

SENATE BILL REPORT

2SHB 1028

As of March 16, 2023

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

Brief History: Passed House: 3/6/23, 95-0.

Committee Activity: Law & Justice: 3/16/23.

Brief Summary of Bill

- Reestablishes the Sexual Assault Forensic Examination Best Practices Advisory Group.
- 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.
- Extends the statute of limitations that applies to the prosecution of sex offenses where the suspect is identified by DNA testing or photograph.
- Modifies the curriculum and requirements for certain training programs offered by the Criminal Justice Training Commission (CJTC).
- Requires the CJTC to administer a grant program to establish a statewide resource prosecutor for sexual assault cases, and to develop and conduct specialized training for persons responsible for prosecuting sexual assault cases involving adult victims.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: 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 Sexual Assault Kits (SAKs) and review best practice models for managing all aspects of sexual assault investigations. The SAFE Advisory Group expired on December 31, 2021, but was funded through fiscal year 2023 through the 2022 budget.

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.

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 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.

Summary of Bill: Sexual Assault Forensic Examination Best Practices Advisory Group. The 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.

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.

Criminal Justice Training Commission. The CJTC's 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.

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.

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: PRO: Sexual assault is one of the most horrific crimes. The trauma has devastating effects on individuals and the community. This bill is a path forward to justice and will give prosecutors the tools that they need to move forward on these cases. A majority of sexual assault cases are unreported, and historically, even if they are reported, many cases were never referred for prosecution by law enforcement agencies. Extending the statute of limitations will enable cases that were impacted by COVID to move forward. There are many states that have sexual assault and domestic violence statewide resource prosecutors that provide a bridge between the training that law enforcement receive and the training that prosecutors receive. Statewide resource prosecutors are used in small rural and large urban areas to help on complex issues, like sexual assault cases, and to provide additional trainings. Expanding and mandating participation in training for trauma-informed responses to sexual violence and other forms of gender-based violence will help close the current gaps in the approach by police, investigation commanders, patrol officers, and prosecutors. Expansion of the case review process to include prosecutors will identify training gaps and bolster case outcomes. Sections pertaining to victims' rights in sexually violent predator cases should be added back to the bill so that victims in these civil cases will have the same rights as victims in criminal cases. Many of these survivors are from marginalized communities and cannot

afford resources to hire their own attorneys to represent them in depositions on these civil matters.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Jennifer Wallace, WA State Criminal Justice Training Commission; Jennifer Ritchie, King County Prosecuting Attorney's Office; Russell Brown, WA Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: No one.