

SENATE BILL REPORT

ESHB 1109

As of March 15, 2017

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

Brief Description: Supporting victims of sexual assault.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Orwall, McCabe, Griffey, Hayes, McBride, Frame, Goodman, Klippert, Stanford, Stambaugh, Jinkins, Fey, Harmsworth, Dolan, Sells, Muri, Gregerson, McDonald, Wylie, Kilduff, Kloba, Tarleton, Pollet, Farrell, Kagi, Riccelli, Senn, Peterson, Bergquist and Doglio).

Brief History: Passed House: 3/06/17, 96-2.

Committee Activity: Law & Justice: 3/15/17.

Brief Summary of Bill

- Creates the Washington Sexual Assault Kit Initiative (SAKI) Pilot Project to fund the creation of locally based multidisciplinary community response teams to conduct cold case investigations tied to previously unsubmitted sexual assault kits (SAKs).
- Authorizes the Office of the Attorney General to assist law enforcement officials and prosecutors with investigations and prosecutions of cold cases tied to previously unsubmitted SAKs.
- Requires the Criminal Justice Training Commission to incorporate into existing training and develop new training with a victim-centered, trauma-informed approach.
- Eliminates the expiration date for the 6.2 percent fee on most liquor licenses and permits issued by the Liquor and Cannabis Board, and directs revenue from the 6.2 percent fee to the Sexual Assault Prevention and Response Account to fund the Washington SAKI Pilot Project and other specified services for victims.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

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.

Background: Sexual Assault Kits. 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 was left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault forensic examination kit, also commonly referred to as a sexual assault kit (SAK) or rape kit. After the examination, custody of a SAK may be transferred to a law enforcement agency to be utilized during an investigation and subsequent criminal prosecution.

Prior to 2015, law enforcement agencies and prosecutors had discretion to send SAKs to forensic laboratories for testing, but were not required to do so. In 2015, the Legislature passed SHB 1068, which requires a law enforcement agency to submit a SAK to the Washington State Patrol (WSP) Crime Laboratory within 30 days of receiving it, provided that the victim has consented to the testing. Consent is not a condition of submission if the SAK was collected from a non-emancipated minor. The requirement to test SAKs is prospective as of July 24, 2015, meaning it does not apply to previously unsubmitted SAKs.

SHB 1068 also created the Sexual Assault Forensic Examination (SAFE) Best Practices Task Force to review best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested SAKs in Washington. The SAFE Best Practices Task Force is composed of 4 legislators and 14 stakeholders representing specified interests and organizations.

Criminal Justice Training Commission. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training, and educational programs for law enforcement, corrections, and other public safety professionals in Washington. The CJTC also certifies, and when necessary de-certifies, peace officers.

Basic law enforcement officer training is generally required of all law enforcement officers, with the exception of volunteers, and reserve officers employed in Washington. The Basic Law Enforcement Academy (BLEA) consists of a 720-hour program covering a wide variety of subjects including criminal law and procedures, traffic enforcement, cultural awareness, communication and writing skills, emergency vehicle operations, firearms, crisis intervention, patrol procedures, and criminal investigation and defensive tactics.

In addition to the BLEA, the CJTC provides specialized training to commissioned officers on a range of subjects, including, for example, interviewing children in child abuse cases and neglect cases.

Additional Nonrefundable Liquor Fee. The Liquor and Cannabis Board (Board) issues various licenses and permits relating to the production, distribution, and retail sale of beer, wine, and spirits. It also issues licenses for the production, processing, and retail sale of marijuana under the Controlled Substances Act. Each license and permit issued by the Board carries a fee, which is either fixed, as in the case of microbrewery licenses, or varied depending on sales, as in the case of the spirits retail license fee.

In 2015, the Legislature established an additional temporary nonrefundable fee imposed on all applications and renewals of licenses and permits relating to spirits, beer, and wine. The fee is equal to 6.2 percent of the licensing or permit fee that is otherwise due. The 17-percent

spirits retail license fee and the 5- to 10-percent spirits distributor license fee are exempt from the additional fee. A similar fee was created for marijuana-related licenses. The fee funds the costs of replacing and modernizing the Board's licensing, enforcement, and imaging systems.

The 6.2 percent fee expires June 30, 2017.

Private Funds for Sexual Assault Kits. The Washington SAK Program accepts private funds until June 1, 2022, for the Washington SAK Account. Funds are used exclusively for the following:

- 85 percent for the WSP for testing SAKs in the possession of a law enforcement agency but not submitted for forensic testing as of July 24, 2015; and
- 15 percent for the Office of Crime Victim Advocacy (OCVA) for Sexual Assault Nurse Examiner services and training.

Summary of Bill: Washington Sexual Assault Kit Initiative Pilot Project. Subject to amounts appropriated, the Washington Sexual Assault Kit Initiative (SAKI) Pilot Project is created for the purpose of providing funding through a competitive grant program to fund multidisciplinary community response teams seeking resolutions to cases tied to previously unsubmitted SAKs. The Office of the Attorney General (AGO) is required to administer the SAKI Pilot Project.

Two grants must be given, one in Western Washington and one in Eastern Washington, to:

- a law enforcement agency;
- a unit of local government;
- a combination of units of local government;
- a prosecutor's office; or
- a governmental non-law enforcement agency acting as fiscal agent for one of the previously listed types.

A combination of jurisdictions, including contiguous jurisdictions of multiple towns, cities, or counties, may create a taskforce or other entity for the purposes of applying for and receiving a grant, provided that the relevant prosecutors and law enforcement agencies are acting in partnership in complying with the grant requirements.

Grant recipients must perform an inventory of all unsubmitted SAKs in the jurisdiction's possession and submit those SAKs for testing. Grant recipients must establish multidisciplinary cold case or sexual assault investigation units for follow-up investigations and prosecutions resulting from evidence from the testing of previously unsubmitted SAKs. Cold case or sexual assault investigative units must include prosecutors, law enforcement, and victim advocates for the duration of the project. The cold case or sexual assault investigative units must also use victim-centered, trauma-informed protocols and other protocols established by the AGO. The grant funds may support personnel costs, including hiring and overtime, to allow for adequate follow-up investigations and prosecutions. Grant awards must be prioritized for eligible applicants with a commitment to co-locate assigned prosecutors, law enforcement, and victim advocates for the duration of the grant program.

Participants in the SAKI Pilot Project must complete specialized training for victim-centered, trauma-informed investigation and prosecutions. The AGO must also facilitate the hosting of a SAKI Summit in Washington, subject to the availability of funds. Other requirements for administering and participating in the SAKI Pilot Project are included in the act.

The AGO is added to the membership of the SAFE Best Practices Task Force. Meetings of the SAFE Best Practices Task Force are subject to approval by the Senate and the House of Representatives.

Attorney General's Cold Case Investigations. The AGO is authorized to assist law enforcement and prosecutors with investigations and prosecutions of cold cases involving sexual assault, as long as the applicable agency or prosecutor agrees to the assistance. Cold case refers to any criminal investigation where initial investigative leads have been exhausted or where significant time has passed without investigative results or the filing of charges. Cold case includes, but is not limited to, cases tied to previously unsubmitted SAKs.

An agreement may also authorize the AGO to conduct the investigations or prosecutions on behalf of the agency or prosecuting attorney. In those circumstances, the AGO has the same powers as would otherwise be vested in the prosecuting attorney under the law.

The AGO is encouraged to seek federal and other grant funds to support investigations and prosecutions of cold cases involving sexual assault, particularly those cases tied to unsubmitted SAKs.

Training. By July 1, 2018, the CJTC must incorporate victim-centered, trauma-informed approaches to policing in the BLEA curriculum.

By July 1, 2018, the CJTC must provide ongoing specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Among other subjects, the training must include content on the neurobiology of trauma and trauma-informed interviewing, counseling, and investigative techniques. Officers assigned to regularly investigate sexual assault involving adult victims must complete the training within one year of being assigned or by July 1, 2020, whichever is later.

By July 1, 2018, the CJTC must develop training on a victim-centered, trauma-informed approach to interacting with victims and responding to sexual assault calls. Among other components, the curriculum must be designed for commissioned patrol officers not regularly assigned to investigate sexual assault cases and be designed for deployment and use within individual law enforcement agencies. All law enforcement agencies must annually host the training.

Additional Nonrefundable Liquor Fee. The expiration date for the 6.2 percent fee on most liquor licenses and permits is removed, thereby requiring the fee on an ongoing basis. Revenues from the fee must be deposited into the Sexual Assault Response and Prevention Account.

The Legislature must prioritize appropriations from the account for:

- the Washington SAKI Pilot Project;
- the OCVA for the purpose of providing support and services, including educational and vocational training, to victims of sexual assault and trafficking;
- victim-centered, trauma-informed training for prosecutors, law enforcement, and victim advocates, including, but not limited to, the training created in the act; and
- the WSP for the purpose of funding the statewide SAK tracking system and funding the forensic analysis of SAKs.

Private Funds for Sexual Assault Kits. Disbursements of private funds in the Washington SAK Account are changed to the following:

- 30 percent for the Washington SAKI Pilot Project;
- 30 percent for the CJTC for the training requirements in the act;
- 10 percent for the OCVA for services to victims of sexual assault and training for professionals interacting with and providing services to victims of sexual assault; and
- 30 percent for the WSP for testing SAKs in the possession of a law enforcement agency but not submitted for forensic testing as of July 24, 2015, unless the WSP deems the funds are not necessary, in which case the funds must be divided equally to the other purposes above.

A grantor of funds may enter into an agreement with the Department of Commerce for a different allocation of funds, provided that the funds are distributed for the purpose of the SAK Program. Within 30 days of entering into an agreement, the Department of Commerce must notify the SAFE Best Practices Task Force and the appropriate committees of the Legislature.

The disbursement requirements of public funds in the account are unchanged.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains an emergency clause and Section 10 takes effect June 30, 2017. The remaining sections are effective ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is about finding justice for victims and giving law enforcement tools to track down dangerous offenders. The bill takes the important next steps after testing to pursue investigation and prosecution of the crime. Other jurisdictions are finding that following up on the untested SAKs are assisting them in tracking down serial rapists with a 90 percent conviction rate. There are 400,000 untested kits nationwide. We also need to address training for those who come into contact with sexual assault victims to ensure they are not re-traumatized in the process.

Supporting victims of sexual assault has been a multi-year effort by the legislature. The Legislature has previously determined that victims deserve to have their SAK tested and

deserve to be able to track the progress of that testing through the system. This bill addresses the next steps by ensuring that victims have their crimes investigated and brought to justice. It also ensures the persons with whom they come into contact with in the process communicate with them in a way that is well received and not in a way that pushes them out of the criminal justice process.

Persons Testifying: PRO: Representative Tina Orwall, Prime Sponsor; Representative Gina McCabe, 14th Legislative District; James McMahan, WA Association of Sheriffs & Police Chiefs.

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