

# HOUSE BILL REPORT

## SHB 1068

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### As Amended by the Senate

**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:**

##### **Committee Activity:**

Public Safety: 1/14/15, 1/23/15 [DPS];  
Appropriations: 2/4/15, 2/19/15 [DPS(PS)].

##### **Floor Activity:**

Passed House: 3/2/15, 82-15.  
Senate Amended.  
Passed Senate: 4/13/15, 46-0.

#### **Brief Summary of Substitute Bill**

- Requires a law enforcement agency to submit a request for laboratory examination within 30 days of receiving a sexual assault examination kit, provided that the victim or the victim's legal guardian has consented to analysis of the kit as part of a sexual assault investigation.
- Specifies that failure to comply with the 30-day deadline does not create a private right of action against the law enforcement agency and is not a basis to exclude evidence in a court proceeding or to set aside a conviction or sentence.
- Creates a work group to study the issue of untested sexual assault examination kits in Washington, which must file an annual report through June 30, 2018.

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#### HOUSE COMMITTEE ON PUBLIC SAFETY

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

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Cassie Jones (786-7303).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 27 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, MacEwen, Magendanz, Pettigrew, Sawyer, Senn, Springer, Stokesbary, Sullivan, Tharinger and Walkinshaw.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; G. Hunt, Schmick, Taylor and Van Werven.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Condotta.

**Staff:** Meghan Bunch (786-7119).

### **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 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 Substitute Bill:**

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 Crime Laboratory within 30 days of receiving it. 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.

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

- the Washington State Patrol;
- 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 Office of Crime Victims Advocacy;
- the Washington State Hospital Association;
- the Innocence Project Northwest;
- the Washington Forensic Investigations Council;
- institutions of higher education; and
- one or more individuals who are survivors of sexual assault.

The work group will research the number of untested sexual assault kits in Washington, the reasons why they are untested, and where they are stored. The work group will also review and make 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 work group will also research funding sources for the testing of sexual assault examination kits.

The work group will meet at least twice annually and provide an annual report on its findings and recommendations to the Legislature and the Governor. The work group expires on June 30, 2018.

#### **EFFECT OF SENATE AMENDMENT(S):**

Provides that a law enforcement agency does not need victim consent to submit a request for laboratory examination for a sexual assault examination kit when the victim is a non-emancipated minor.

Requires the Washington State Patrol, subject to available funding, give priority to the laboratory examinations of sexual assault kits at the request of the a law enforcement agency for active investigations with impending court dates, active investigations where public safety is an immediate concern, violent crime investigations, post-conviction cases, and other crimes' investigations and non-active investigations such as previously submitted older sexual assault kits or recently collected sexual assault kits that have been determined to be lower priority.

Requires the Washington State Patrol to compile information regarding the requests for laboratory examination submitted by law enforcement agencies and report its findings annually to the appropriate committees of the Legislature and Governor beginning in 2015 and ending in 2018. The information must include the number of requests for laboratory examination by each agency and the progress made toward testing the sexual assault examination kits.

Makes the following changes to the work group:

- establishes a task force for the purpose reviewing best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested sexual assault examination kits in Washington that were collected prior to the effective date of the act;
- provides that the legislative members are chosen by the caucus leaders in both the Senate and the House of Representatives;
- provides that the President of the Senate and the Speaker of the House of Representatives must jointly appoint the remaining members of the task force;
- removes Innocence Project Northwest from the task force;
- clarifies that members from institutions of higher education include one member each from a public and private institution;
- provides that the co-chairs be selected from the legislative membership instead of law enforcement and the victim advocacy service community;
- specifies that staff support for the task force is provided by Senate Committee Services and the Office of Program Research; and
- provides for reimbursement of travel expenses of task force members.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Public Safety):**

(In support) This bill came about after a tour of evidence rooms and conversations with families of rape victims. Rape is a common occurrence in some women's lives. This bill is to start the conversation about seeking justice for victims and helping them find their voices. Testing rape kits is part of this. Currently, there is no way to know how many rape kits are untested. This bill is also about keeping children and women safe. Testing all rape kits will lead to establishing a pattern by offenders. The bill gives tools to law enforcement to build cases. In Michigan, a 10 percent sample of testing rape kits revealed 198 serial rapists. This is a chance to work collaboratively on behalf of victims.

There may be as many as 400,000 untested rape kits in the nation. Ohio recently codified a requirement to submit rape kits; the law applied retroactively. A number of states are doing this. This bill is a conservative approach. All rape kits in Ohio were tested dating back to 1993. Results of the tests started coming back in 2013. New cases were filed as a result of the testing. Approximately 2,000 rape kits had a Combined DNA Index System (CODIS) hit

to a known offender. This led to 244 indictments. Ohio is leading the field in this area. Thirty percent of those indicted are serial rapists. It has been very successful and great for the police department. The conviction rate for the indictments is 90 percent.

Reasons why rape kits were untested included the cost of the technology. This cost has dropped significantly. Another reason is the consent issue; kits were not tested if there was a consent defense. Serial rapists often commit both stranger rapes and acquaintance rapes. Testing is cost effective in the long run considering the result of an economic harm study. Police and victims will have better relations.

This bill is a necessary advancement to meet the needs of survivors. Rape kits sit on shelves and the victims do not get justice after going through an invasive four- to six-hour examination. The bill is a positive first step to streamline the process. Forwarding the rape kits will generate data on how many kits there are. The bill needs to specify that forwarding the rape kits requires victim consent. There is a difference between "Jane Doe Kits" and rape kits where there is full consent. This is not comprehensive reform but it is a step in the right direction. The policy should be survivor-centered and encourage reporting and prosecution. If there is a low likelihood of testing, there is little incentive to do the exam.

Rapists are recidivists. Rape kit evidence matters. It is a complicated issue because of the need to pay for all the testing. All states who have had comprehensive reform have started with a study group. The bill will stop the amassing of rape kits on the shelf.

(With concerns) There should be a mechanism for allowing law enforcement to not test the rape kits involving accused persons whose charges are dismissed. The Federal Bureau of Investigation is developing rapid DNA testing technology. This could lead to an ability to identify profiles in CODIS which are currently unidentifiable. This is a concern for those wrongly prosecuted.

(Other) There are concerns with resources based on how many rape kits the Washington State Patrol (WSP) will receive. Language surrounding accredited labs and database matches needs clarifications. The bill, as written, tests no kits. Rape kits would sit at the WSP being prioritized the same as they are now. There are 5,000-6,000 untested kits. The DNA will solve crime but the crime lab cannot process the current numbers. All this bill does is move rape kits from one shelf to another. The WSP needs significantly more funding.

(Opposed) None.

#### **Staff Summary of Public Testimony (Appropriations):**

(In support) There was some confusion on the fiscal note; here are a few explanations. First, the fiscal note is tied to the narrow policy to begin testing sexual assault examination kits (kits) from this point forward. There are about 6,000 untested kits in the state. The work group will look at these untested kits for two reasons: (1) so the Washington State Patrol (WSP) Crime Laboratory Division are not overwhelmed; and (2) there is about \$140 million at the federal level to test old kits. It is important not to confuse the difference between old and new kits moving forward. In addition, there is no timeline for the WSP to perform testing. This is a tool for timely testing and all kits will be logged into a system. When the

WSP has the ability to test a kit, it will be sent to the lab for testing. This is a moving target, there is no data on the number of kits that will be sent to the WSP. The Legislature has the ability to do this to scale and come back next year with a better understanding of the timelines and make adjustments.

This is a smart way to invest money to protect people, mostly women and children, and keep the state safe. When there are more test results, there are more chances to find serial rapists. When the results are entered into the Federal Bureau of Investigation's Combined DNA Index System, there may be "hits" matching test results to an offender. It will result in catching more criminals and will send a message to survivors that the crime will be treated seriously. Ohio put in place a similar system. Ohio estimates if they began testing the kits sooner, they could have saved \$122 million in harm reduction.

The state and victims need this bill to access ongoing justice. It is important to have victims' consent and this has been put in the bill, but a little more clarification is needed to address the consent of vulnerable populations. It is an extremely long, invasive, and unpleasant experience to spend four to five hours in a medical facility to provide the sample. We cannot let people go through this experience only to let samples sit untested on a shelf. The state must let victims know the kits will be tested. The state needs to move forward and support victims by processing the kits that have been submitted. Currently, the state does not have a streamlined process for handling the kits, and this is a step in the right direction. The work group will be able to provide further direction.

Campus sexual assault is a problem across country; Washington is not unique. Students cannot thrive in the classroom if they do not feel safe and protected. Providing an increase in resources for survivors of sexual assault is key to providing students the resources necessary for academic achievement.

(Opposed) None.

**Persons Testifying** (Public Safety): (In support) Representative Orwall, prime sponsor; Rick Bell, Ohio County Prosecuting Attorney's Office; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; Nancy Sapiro, Legal Voice; Erika Teschke; and Lara Zarowsky, Innocence Project Northwest.

(With concerns) Amanda Lee, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(Other) Mitch Barker, Washington Association of Sheriffs and Police Chiefs; and Rob Huss, Washington State Patrol.

**Persons Testifying** (Appropriations): Representative Orwall, prime sponsor; Andrea Piper-Wentland, Washington Coalition of Sexual Assault Programs; Heather Heffelmire, Associated Students of Western Washington University; and David Ward, Legal Voice.

**Persons Signed In To Testify But Not Testifying** (Public Safety): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.