
SUBSTITUTE HOUSE BILL 2353

State of Washington

65th Legislature

2018 Regular Session

By House Public Safety (originally sponsored by Representatives Orwall, McCabe, Van Werven, Goodman, Hansen, Peterson, Johnson, Morris, Wylie, Kilduff, Chapman, Sells, Kagi, Senn, McDonald, Kirby, Stanford, Blake, Reeves, Macri, Stambaugh, Jinkins, Steele, Appleton, Doglio, Griffey, Kraft, Pollet, Valdez, Riccelli, Young, Dolan, and Gregerson)

READ FIRST TIME 01/30/18.

1 AN ACT Relating to supporting sexual assault survivors; amending
2 RCW 43.43.545, 43.101.272, and 70.125.090; amending 2017 c 290 s 2
3 (uncodified); adding new sections to chapter 70.125 RCW; creating a
4 new section; and providing an expiration date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** 2017 c 290 s 2 (uncodified) is amended to read as
7 follows:

8 (1)(a) The joint legislative task force on sexual assault
9 forensic examination best practices is established for the purpose of
10 reviewing best practice models for managing all aspects of sexual
11 assault (~~(examinations)~~) investigations and for reducing the number
12 of untested sexual assault examination kits in Washington state
13 (~~(that were collected prior to the effective date of this section)~~).

14 (i) The caucus leaders from the senate shall appoint one member
15 from each of the two largest caucuses of the senate.

16 (ii) The caucus leaders from the house of representatives shall
17 appoint one member from each of the two largest caucuses of the house
18 of representatives.

19 (iii) The president of the senate and the speaker of the house of
20 representatives shall jointly appoint:

21 (A) One member representing each of the following:

1 (I) The Washington state patrol;
2 (II) The Washington association of sheriffs and police chiefs;
3 (III) The Washington association of prosecuting attorneys;
4 (IV) The Washington defender association or the Washington
5 association of criminal defense lawyers;
6 (V) The Washington association of cities;
7 (VI) The Washington association of county officials;
8 (VII) The Washington coalition of sexual assault programs;
9 (VIII) The office of crime victims advocacy;
10 (IX) The Washington state hospital association;
11 (X) The Washington state forensic investigations council;
12 (XI) A public institution of higher education as defined in RCW
13 28B.10.016;
14 (XII) A private higher education institution as defined in RCW
15 28B.07.020; (~~and~~)
16 (XIII) The office of the attorney general; and
17 (XIV) A sexual assault nurse examiner; and
18 (B) Two members representing survivors of sexual assault.
19 (b) The task force shall choose two cochairs from among its
20 legislative membership. The legislative membership shall convene the
21 initial meeting of the task force.
22 (2) The duties of the task force include, but are not limited to:
23 (a) Researching and determining the number of untested sexual
24 assault examination kits in Washington state;
25 (b) Researching the locations where the untested sexual assault
26 examination kits are stored;
27 (c) Researching, reviewing, and making recommendations regarding
28 legislative policy options for reducing the number of untested sexual
29 assault examination kits;
30 (d) Researching the best practice models both in state and from
31 other states for collaborative responses to victims of sexual assault
32 from the point the sexual assault examination kit is collected to the
33 conclusion of the investigation and prosecution of a case, and
34 providing recommendations regarding any existing gaps in Washington
35 and resources that may be necessary to address those gaps; (~~and~~)
36 (e) Researching, identifying, and making recommendations for
37 securing nonstate funding for testing the sexual assault examination
38 kits, and reporting on progress made toward securing such funding;
39 (f) Monitoring implementation of state and federal legislative
40 changes;

1 (g) Collaborating with the office of the attorney general to
2 implement reforms pursuant to federal grant requirements; and

3 (h) Making recommendations for institutional reforms necessary to
4 prevent sexual assault and improve the experiences of sexual assault
5 survivors in the criminal justice system.

6 (3) Staff support for the task force must be provided by the
7 senate committee services and the house of representatives office of
8 program research.

9 (4) Legislative members of the task force must be reimbursed for
10 travel expenses in accordance with RCW 44.04.120. Nonlegislative
11 members, except those representing an employer or organization, are
12 entitled to be reimbursed for travel expenses in accordance with RCW
13 43.03.050 and 43.03.060.

14 (5) The expenses of the task force must be paid jointly by the
15 senate and the house of representatives. Task force meetings and
16 expenditures are subject to approval by the senate facilities and
17 operations committee and the house of representatives executive rules
18 committee, or their successor committees.

19 (6) The first meeting of the task force must occur prior to
20 October 1, 2015. The task force shall submit a preliminary report
21 regarding its initial findings and recommendations to the appropriate
22 committees of the legislature and the governor no later than December
23 1, 2015.

24 (7) The task force must meet no less than twice annually.

25 (8) The task force shall report its findings and recommendations
26 to the appropriate committees of the legislature and the governor by
27 September 30, 2016, and by December 1st of (~~the following~~) each
28 subsequent year.

29 (9) This section expires (~~June~~) September 30, (~~2018~~) 2020.

30 **Sec. 2.** RCW 43.43.545 and 2016 c 173 s 2 are each amended to
31 read as follows:

32 (1) The Washington state patrol shall create and operate a
33 statewide sexual assault kit tracking system. The Washington state
34 patrol may contract with state or nonstate entities including, but
35 not limited to, private software and technology providers, for the
36 creation, operation, and maintenance of the system.

37 (2) The statewide sexual assault kit tracking system must:

38 (a) Track the location and status of sexual assault kits
39 throughout the criminal justice process, including the initial

1 collection in examinations performed at medical facilities, receipt
2 and storage at law enforcement agencies, receipt and analysis at
3 forensic laboratories, and storage and any destruction after
4 completion of analysis;

5 (b) Allow medical facilities performing sexual assault forensic
6 examinations, law enforcement agencies, prosecutors, the Washington
7 state patrol bureau of forensic laboratory services, and other
8 entities in the custody of sexual assault kits to update and track
9 the status and location of sexual assault kits;

10 (c) Allow victims of sexual assault to anonymously track or
11 receive updates regarding the status of their sexual assault kits;
12 and

13 (d) Use electronic technology or technologies allowing continuous
14 access.

15 (3) The Washington state patrol may use a phased implementation
16 process in order to launch the system and facilitate entry and use of
17 the system for required participants. The Washington state patrol may
18 phase initial participation according to region, volume, or other
19 appropriate classifications. All entities in the custody of sexual
20 assault kits shall fully participate in the system no later than June
21 1, 2018. The Washington state patrol shall submit a report on the
22 current status and plan for launching the system, including the plan
23 for phased implementation, to the joint legislative task force on
24 sexual assault forensic examination best practices, the appropriate
25 committees of the legislature, and the governor no later than January
26 1, 2017.

27 (4) The Washington state patrol shall submit a semiannual report
28 on the statewide sexual assault kit tracking system to the joint
29 legislative task force on sexual assault forensic examination best
30 practices, the appropriate committees of the legislature, and the
31 governor. The Washington state patrol may publish the current report
32 on its web site. The first report is due July 31, 2018, and
33 subsequent reports are due January 31st and July 31st of each year.
34 The report must include the following:

35 (a) The total number of sexual assault kits in the system
36 statewide and by jurisdiction;

37 (b) The total and semiannual number of sexual assault kits where
38 forensic analysis has been completed statewide and by jurisdiction;

39 (c) The number of sexual assault kits added to the system in the
40 reporting period statewide and by jurisdiction;

1 (d) The total and semiannual number of sexual assault kits where
2 forensic analysis has been requested but not completed statewide and
3 by jurisdiction;

4 (e) The average and median length of time for sexual assault kits
5 to be submitted for forensic analysis after being added to the
6 system, including separate sets of data for all sexual assault kits
7 in the system statewide and by jurisdiction and for sexual assault
8 kits added to the system in the reporting period statewide and by
9 jurisdiction;

10 (f) The average and median length of time for forensic analysis
11 to be completed on sexual assault kits after being submitted for
12 analysis, including separate sets of data for all sexual assault kits
13 in the system statewide and by jurisdiction and for sexual assault
14 kits added to the system in the reporting period statewide and by
15 jurisdiction;

16 (g) The total and semiannual number of sexual assault kits
17 destroyed or removed from the system statewide and by jurisdiction;

18 (h) The total number of sexual assault kits, statewide and by
19 jurisdiction, where forensic analysis has not been completed and six
20 months or more have passed since those sexual assault kits were added
21 to the system; and

22 (i) The total number of sexual assault kits, statewide and by
23 jurisdiction, where forensic analysis has not been completed and one
24 year or more has passed since those sexual assault kits were added to
25 the system.

26 (5) For the purpose of reports under subsection (4) of this
27 section, a sexual assault kit must be assigned to the jurisdiction
28 associated with the law enforcement agency anticipated to receive the
29 sexual assault kit or otherwise in the custody of the sexual assault
30 kit.

31 (6) Any public agency or entity, including its officials and
32 employees, and any hospital and its employees providing services to
33 victims of sexual assault may not be held civilly liable for damages
34 arising from any release of information or the failure to release
35 information related to the statewide sexual assault kit tracking
36 system, so long as the release was without gross negligence.

37 (7) The Washington state patrol shall adopt rules as necessary to
38 implement this section.

1 **Sec. 3.** RCW 43.101.272 and 2017 c 290 s 3 are each amended to
2 read as follows:

3 (1) Subject to the availability of amounts appropriated for this
4 specific purpose, the commission shall provide ongoing specialized,
5 intensive, and integrative training for persons responsible for
6 investigating sexual assault cases involving adult victims. The
7 training must be based on a victim-centered, trauma-informed approach
8 to responding to sexual assault. Among other subjects, the training
9 must include content on the neurobiology of trauma and trauma-
10 informed interviewing, counseling, and investigative techniques.

11 (2) The training must: Be based on research-based practices and
12 standards; offer participants an opportunity to practice interview
13 skills and receive feedback from instructors; minimize the trauma of
14 all persons who are interviewed during abuse investigations; provide
15 methods of reducing the number of investigative interviews necessary
16 whenever possible; assure, to the extent possible, that investigative
17 interviews are thorough, objective, and complete; recognize needs of
18 special populations; recognize the nature and consequences of
19 victimization; require investigative interviews to be conducted in a
20 manner most likely to permit the interviewed persons the maximum
21 emotional comfort under the circumstances; address record retention
22 and retrieval; ~~((and))~~ address documentation of investigative
23 interviews; and educate investigators on the best practices for
24 notifying victims of the results of forensic analysis of sexual
25 assault kits and other significant events in the investigative
26 process, including for active investigations and cold cases.

27 (3) In developing the training, the commission shall seek advice
28 from the Washington association of sheriffs and police chiefs, the
29 Washington coalition of sexual assault programs, and experts on
30 sexual assault and the neurobiology of trauma. The commission shall
31 consult with the Washington association of prosecuting attorneys in
32 an effort to design training containing consistent elements for all
33 professionals engaged in interviewing and interacting with sexual
34 assault victims in the criminal justice system.

35 (4) The commission shall develop the training and begin offering
36 it by July 1, 2018. Officers assigned to regularly investigate sexual
37 assault involving adult victims shall complete the training within
38 one year of being assigned or by July 1, 2020, whichever is later.

1 **Sec. 4.** RCW 70.125.090 and 2015 c 247 s 1 are each amended to
2 read as follows:

3 (1) When a law enforcement agency receives a sexual assault
4 examination kit, the law enforcement agency must, within thirty days
5 of its receipt, submit a request for laboratory examination to the
6 Washington state patrol crime laboratory for prioritization for
7 testing by it or another accredited laboratory that holds an
8 outsourcing agreement with the Washington state patrol if:

9 (a) Consent has been given by the victim; or

10 (b) The victim is a person under the age of eighteen who is not
11 emancipated pursuant to chapter 13.64 RCW.

12 (2) Subject to available funding, the Washington state patrol
13 crime laboratory must give priority to the laboratory examination of
14 sexual assault examination kits at the request of a local law
15 enforcement agency for:

16 (a) Active investigations and cases with impending court dates;

17 (b) Active investigations where public safety is an immediate
18 concern;

19 (c) Violent crimes investigations, including active sexual
20 assault investigations;

21 (d) Postconviction cases; and

22 (e) Other crimes' investigations and nonactive investigations,
23 such as previously unsubmitted older sexual assault kits or recently
24 collected sexual assault kits that the submitting agency has
25 determined to be lower priority based on their initial investigation.

26 (3) The failure of a law enforcement agency to submit a request
27 for laboratory examination within the time prescribed under this
28 section does not constitute grounds in any criminal proceeding for
29 challenging the validity of a DNA evidence association, and any
30 evidence obtained from the sexual assault examination kit may not be
31 excluded by a court on those grounds.

32 (4) A person accused or convicted of committing a crime against a
33 victim has no standing to object to any failure to comply with the
34 requirements of this section, and the failure to comply with the
35 requirements of this section is not grounds for setting aside the
36 conviction or sentence.

37 (5) Nothing in this section may be construed to create a private
38 right of action or claim on the part of any individual, entity, or
39 agency against any law enforcement agency or any contractor of any
40 law enforcement agency.

1 (6) This section applies prospectively only and not
2 retroactively. It only applies to sexual assault examinations
3 performed on or after July 24, 2015.

4 (7)(a) Until June 30, (~~2018~~) 2022, the Washington state patrol
5 shall compile the following information related to the sexual assault
6 examination kits identified in this section and section 5 of this
7 act:

8 (i) The number of requests for laboratory examination made for
9 sexual assault examination kits and the law enforcement agencies that
10 submitted the requests; and

11 (ii) The progress made towards testing the sexual assault
12 examination kits, including the status of requests for laboratory
13 examination made by each law enforcement agency.

14 (b) The Washington state patrol shall make recommendations for
15 increasing the progress on testing any untested sexual assault
16 examination kits.

17 (c) Beginning in 2015, the Washington state patrol shall report
18 its findings and recommendations annually to the appropriate
19 committees of the legislature and the governor by December 1st of
20 each year.

21 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.125
22 RCW to read as follows:

23 (1) Law enforcement agencies shall submit requests for forensic
24 analysis of all sexual assault kits collected prior to July 24, 2015,
25 and in the possession of the agencies to the Washington state patrol
26 crime laboratory by January 1, 2019, except submission for forensic
27 analysis is not required when: (a) Forensic analysis has previously
28 been conducted; (b) there is documentation of an adult victim or
29 emancipated minor victim expressing that he or she does not want his
30 or her sexual assault kit submitted for forensic analysis; or (c) a
31 sexual assault kit is noninvestigatory and held by a law enforcement
32 agency pursuant to an agreement with a hospital or other medical
33 provider. The requirements of this subsection apply regardless of the
34 statute of limitations or the status of any related investigation.

35 (2) The Washington state patrol crime laboratory may consult with
36 local law enforcement agencies to coordinate the efficient submission
37 of requests for forensic analysis under this section in conjunction
38 with the implementation of the statewide tracking system under RCW
39 43.43.545, provided that all requests are submitted by January 1,

1 2019. The Washington state patrol crime laboratory shall facilitate
2 the forensic analysis of all sexual assault kits submitted under this
3 section by December 1, 2021. The analysis may be conducted by the
4 Washington state patrol laboratory or an accredited laboratory
5 holding a contract or agreement with the Washington state patrol. The
6 Washington state patrol shall process the forensic analysis of sexual
7 assault kits in accordance with the priorities in RCW 70.125.090(2).

8 (3) The failure of a law enforcement agency to submit a request
9 for laboratory examination within the time prescribed under this
10 section does not constitute grounds in any criminal proceeding for
11 challenging the validity of a DNA evidence association, and any
12 evidence obtained from the sexual assault kit may not be excluded by
13 a court on those grounds.

14 (4) A person accused or convicted of committing a crime against a
15 victim has no standing to object to any failure to comply with the
16 requirements of this section, and the failure to comply with the
17 requirements of this section is not grounds for setting aside the
18 conviction or sentence.

19 (5) Nothing in this section may be construed to create a private
20 right of action or claim on the part of any individual, entity, or
21 agency against any law enforcement agency or any contractor of any
22 law enforcement agency.

23 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.125
24 RCW to read as follows:

25 (1) In addition to all other rights provided in law, a sexual
26 assault survivor has the right to:

27 (a) Receive a medical forensic examination at no cost;

28 (b) Consult with a sexual assault survivor's advocate during any
29 medical evidentiary examination and during any interview by law
30 enforcement officers, prosecuting attorneys, or defense attorneys,
31 unless an advocate cannot be summoned in a timely manner, and
32 regardless of whether a survivor has waived the right in a previous
33 examination or interview;

34 (c) Be informed, upon the request of a survivor, of when the
35 forensic analysis of his or her sexual assault kit and other related
36 physical evidence will be or was completed, the results of the
37 forensic analysis, and whether the analysis yielded a DNA profile and
38 match, provided that the disclosure is made at an appropriate time so
39 as to not impede or compromise an ongoing investigation;

1 (d) Receive notice prior to the destruction or disposal of his or
2 her sexual assault kit;

3 (e) Receive a copy of the police report related to the
4 investigation without charge; and

5 (f) Review his or her statement before law enforcement refers a
6 case to the prosecuting attorney.

7 (2) A sexual assault survivor retains all the rights of this
8 section regardless of whether the survivor agrees to participate in
9 the criminal justice system and regardless of whether the survivor
10 agrees to receive a forensic examination to collect evidence.

11 (3) If a survivor is denied any right enumerated in subsection
12 (1) of this section, he or she may seek an order directing compliance
13 by the relevant party or parties by filing a petition in the superior
14 court in the county in which the sexual assault occurred and
15 providing notice of such petition to the relevant party or parties.
16 Compliance with the right is the sole remedy available to the
17 survivor. The court shall expedite consideration of a petition filed
18 under this subsection.

19 (4) Nothing contained in this section may be construed to provide
20 grounds for error in favor of a criminal defendant in a criminal
21 proceeding. Except in the circumstances as provided in subsection (3)
22 of this section, this section does not grant a new cause of action or
23 remedy against the state, its political subdivisions, law enforcement
24 agencies, or prosecuting attorneys. The failure of a person to make a
25 reasonable effort to protect or adhere to the rights enumerated in
26 this section may not result in civil liability against that person.
27 This section does not limit other civil remedies or defenses of the
28 sexual assault survivor or the offender.

29 (5) For the purposes of this section:

30 (a) "Law enforcement officer" means a general authority
31 Washington peace officer, as defined in RCW 10.93.020, or any person
32 employed by a private police agency at a public school as described
33 in RCW 28A.150.010 or an institution of higher education, as defined
34 in RCW 28B.10.016.

35 (b) "Sexual assault survivor" means any person who is a victim,
36 as defined in RCW 7.69.020, of sexual assault. However, if a victim
37 is incapacitated, deceased, or a minor, sexual assault survivor also
38 includes any lawful representative of the victim, including a parent,
39 guardian, spouse, or other designated representative, unless the
40 person is an alleged perpetrator or suspect.

1 (c) "Sexual assault survivor's advocate" means any person who is
2 defined in RCW 5.60.060 as a sexual assault advocate, or a crime
3 victim advocate.

4 NEW SECTION. **Sec. 7.** The office of the attorney general is
5 authorized and encouraged to facilitate the hosting of the sexual
6 assault kit initiative summit in conjunction with any conditions of
7 federal funds granted to the state through the sexual assault kit
8 initiative. The attorney general may use its contracting authority
9 and use, when appropriate, public and private moneys for the purpose
10 of hosting the summit.

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