

SENATE BILL REPORT

HB 1564

As Reported by Senate Committee On:
Law & Justice, March 22, 2023

Title: An act relating to prohibiting the sale of over-the-counter sexual assault kits.

Brief Description: Prohibiting the sale of over-the-counter sexual assault kits.

Sponsors: Representatives Mosbrucker, Orwall, Chambers, Graham, Rude and Rule.

Brief History: Passed House: 2/27/23, 96-0.

Committee Activity: Law & Justice: 3/08/23, 3/22/23 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Prohibits the sale, offering for sale, or provision to individuals of over-the-counter sexual assault kits.
- Makes violations actionable under the Consumer Protection Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon and Valdez.

Minority Report: Do not pass.

Signed by Senator McCune.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Torres, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: Sexual Assault Kits. A victim of a sexual assault may undergo a forensic

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examination for collecting evidence. The doctor or nurse conducting the examination preserves the evidence using a sexual assault kit (SAK), also commonly referred to as a rape kit. After the examination, evidence from and custody of a SAK may be transferred to a law enforcement agency to be used during an investigation and subsequent criminal prosecution.

Payment for Sexual Assault Forensic Examinations. State law prohibits hospitals and other emergency medical facilities from billing or charging a victim, directly or indirectly, for the costs of a sexual assault forensic examination. Hospitals and other emergency medical facilities may seek payment from the state through the Crime Victim Compensation Program.

Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. The attorney general is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. The courts may increase awarded damages up to three times the actual damages sustained.

Summary of Amended Bill: A person may not sell, offer for sale, or provide to a natural person an over-the-counter SAK. An over-the-counter SAK is one that:

- is marketed or presented as over-the-counter, at-home, or self-collected;
- is offered for sale or as a sample to members of the public; and
- purports to allow an individual to independently collect evidence of a sexual assault outside of a hospital or other health care facility.

An over-the-counter SAK does not include a SAK intended for administration or collection by law enforcement or health care provider.

A violation of the prohibition on selling, offering for sale, or providing a natural person an over-the-counter SAK is a violation of the CPA.

"Health care provider" means a person, hospital, or other health care facility that is licensed, certified, or otherwise authorized or permitted by law in Washington State to administer health care or dispense medication in the ordinary course of business or practice of a profession.

"Natural person" means a human being. The term does not include a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality. The term does not include a health care provider.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Clarifies that an over-the-counter sexual assault kit is a sexual assault kit or rape kit that, in addition to other requirements, is purported to allow a natural person to independently collect evidence of a sexual assault outside of a hospital or other health care facility.
- Clarifies that an over-the-counter sexual assault kit does not include a sexual assault kit intended for administration or collection by law enforcement or a health care provider.
- Clarifies that a person may not sell, offer for sale, or provide an over-the-counter sexual assault kit to a natural person.
- Defines "health care provider," "natural person," and "person."

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: When handled properly, sexual assault examinations provide crucial evidence that is often key to prosecuting perpetrators of sexual assault. That evidence must be tracked all the way through to prosecution. People can go online to check the status of their kits. After a kit is tested, it is entered in CODIS, where links to other cases and serial rapists can be identified. A normal rape kit in Washington has about 15 pieces in it and is very intricate. The over-the-counter kits being sold by companies are ineligible for testing at the Washington crime lab, do not have CODIS hits, and are outside the chain of custody. At-home kits face numerous barriers to admission as evidence, including on basis of potential cross-contamination and spoliation. At-home test kits cannot be substituted for sexual assault kits, and at-home kits have never been admitted in criminal court or used in a prosecution, and only give victims false hope. The advertising campaign for these products has created the false perception that do-it-yourself (DIY) kits have the same evidentiary value as evidence collected by a medical professional, and that sexual assault nurse examiner (SANE) examinations are costly, retraumatizing, and inaccessible. Victims of sexual assault can get a free exam by a qualified, trained and competent sexual nurse examiner without filing a complaint to law enforcement, as well as receiving access to sexual assault counselors and community

support. This bill prevents the spread of misinformation and false hope by companies peddling DIY kits. This bill is designed to protect the integrity of investigations and prosecutions that provide justice for sexual assault survivors.

CON: There is a sexual assault epidemic. Seventy percent of sexual assault survivors do not report. It is the most underreported violent crime. These kits are an additive option that would be lost for victims who do not go to the hospital. Only 17 to 20 percent of hospitals in the U.S. have SANE nurses. Victims are not guaranteed an exam when going to a hospital and are often turned away. When a sexual assault is reported there is only a one to four percent conviction rate. The system is failing survivors and this bill would perpetuate this broken system. Early evidence kits can help survivors that are uncomfortable going to a hospital. These kits would utilize telehealth at a time of need and collect evidence that would otherwise be lost. The statements about inadmissibility of this kit are patently false. There is no categorical limitation on evidence except for hearsay. This kit is designed to help people understand what is going on with their bodies and to help collect what has happened with their bodies. There are many protections in place for these kits including immutable timestamps that are blockchain supported to record the time of collection. There are trained professionals to help people walk through this process. Fifteen dollars was the amount charged at the University of Washington for these kits which also provided unlimited access to Plan B, SANE nurses, STI testing kits, early evidence kits, and educational programming. This bill removes alternative resources for sexual assault survivors and removes survivor choice and autonomy under the guise of protection.

Persons Testifying: PRO: Representative Gina Mosbrucker, Prime Sponsor; James McMahan, WA Assoc Sheriffs & Police Chiefs; Heidi Anderson, WA State Attorney General's Office; Alex Davidson, The Associated Students of the University of Washington; Maddie Menser, UW Greeks Take Action; Jon Tunheim, Thurston County Prosecutor/WA Assoc of Prosecuting Attorneys.

CON: Debra Carlson-Chamberlin; Paris Crawford, Leda Health; Ilana Turko, Leda Health; Hannah Chamberlin, Leda Health; Kaylee Powers, WA Licenced SANE.

Persons Signed In To Testify But Not Testifying: PRO: Madeline Brown; Ian Goodhew, UW Medicine-Harborview; Leah Griffin, Sexual Assault Forensic Examination Best Practices Working Group, Representative of Survivors; Antoinette Bonsignore; Katie Kolan, Washington State Hospital Association (WSHA); Quinn Dalan, Washington State Women's Commission; Riddhi Mukhopadhyay, Sexual Violence Law Center.

CON: Andrea Cruz, Survivors of color.