies and prosecuting attorneys to provide certain status updates on cases related to any SAK with a CODIS hit, rather than only cases related to a SAK collected prior to July 24, 2015; (3) eliminates the provision requiring the Department of Commerce to establish and administer a competitive grant program to support regional multidisciplinary community response teams; (4) restores the current-law requirement that the Criminal Justice Training Commission's (CJTC) peace officer training on interacting with victims and responding to calls involving gender-based violence must be designed for deployment and use within individual law enforcement agencies, and allow for law enforcement agencies to host it in small segments at different times; (5) specifies that the CJTC's case review program must include a comparison of cases involving prosecutors who have participated in the CJTC's specialized, intensive, and integrative training for prosecuting sexual assault cases involving adult victims, and cases involving prosecutors who have not participated in such training; (6) provides that the Department of Children, Youth, and Families' receiving center programs must provide shelter and services to qualifying children for up to seven days, rather than 30 days; (7) specifies in the intent section that the state has engaged in a multiyear effort to implement certain practice across the criminal justice system, rather than the criminal legal system; and (8) specifies in the intent section that all sexual assault survivors deserve to be treated with respect and dignity, including through a trauma-informed, good faith investigation of every report of sexual assault.

Appropriation: None.

Fiscal Note: Requested on January 5, 2023.

Effective Date of Substitute Bill: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony:

(In support) Survivors of sexual assault who engage with the criminal justice system do so with the belief that someone will listen and act. Accountability is equally as important as the survivor's experience with the criminal justice system. Only a fraction of survivors make reports, but that should not be because they think they will be unsupported or ignored. Many survivors are from marginalized communities and lack resources, which is why they are targeted. Those survivors face profound barriers to justice.

Of the sexual assault kits (SAK) that have been tested and entered into the Combined DNA

(deoxyribonucleic acid) Indexing System (CODIS), 35 to 40 percent will generate a CODIS hit. Over 98 percent are tested within the statutory time limit. However, less than 1 percent of sexual assaults result in felony charges. This bill provides tools to investigate and prosecute these sexual assault cases. There may be language proposed to prohibit at-home SAKs. This bill also contains language requiring an investigation to be conducted within 90 days, but many cases take longer than that. One suggestion is to require investigations to initiate or begin within 90 days instead.

Victims' rights are vital protections that may be overlooked because of expediency or other reasons. Currently there are no protections for victims' rights in judicial proceedings. Without these rights, victims have no recourse. This bill establishes the right to seek strict compliance. However, it may be impossible to provide remedies in certain instances, such as when a victim misses a chance to appear at a sentencing hearing. If the victim asked for strict compliance, that might force resentencing.

Case reviews have affirmed the effectiveness of training for officers. Lack of such training may limit the ability to respond in a way that mitigates harm and holds offenders accountable. This bill requires officers to receive specific training in gender-based violence, which is a critical expansion. This bill also provides grant funds for a sexual assault resource prosecutor, which is a model that has been used across the country. Partnering the resource prosecutor with the Criminal Justice Training Commission is an effective way to manage the new enhanced training for prosecutors. However, the scope of the case review for such training should be specified more clearly in the bill.

It is very difficult to stabilize someone and provide therapeutic services in 72 hours. Most of the youth served at receiving centers are heavily addicted and have to come out of withdrawals. This bill provides 30 days to allow receiving centers to provide services, coordinate care, and develop a discharge plan.

(Opposed) None.

Persons Testifying: Representative Tina Orwall, prime sponsor; Sarah Spier; Jennifer Wallace, Washington State Criminal Justice Training Commission; Jennifer Ritchie; Colleen McIngalls, King County Prosecuting Attorneys Office; Megan Allen, King County Sexual Assault Resource Center; and Russell Brown, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: Michael Moran, Confederated Tribes of the Colville Reservation.