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**ENGROSSED SUBSTITUTE HOUSE BILL 1109**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** House Public Safety (originally sponsored by Representatives Orwall, Mosbrucker, Simmons, Goodman, Leavitt, Valdez, Kloba, Graham, Morgan, Caldier, Rule, and Macri)

AN ACT Relating to supporting victims of sexual assault; amending RCW 43.101.278 and 70.125.110; and adding new sections to chapter 5.70 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 5.70 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the association must, in consultation with the office of the attorney general, collect information on the investigational status of any sexual assault case where the sexual assault kit was in the possession of the law enforcement agency and a request for forensic examination had not been submitted by the law enforcement agency to the Washington state patrol crime laboratory as of July 24, 2015. The association must work with law enforcement agencies to update the investigational status of each open case not less than semiannually. Beginning in 2022, the association must submit reports on the information collected pursuant to this section to the governor and appropriate committees of the legislature by January 1st and July 1st of each year.

(2) For the purposes of this section:

(a) "Association" means the Washington association of sheriffs and police chiefs.

(b) "Investigational status" means:

(i) The agency case or incident number;

(ii) The date the request for forensic examination of the sexual
assault kit was submitted to the Washington state patrol crime
laboratory;

(iii) The date the forensic examination was complete and reported
to the law enforcement agency;

(iv) Whether the case is open or closed;

(v) For open cases, whether the case remains:

(A) An active investigation;

(B) Open pending forensic examination results; or

(C) Open and inactive, in which case the agency must include a brief description as to why the case is inactive; and

(vi) For closed cases, whether the case was closed as a result of:

(A) A referral for prosecution where charges were filed or the prosecutor is reviewing the case;

(B) A referral for prosecution where the prosecutor declined to file charges based on the case being legally insufficient;

(C) A referral for prosecution where the prosecutor declined to files charges because the case failed to meet prosecutorial charging standards;

(D) After reviewing the results of the forensic examination, there was no evidence that a crime occurred, or there was lack of probable cause that a crime occurred;

(E) The inability to locate the victim or lack of victim participation; or

(F) Any other reason, in which case the agency must include a brief description as to why the case closed.

(3) Nothing in this section may be interpreted to require any law enforcement agency to disclose any information that would jeopardize an active criminal investigation.

NEW SECTION. **Sec.**  A new section is added to chapter 5.70 RCW to read as follows:

(1) For any sexual assault kit under RCW 5.70.050 where forensic analysis has generated a profile that has resulted in a hit in the combined DNA index system, the office of the attorney general may request information from the applicable law enforcement agency and prosecuting attorney as to the case status of any related criminal investigation and prosecution, including information as provided under section 1(2)(b) of this act as well as any other relevant information. The law enforcement agency and prosecuting attorney shall provide requested case status updates to the office of the attorney general. The office of the attorney general shall consult with the Washington association of sheriffs and police chiefs when developing any procedures for requesting and collecting case status updates under this section.

(2) Nothing in this section may be interpreted to require any law enforcement agency or prosecuting attorney to disclose any information that would jeopardize an active criminal investigation or prosecution.

**Sec.**  RCW 43.101.278 and 2020 c 26 s 8 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the commission shall ((~~develop a proposal for a~~)) conduct an annual case review program. The ((~~commission shall research, design, and develop case review strategies designed to optimize outcomes in sexual assault investigations through improved~~)) program must review case files from law enforcement agencies and prosecuting attorneys selected by the commission in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. The ((~~proposed~~)) program must ((~~evaluate~~)) include:

(a) An evaluation of whether current training and practices foster a trauma-informed, victim-centered approach to victim interviews and that identifies best practices and current gaps in training and assesses the integration of the community resiliency model((~~. The program will include a~~));

(b) 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 will also include other randomly~~));

(c) Randomly selected cases for a systematic review to assess whether current practices conform to national best practices for a multidisciplinary approach to investigating sexual assault cases and interacting with survivors; and

(d) An analysis of the impact that race and ethnicity have on sexual assault case outcomes.

(2) The case review program may review and access files, including all reports and recordings, pertaining to closed cases involving allegations of adult sexual assault only. Any law enforcement agency or prosecuting attorney selected for the program by the commission shall make requested case files and other documents available to the commission, provided that the case files are not linked to ongoing, open investigations and that redactions may be made where appropriate and necessary. Agencies and prosecuting attorneys shall include available information on the race and ethnicity of all sexual assault victims in the relevant case files provided to the commission. Case files and other documents must be made available to the commission according to appropriate deadlines established by the commission in consultation with the agency or prosecuting attorney.

(3) If a law enforcement agency has not participated in the training under RCW 43.101.272 by July 1, 2022, the commission may prioritize the agency for selection to participate in the program under this section.

(4) In designing and conducting the program, the commission shall consult and collaborate with experts in trauma-informed and victim-centered training, experts in sexual assault investigations and prosecutions, victim advocates, and other stakeholders identified by the commission. The commission may form a multidisciplinary working group for the purpose of carrying out the requirements of this section.

((~~(3)~~)) (5) The commission shall submit a report with a summary of its ((~~proposal~~)) work to the governor and the appropriate committees of the legislature by December ((~~1, 2020~~)) 1st of each year.

((~~(4) This section expires July 1, 2021.~~))

**Sec.**  RCW 70.125.110 and 2019 c 93 s 9 are each amended to read as follows:

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

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

(b) Receive written notice of the right under (a) of this subsection and that he or she may be eligible for other benefits under the crime victim compensation program, through a form developed by the office of crime victims advocacy, from the medical facility providing the survivor medical treatment relating to the sexual assault;

(c) Receive a referral to an accredited community sexual assault program or, in the case of a survivor who is a minor, receive a connection to services in accordance with the county child sexual abuse investigation protocol under RCW 26.44.180, which may include a referral to a children's advocacy center, when presenting at a medical facility for medical treatment relating to the assault and also when reporting the assault to a law enforcement officer;

(d) Consult with a sexual assault survivor's advocate throughout the investigatory process and prosecution of the survivor's case, including during ((~~any~~)): Any medical evidentiary examination ((~~and during~~)) at a medical facility; any interview by law enforcement officers, prosecuting attorneys, or defense attorneys((~~, unless an advocate cannot be summoned in a timely manner,~~)); and court proceedings, except while providing testimony in a criminal trial, in which case the advocate may be present in the courtroom. Medical facilities, law enforcement officers, prosecuting attorneys, defense attorneys, courts and other applicable criminal justice agencies, including correctional facilities, are responsible for providing advocates access to facilities where necessary to fulfill the requirements under this subsection. The right in this subsection applies regardless of whether a survivor has waived the right in a previous examination or interview;

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

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

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

~~(f)~~)) (h) Review his or her statement before law enforcement refers a case to the prosecuting attorney;

(i) Receive timely notifications from the law enforcement agency and prosecuting attorney as to the status of the investigation and any related prosecution of the survivor's case;

(j) Be informed by the law enforcement agency and prosecuting attorney as to the expected and appropriate time frames for receiving responses to the survivor's inquiries regarding the status of the investigation and any related prosecution of the survivor's case; and further, receive responses to the survivor's inquiries in a manner consistent with those time frames;

(k) Access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and

(l) Where the sexual assault survivor is a minor, have:

(i) The prosecutor consider and discuss the survivor's requests for remote video testimony under RCW 9A.44.150 when appropriate; and

(ii) The court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom in order to facilitate the survivor's testimony and participation in the criminal justice process.

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

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

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

(5) For the purposes of this section:

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

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

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

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