
Public Safety Committee

HB 2318

Brief Description: Advancing criminal investigatory practices.

Sponsors: Representatives Orwall, Lovick, Slatter, Morgan, Wylie, Mosbrucker and Pollet.

Brief Summary of Bill

- Requires agencies to preserve criminal investigatory records related to deoxyribonucleic acid (DNA) work product.
- Defines "sexual assault kit" (SAK) as it relates to state law on DNA work product preservation and SAK preservation, testing, and tracking as including all evidence collected during a sexual assault medical forensic examination.
- Establishes storage and preservation requirements for unreported SAKs.
- Requires convicted offenders who will not immediately be taken into custody to provide any required DNA sample before leaving the courtroom.
- Requires the Criminal Justice Training Commission to develop a proposal for a case review program.

Hearing Date: 1/14/20

Staff: Kelly Leonard (786-7147).

Background:

Deoxyribonucleic acid (DNA) and other biological evidence is collected from crime scenes, victims, and potential suspects for the purpose of supporting criminal investigations. This includes, for example, identifying suspects, reconstructing crimes, connecting serial cases, and exonerating wrongfully accused or convicted persons.

The Washington State Patrol (WSP) Crime Laboratory provides forensic DNA analysis services to local law enforcement agencies, assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court, and expert testimony in

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.

court on DNA evidentiary issues. WSP also maintains the state Combined DNA Index System (CODIS), which assists with identifying suspects in criminal investigations as well as identifying human remains and missing persons.

DNA Work Product.

In any felony case, a sentencing court may order the preservation of biological material or other evidence. The court must specify the samples to be maintained and the length of time the samples must be preserved. In the absence of a court order, preservation practices generally vary across the state. However, in 2015 the state established certain preservation requirements for DNA work product secured in connection with certain types of criminal cases.

DNA work product includes: Product generated during the process of scientific analysis of material, with some exceptions; and any material catalogued on a microscope slide, swab, in a sample tube, cutting, DNA extract, or some other similar retention method used to isolate potential biological evidence collected by law enforcement as part of its investigation and prepared for scientific analysis, whether or not it is submitted for analysis and derived from the contents of a sexual assault kit (SAK), blood, semen, hair, saliva, skin tissue, fingerprints, bones, teeth, or any other identifiable human biological material or physical evidence.

Agencies must preserve DNA work product collected in any felony case initially charged as a violent or sex offense. The mandated period for preservation depends upon whether a defendant has been identified, charged, and convicted, and it varies from the length of a sentence to 99 years.

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 evidence left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a SAK, also commonly referred to as a rape kit. Evidence from the SAK may be used during an investigation and subsequent criminal prosecution. In recent years, the state has established several requirements pertaining to the preservation, tracking, and testing of SAKs. However, state law does not define the term SAK nor does it specify what is or is not included in the SAK for the purposes of current requirements.

Mandatory Testing. A law enforcement agency is required to submit a request for testing to the WSP Crime Laboratory within 30 days of receiving a SAK, 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 mandatory testing requirement was prospective as of July 24, 2015, meaning it does not apply to previously unsubmitted SAKs. Beginning May 1, 2022, the WSP must complete testing of a SAK within 45 days of receiving the request.

For previously unsubmitted SAKs collected before July 24, 2015, law enforcement agencies must have submitted requests for testing by October 1, 2019, and the WSP must complete testing by December 1, 2021.

Tracking. The WSP operates the Statewide SAK Tracking System for the purpose of tracking the location and status of all SAKs from the point of collection and then throughout the criminal justice process. Local law enforcement agencies, prosecutors, hospitals, and the WSP are required to participate in the system. The system also allows sexual assault survivors to anonymously track their SAKs.

Unreported SAKs. An "unreported SAK" refers to a SAK collected from an adult or emancipated minor victim who has consented to the collection of the SAK but who has not reported the alleged crime to law enforcement. In 2019 the state established temporary storage and preservation requirements for unreported SAKs. Unreported SAKs collected prior to April 23, 2019, must be stored and preserved by the entity responsible for the collection, while those collected on or after that date must be stored and preserved by the WSP Crime Laboratory. These requirements expire June 30, 2020.

Offender DNA for Entry into CODIS.

State law requires the collection of biological samples from certain convicted offenders for the purpose of entering a DNA profile into the CODIS Offender Index. The profile is searched against other indexes and may result in investigative leads. Investigative leads may be due to a DNA profile matching another profile in the Forensic Index, including profiles generated from crime scene evidence.

Various entities are responsible for collecting the samples. For a person who is sentenced to a term of confinement at a state or local correctional or rehabilitative facility, the facility collects the sample. For a person who will not serve any term of confinement, the court must order the person to report to the local police department or sheriff's office and provide a sample by a deadline established by the court.

A person who willfully refuses to comply with a legal request for a DNA sample is guilty of a gross misdemeanor.

Summary of Bill:

DNA Work Product.

The requirements for preserving DNA work product in forensic cases are modified. DNA work product also includes the same materials collected by forensic nurses. Law enforcement agencies must also preserve criminal investigatory records related to DNA work product.

Sexual Assault Kits (SAKs).

"Sexual assault kit" (SAK), as it relates to state law on DNA work product and SAK preservation, testing, and tracking, is defined as including all evidence collected during a sexual assault medical forensic examination.

Tracking and Testing. The Statewide SAK Tracking System must include information as to whether a particular SAK contains materials collected for forensic toxicological analysis. The

requirements for mandatory testing of SAKs does not include toxicological analysis. Law enforcement agencies retain discretion to determine whether to request toxicological analysis.

Unreported SAKs. Beginning June 30, 2020, unreported SAKs must be transported from the collecting entity to the respective local law enforcement agency which the collecting entity or WSP reasonably believes would have jurisdiction to investigate any related criminal allegations if they were to be reported to law enforcement. Unreported sexual assault kits collected prior to June 30, 2020, must be transported from either the collecting entity or WSP according to the same requirements by January 1, 2021. Local law enforcement agencies must store and preserve any unreported SAK for 20 years from the date of collection.

Offender DNA for Entry into CODIS.

For convicted offenders who will not immediately be taken into custody and who are required to provide a biological sample, the court must order the person to immediately provide the sample. The sample must be taken prior to the person leaving the presence of the court by the local police department, sheriff's office, or other entity designated by the court.

Case Reviews.

Subject to a specific appropriation, the Criminal Justice Training Commission (CJTC) must develop a proposal for a case review program. The CJTC is required to research, design, and develop case review strategies designed to optimize outcomes in sexual assault investigations through improved training and investigatory practices. The CJTC must consult with specified entities and may form a multidisciplinary work group. The CJTC must submit a report with its proposal to the Governor and Legislature by December 1, 2020.

Appropriation: None.

Fiscal Note: Requested on January 10, 2020.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 3, relating to the storage of unreported sexual assault kits, which takes effect June 30, 2020.