

# SENATE BILL REPORT

## 2SHB 1028

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As of March 29, 2023

**Title:** An act relating to supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

**Brief Description:** Supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses in the legal system.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Orwall, Mosbrucker, Ryu, Simmons, Goodman, Reed, Lekanoff, Pollet, Callan, Doglio, Macri, Caldier, Reeves, Wylie, Gregerson, Davis, Ormsby and Fosse).

**Brief History:** Passed House: 3/6/23, 95-0.

**Committee Activity:** Law & Justice: 3/16/23, 3/22/23 [DPA-WM].

Ways & Means: 3/30/23.

### Brief Summary of Amended Bill

- Reestablishes the Sexual Assault Forensic Examination Best Practices Advisory Group.
- Modifies provisions related to medical disclosure authorization for a forensic examination, statute of limitations for sex offenses, evidentiary procedures regarding a defendant's use of a victim's social media account to prove consent, and statutory rights of victims and survivors.
- Modifies the curriculum and requirements for certain training programs offered by the Criminal Justice Training Commission (CJTC) and requires CJTC to administer a grant program to establish a statewide resource prosecutor for sexual assault cases.
- Establishes biological sample collection procedures for jails, prisons, and sentencing courts for convicted persons required to provide a sample.

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

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## SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

**Staff:** Ryan Giannini (786-7285)

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Sarian Scott (786-7729)

**Background:** Sexual Assault Forensic Examination Best Practices Advisory Group. In 2019, the state established the Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE Advisory Group) within the Attorney General's Office and directed the SAFE Advisory Group to reduce the number of untested Sexual Assault Kits (SAKs) and review best practice models for managing all aspects of sexual assault investigations. The SAFE Advisory Group expired on December 31, 2021, but was funded through fiscal year 2023 through the 2022 budget.

Uniform Health Care Information Act. The state Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or written authorization by the patient. To be valid, a disclosure authorization to a health care provider or health care facility must:

- be in writing, dated, and signed by the patient;
- identify the nature of the information to be disclosed;
- identify the name and institutional affiliation of the person to whom the information will be disclosed;
- identify the provider making the disclosure;
- identify the patient; and
- contain an expiration date or an expiration event that relates to the patient or the purpose of the disclosure.

Statute of Limitations for Sex Offenses. A statute of limitations provides an authorized period of time for initiating a prosecution after a crime is committed. Once the applicable statute of limitations has expired, a prosecutor is barred from bringing charges against the alleged perpetrator. Statutes of limitations vary depending on the crime.

In a prosecution for a sex offense, the applicable statute of limitation runs from whichever of the following dates is later:

- the date the crime was committed; or
- two years from the date the identity of the suspect is conclusively established by

deoxyribonucleic acid (DNA) testing or by photograph.

Criminal Justice Training Commission. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for new recruits prior to certification as well as advanced training and educational programming for officers, including the following:

- training for officers who do not regularly investigate sexual assault cases on a victim-centered, trauma-informed approach to interacting with sexual assault victims; and
- specialized training for officers who are responsible for investigating sexual assault cases involving adult victims, which applicable officers must complete within one year of being assigned.

CJTC must conduct an annual, ongoing case review program to review case files from select law enforcement agencies and prosecuting attorneys to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. If a law enforcement agency has not participated in CJTC's specialized training for officers who are responsible for investigating sexual assault cases involving adult victims by July 1, 2022, CJTC may prioritize the agency for selection to participate in the case review program.

Biological Samples. The Washington State Patrol (WSP) operates and maintains a DNA identification system. The purpose of the system is to aid in criminal investigations, and to identify human remains or missing persons. The Forensic Laboratory Services Bureau of WSP is responsible for testing biological samples for inclusion in the DNA database.

Biological samples must be collected from any person who has been convicted of a felony, any person who is required to register as a sex offender or kidnapping offender, or any person convicted of the following list of specified misdemeanors or gross misdemeanors:

- assault in the fourth degree where domestic violence was pleaded and proven;
- assault in the fourth degree with sexual motivation;
- communication with a minor for immoral purposes;
- custodial sexual misconduct in the second degree;
- failure to register as a sex or kidnapping person;
- harassment;
- patronizing a prostitute;
- sexual misconduct with a minor in the second degree;
- stalking;
- indecent exposure; and
- violation of a sexual assault protection order.

Collection of Biological Samples. County and city jails are responsible for collecting biological samples for DNA analysis from persons incarcerated in their facilities. The Department of Corrections (DOC) and the Department of Children, Youth, and Families (DCYF) are responsible for collecting biological samples for DNA analysis from persons incarcerated in a state facility. Local police departments and sheriff's offices are responsible

for collecting biological samples for DNA analysis from registered sex offenders and kidnapping offenders and convicted persons who do not serve any term of confinement.

Refusal to Provide a Sample. A person who willfully refuses to comply with a legal request for a DNA sample is guilty of the crime of refusal to provide DNA. Refusal to provide DNA is a gross misdemeanor.

Evidence of Victim's Past Sexual History. In a prosecution for a sex offense, evidence of a victim's past sexual behavior is generally inadmissible to attack the credibility of the victim and to prove the victim's consent. When the perpetrator and victim engaged in sexual intercourse with each other in the past, and when the behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense. In a prosecution for the crime of rape, trafficking, or an offense related to commercial sexual abuse of a minor, such evidence is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Rights of Crime Victims, Survivors of Victims, and Witnesses. The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. A reasonable effort must be made to ensure that victims, survivors of victims, and witnesses of crimes have various rights in criminal court and juvenile court proceedings. Examples of statutory rights include the following:

- with respect to victims of violent and sex crimes—the right to have a crime victim advocate from a crime victim or witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim;
- with respect to victims and survivors of victims—the right to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified; and
- with respect to victims and survivors of victims—to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor.

**Summary of Amended Bill:** Sexual Assault Forensic Examination Best Practices Advisory Group. The SAFE Advisory Group is reestablished in the Attorney General's Office. The membership is expanded by an additional six persons with certain specified roles or expertise. The duties of the SAFE Advisory Group are modified, including by removing issues relating to the testing and storage of untested or unreported SAKs. The SAFE Advisory Group must research and make recommendations on opportunities to increase access to and availability of critical sexual assault nurse examiner services, and to continue monitoring the testing of SAKs and the supply chain and distribution of SAKs. The SAFE Advisory Group expires on July 1, 2026.

Uniform Health Care Information Act. A disclosure authorization to a health care provider or health care facility authorizing disclosure of information to law enforcement regarding a forensic examination performed for the purposes of gathering evidence for possible prosecution of a criminal offense is valid until the end of all related criminal proceedings or a later event selected by the provider, facility, patient, or patient's representative, unless the patient or patient's representative requests a different expiration date or event.

Statute of Limitations for Sex Offenses. The authorized period for commencing the prosecution of certain sex offenses is expanded. In a prosecution for a sex offense, the applicable statute of limitations runs from whichever of the following dates is later:

- the date the crime was committed; or
- four years from the date the identity of the suspect is conclusively established by DNA testing or by photograph.

Criminal Justice Training Commission. CJTC's trauma-informed training for officers who do not regularly investigate sexual assault cases is expanded to include training on all gender-based violence. All peace officers must complete the trauma-informed training every three years. CJTC's specialized training for officers investigating sexual assault cases involving adult victims is expanded to include training for investigators of gender-based violence cases, commanding officers overseeing investigations of sexual assault and gender-based violence, and prosecutors responsible for prosecuting sexual assault cases involving adult victims.

CJTC's case review program is modified to specify that:

- CJTC may prioritize case reviews for agencies that did not participate in required specialized training in the previous two years; and
- the program must include a comparison of cases involving prosecutors who have participated in CJTC's specialized training to cases involving prosecutors who have not participated in such training.

CJTC must, subject to appropriation, administer a grant program for establishing a statewide resource prosecutor for sexual assault cases. The grant recipient must be a statewide organization or association representing prosecuting attorneys. The grant recipient must hire a resource prosecutor for specified purposes. CJTC may, in consultation with the SAFE Advisory Group, establish additional conditions for any grant awarded. CJTC and statewide resource prosecutor must, subject to appropriation, partner to develop and conduct specialized, intensive, and integrative training meeting specified criteria for persons responsible for prosecuting sexual assault cases involving adult victims.

Collection of Biological Samples. Juveniles who are adjudicated of an offense which if committed by an adult would be a felony, are required to provide biological samples.

County and city jails, DOC, and DCYF are responsible for collecting biological samples for DNA analysis from persons required to provide a biological sample who are incarcerated in

their facilities. If the biological sample is not collected prior to the person's release from confinement, the responsible city or county jail facility, DOC facility, or DCYF facility must notify the sentencing court within three business days of the person's release. The sentencing court must schedule a compliance hearing within ten days of receiving a notice that a person owing a biological sample was released from confinement. The responsible city or county jail facility, DOC facility, or DCYF facility must serve the person owing a biological sample with notice of the compliance hearing and to file proof of service with the sentencing court. A representative of the city or county jail facility, DOC facility, or DCYF facility must attend the compliance hearing and obtain the person's biological sample. A court may require the facility that failed to collect the person's biological sample at the time of the person's confinement to pay attorneys' fees and court costs associated with scheduling and attending the compliance hearing.

A sentencing court is no longer required to order a convicted person required to provide a biological sample, who will not serve a term of confinement, to report to a local police department or sheriff's office to provide a biological sample. Instead, a sentencing court must order a convicted person to be administratively booked at a city or county jail for the sole purpose of providing a biological sample if the convicted person will not serve any term of confinement.

The sentencing court must create and implement a biological sample collection protocol. The sentencing court shall order the biological samples at the time of sentencing. If the biological sample is not collected at the time of sentencing, then the sample must be collected by county and city jails, DOC, DCYF, and local police departments and sheriff's offices. The sentencing court must schedule a compliance hearing within ten days of the sentence to ensure that the biological sample has been collected.

Evidence of a Victim's Past Sexual History. Inadmissible evidence of a victim's past sexual behavior includes a victim's social media account, including any text, image, video, or picture, which depict sexual content, history, activity, or communications. Such evidence may not be used to to attack a victim's credibility or to prove a victim's consent, unless the past sexual behavior on a victim's social media account relates to the offense.

Rights of Crime Victims, Survivors of Victims, and Witnesses. The statutory rights of crime victims, survivors, and witnesses apply to any adult or juvenile criminal proceeding and any sexually violent predator commitment proceeding. If a victim, survivor of a victim, or witness of a crime is denied a right, that person may seek an order directing compliance by the relevant party. Compliance with the right is the sole available remedy.

#### **EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):**

- Requires biological samples to be collected from a juvenile who is adjudicated of an offense which if committed by an adult would be a felony.
- Requires jail and prison facilities to collect biological samples before a convicted

- person required to provide a sample is released from confinement, and establishes procedures to collect biological samples if such samples are not collected prior to a person's release from confinement.
- Requires persons required to provide a biological sample who will not be confined in a jail or prison facility, to be administratively booked at a city or county jail facility for the sole purpose of providing a biological sample.
  - Requires sentencing courts to create and implement biological sample collection protocols, and to order biological samples at the time of sentencing.
  - Limits the ability of a defendant accused of sex offenses to introduce evidence of a victim's past sexual behavior on a victim's social media account to attack the victim's credibility, or to prove the victim's consent, unless the past sexual behavior on a victim's social media account relates to the offense.
  - Modifies the statutory rights of crime victims, survivors, and witnesses to apply to any adult or juvenile criminal proceeding and any sexually violent predator commitment proceeding.
  - Provides that if a victim, survivor of a victim, or witness of a crime is denied a right, that person may seek an order directing compliance by the relevant party.
  - Provides that compliance with the right is the sole available remedy.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Second Substitute House Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: Sexual assault is one of the most horrific crimes. The trauma has devastating effects on individuals and the community. This bill is a path forward to justice and will give prosecutors the tools that they need to move forward on these cases. A majority of sexual assault cases are unreported, and historically, even if they are reported, many cases were never referred for prosecution by law enforcement agencies. Extending the statute of limitations will enable cases that were impacted by COVID to move forward. There are many states that have sexual assault and domestic violence statewide resource prosecutors that provide a bridge between the training that law enforcement receive and the training that prosecutors receive. Statewide resource prosecutors are used in small rural and large urban areas to help on complex issues, like sexual assault cases, and to provide additional trainings. Expanding and mandating participation in training for trauma-informed responses to sexual violence and other forms of gender-based violence will help close the current gaps in the approach by police, investigation commanders, patrol officers, and prosecutors. Expansion of the case review process to include prosecutors will identify training gaps and bolster case outcomes.

Sections pertaining to victims' rights in sexually violent predator cases should be added back to the bill so that victims in these civil cases will have the same rights as victims in criminal cases. Many of these survivors are from marginalized communities and cannot afford resources to hire their own attorneys to represent them in depositions on these civil matters.

**Persons Testifying (Law & Justice):** PRO: Representative Tina Orwall, Prime Sponsor; Jennifer Wallace, WA State Criminal Justice Training Commission; Jennifer Ritchie, King County Prosecuting Attorney's Office; Russell Brown, WA Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying (Law & Justice):** No one.