

SENATE BILL REPORT

ESHB 1109

As Passed Senate - Amended, March 29, 2021

Title: An act relating to supporting victims of sexual assault.

Brief Description: Concerning victims of sexual assault.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Mosbrucker, Simmons, Goodman, Leavitt, Valdez, Kloba, Graham, Morgan, Caldier, Rule and Macri).

Brief History: Passed House: 2/25/21, 98-0.

Committee Activity: Law & Justice: 3/15/21, 3/18/21 [DPA].

Floor Activity: Passed Senate - Amended: 3/29/21, 49-0.

Brief Summary of Amended Bill

- Modifies the collection and reporting of the status of investigations for sexual assault cases.
- Requires the state to conduct a case review program for improving training and case outcomes.
- Expands the rights of sexual assault survivors.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; McCune, Assistant Ranking Member; Darneille, Holy, Kuderer, Salomon and Wagoner.

Staff: Tim Ford (786-7423)

Background: Sexual Assault Kits. A victim of a sexual assault may undergo a forensic examination to collect evidence related to the assault. A health care practitioner conducts

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the examination, gathers, and preserves the evidence using a sexual assault kit (SAK). The evidence collected may include clothing fibers, hairs, saliva, blood, semen, and skin debris. After the examination, a law enforcement agency may take custody of the SAK for use during an investigation and subsequent criminal prosecution. The evidence may contain deoxyribonucleic acid (DNA) for laboratory testing and may identify the perpetrator from DNA test results. In 2015, the state established mandatory SAK testing requirements. With few exceptions, a law enforcement agency is required to submit a SAK to the Washington State Patrol Crime Laboratory for testing within 30 days of receiving it if the victim consents to the testing.

Law Enforcement Training. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for new recruits, as well as advanced training and educational programming for certified law enforcement officers. In 2020 the Legislature required CJTC to develop a proposal for a case review program designed to improve outcomes in sexual assault investigations by improving training and investigation practices. The program must evaluate current training and practices to foster a trauma-informed, victim-centered approach to victim interviews and to identify best practices and current gaps in training. The program must include 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. The program must include randomly selected cases for a systematic review to assess whether current practices conform to national best practices to investigating sexual assault cases and interacting with survivors.

Rights of Sexual Assault Survivors. In addition to other rights provided by law, a survivor has the right to:

- a medical forensic examination at no cost;
- assistance from a sexual assault survivor's advocate during the medical examination and interviews with law enforcement investigators, prosecutors, or defense counsel, unless an advocate is not available and whether or not the survivor previously waived the right to an advocate's assistance;
- information upon request about the forensic analysis of their SAK and other physical evidence, and whether the testing yielded a DNA match, so long as the information does not compromise an ongoing investigation;
- notice before disposal or destruction of their SAK;
- a copy of the police report at no charge; and
- an opportunity to review their statement before law enforcement refers their case to the prosecutor.

Summary of Amended Bill: If any SAK analysis results in a DNA hit, the attorney general shall request information on the case status from the law enforcement agency and prosecuting attorney, who must provide the requested information. The attorney general must consult with WASPC when developing procedures for requesting and collecting information on status updates. The attorney general shall report quarterly to the association the investigational status of any sexual assault kit, including the case number, date the SAK

was submitted to the crime lab for a forensic examination, date the exam was completed, if the case is open or closed, and the reasons for why a case may be closed. Beginning in 2022, the association must report on information collected to the Governor and Legislature.

The 2020 legislative requirement for CJTC to develop a proposal for a case review program is made into a permanent program. The program must review case files from law enforcement agencies and prosecuting attorneys to identify changes to training and investigation practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. The program must include an analysis of the impact race and ethnicity have on sexual assault case outcomes. The program may review files of closed cases involving allegations of adult sexual assault only. Any law enforcement agency or prosecuting attorney selected for the program must make requested case files and other documents available to CJTC, provided the case files are not linked to ongoing, open investigations. Program participants must include available information on the race and ethnicity of all sexual assault victims.

The rights of sexual assault survivors are expanded including:

- written notice of the right to receive a medical forensic examination at no cost;
- written notice of eligibility to receive other benefits under the crime victim compensation program;
- for an adult survivor to receive a referral to an accredited community program for services related to the sexual assault;
- for a minor survivor to receive a referral to services in accordance with county protocols;
- to consult with a survivor's advocate throughout the investigatory process and prosecution of the survivor's case and court proceedings;
- providing access for the survivor's access to medical facilities, law enforcement officers, prosecuting attorneys, defense attorneys, courts and other applicable criminal justice agencies, including correctional facilities;
- receipt of timely notifications from law enforcement and the prosecuting attorney as to the status of the investigation and any related prosecution of the survivor's case as well;
- access to interpreter services where necessary; and
- for a minor survivor to provide remote video testimony when appropriate, and safeguarding the minor's security when in the courtroom.

Other. An emergency clause is added so section 3 of the bill does not expire before the bill takes effect.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony on Bill as Amended by Committee: PRO: We require every SAK to be tested by mid 2022. The survivors deserve to know what happens with their kit. The Washington Association of Sheriffs and Police Chiefs are looking into what has happened to the kits. The AG has a federal grant that has them looking at the CODIS hits. The bill also has a survivor bill of rights. There is also a requirement for case reviews to develop better training by the Criminal Justice Training Commission.

CON: 2015 was when we started asking for resources to look into SAK's. 2020 is when the Legislature provided resources but 2020 was a very difficult year with the pandemic and unrest. We do not think it is a good use of resources to have to report to multiple agencies. Our proposed language is only for changes to sections 1 and 2 of the bill. It strengthens the language on the AGO and WASPC working together; harmonizes the definitions of SAK's between the two sections; clarifies that law enforcement agencies are not required to report the same information to multiple entities; and ensures the AGO has full authority to compel information necessary for the federal grant.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Antoinette Bonsignore, Washington State Criminal Justice Training Commission; Sophia Arnold, Youth Against Sexual Violence; Heaven Randall Strothers; Sara Mooney, Sexual Violence Law Center; Laurie Schacht, YWCA Clark County; John Hillman, Washington State Office of the Attorney General; Sarah Ciambrone, Rebuilding Hope! Sexual Assault Center for Pierce County; Leah Griffin, Sexual Assault Forensic Examination Task Force/ Sexual Violence Law Center; Jen Wallace, Washington State Criminal Justice Training Commission.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

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