

SENATE BILL REPORT

SHB 1068

As Reported by Senate Committee On:
Law & Justice, March 31, 2015
Ways & Means, April 7, 2015

Title: An act relating to sexual assault examination kits.

Brief Description: Concerning sexual assault examination kits.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Kagi, Appleton, Gregerson, Reykdal, Carlyle, Stanford, Sawyer, Fitzgibbon, Jinkins, Cody, Hudgins, Senn, Clibborn, Moeller, Riccelli, Moscoso, Farrell and Fey).

Brief History: Passed House: 3/02/15, 82-15.

Committee Activity: Law & Justice: 3/16/15, 3/31/15 [DPA-WM].
Ways & Means: 4/06/15, 4/07/15 [DPA(LAW)].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Aldo Melchiori (786-7439)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended by Committee on Law & Justice.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Fraser, Hasegawa, Hatfield, Hewitt, Kohl-Welles, O'Ban, Padden, Parlette, Rolfes, Schoesler and Warnick.

Staff: Travis Sugarman (786-7446)

Background: After a person has been the victim of a sexual assault, the person may undergo a forensic examination for the purpose of collecting any evidence that may have been left behind during the assault. Biological evidence such as saliva, blood, or semen may be

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collected. The doctor or nurse conducting the examination preserves the evidence using a sexual assault examination kit, commonly referred to as a rape kit. The sexual assault examination kit contains tools that may be used by the doctor or nurse, such as swabs, combs, blood collection devices, and documentation forms. When the examination is complete, the evidence is packaged and steps are taken to preserve the chain of custody.

In some cases, custody of the sexual assault examination kit may be transferred to a law enforcement agency. When a law enforcement agency receives a sexual assault examination kit, the agency may submit it to a crime lab for analysis, but is under no specific deadline for submission.

Summary of Bill (Recommended Amendments): When a law enforcement agency receives a sexual assault examination kit, and consent has been given for the rape kit to be analyzed as part of a sexual assault investigation, the agency must submit a request for laboratory analysis to the Washington State Patrol (WSP) Crime Laboratory within 30 days of receiving it. This applies to sexual assault examinations performed on or after the effective date of the act. The failure of a law enforcement agency to meet the 30-day deadline is not a basis to exclude the evidence from a court proceeding or to overturn a conviction or sentence, and it does not create a private right of action against the agency.

Subject to available funding, WSP must give priority to sexual assault examination kits at the request of a local law enforcement agency for: (1) active investigations and cases with impending court dates; (2) active investigations where public safety is an immediate concern; (3) violent crimes investigations, including active sexual assault investigations; (4) postconviction cases; and (5) other crimes' investigations and non-active investigations, such as previously unsubmitted older sexual assault kits or recently collected sexual assault kits that the submitting agency has determined to be lower priority based on their initial investigation.

WSP compiles statistics regarding the number of requests to test sexual assault kits and progress toward testing with reports of findings and recommendations made annually to the Governor and appropriate committees of the Legislature.

A workgroup is created to study the issue of untested sexual assault examination kits in Washington. The President of the Senate appoints one member from each of the two largest caucuses in the Senate and the Speaker of the House of Representatives appoints one member from each of the two largest caucuses of the House of Representatives. In addition, the workgroup consists of one member from each of the following groups:

- WSP;
- the Washington Association of Sheriffs and Police Chiefs;
- the Washington Association of Prosecuting Attorneys;
- the Washington Defender Association or the Washington Association of Criminal Defense Lawyers;
- the Washington Association of Cities;
- the Washington Association of County Officials;
- the Washington Coalition of Sexual Assault Programs;
- the Washington State Hospital Association;
- the Office of Crime Victims Advocacy;

- the Washington Forensic Investigations Council;
- a public higher education institution;
- a private higher education institution; and
- two individuals who are survivors of sexual assault.

The workgroup researches the number of untested sexual assault kits in Washington, the reasons why they are untested, and where they are stored. The workgroup also reviews and makes recommendations regarding policy options for reducing the number of untested kits, the procedure for contact and notification to victims, and the collaboration among medical, legal, and victim advocacy systems in providing services to victims. The workgroup also researches funding sources for the testing of sexual assault examination kits.

The workgroup must meet at least twice annually and provide an initial report on its findings and recommendations to the Legislature and the Governor no later than December 2015, with reports required every two years thereafter. The workgroup expires on June 30, 2018.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): Consent to test the kit is not required if the victim is a person under the age of 18 who is not emancipated. The crime laboratory must give priority to laboratory examination of sexual assault examination kits at the request of a local law enforcement agency. The caucus leaders select legislative members of the taskforce. The membership of the taskforce is changed to include members from one state and one private institution of higher education. The members from an additional statewide law enforcement agency and the innocence project are eliminated. The taskforce is led by legislative members instead of law enforcement and victims' advocacy groups. Taskforce members are reimbursed for expenses. WSP compiles information and statistics regarding testing, and reports to the Legislature every-other year.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill (Law & Justice): PRO: This bill is about keeping women and children safe. These kits should be handled uniformly throughout the state. The requirement to send the kit in is prospective only. The workgroup is to formulate recommendations including how to properly handle older kits. The DNA evidence will be useful in solving old cases as well. What chance do we have to forensically link serial rapists if we do not test all cases? This will also help prevent future victims. We owe it to the survivors, their families, and the communities we serve to pursue all viable investigative leads and hold sexual offenders accountable. There is a significant fiscal benefit to preventing or reducing future crimes.

OTHER: The Washington State Patrol (WSP) will require additional resources to process the sexual assault kits. At this time, it has not been accurately determined how many of the kits will need to be tested. Storage capacity is also currently limited.

Persons Testifying (Law & Justice): PRO: Representative Orwall, prime sponsor; Joshua Turnham, Legal Voice; Andrea Piper Wentland, WA Coalition of Sexual Assault Programs; Tom McBride, WA Assn. of Prosecuting Attorneys; Mary Weston, Cuyahoga County Prosecutor, Ohio; Lara Zarowsky, Innocence Project NW; Erika Teschke, citizen.

OTHER: Rob Huss, WSP.

Persons Signed in to Testify But Not Testifying: No one.

Staff Summary of Public Testimony (Ways & Means): PRO: Implementing the bill would provide for more sexual assault examination kits to be tested and available for evidence. Kits are not always submitted for individuals that rape someone they know, but these individuals are more likely to rape someone they don't know. This bill would allow rape kit information to be available in other rape cases.

Persons Testifying (Ways & Means): PRO: Representative Orwall, prime sponsor.

Persons Signed in to Testify But Not Testifying: PRO: Andrea Piper-Wentland, WA Coalition of Sexual Assault Programs.