

SENATE BILL REPORT

SB 5937

As of January 15, 2024

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: Senators Dhingra, Braun, Hasegawa, Keiser, Kuderer, Lias, Lovelett, Lovick, Nguyen, Nobles, Stanford, Trudeau, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Law & Justice: 1/15/24.

Brief Summary of Bill

- Modifies crime victim eligibility for benefits, reimbursement for travel, and state payment of forensic examinations under the Crime Victims' Compensation Program (CVCP).
- Modifies procedures and rights related to crime victims.
- Expands the crime of rape in the first degree and removes the statute of limitations for rape committed by first responders who use their position to facilitate the commission of the offense.
- Requires the prosecuting attorney of each county to establish a multidisciplinary team to address adult sexual assault or coordinate with other local jurisdictions to ensure resources for adult victims of sexual assault.
- Creates the statewide forensic nurse coordination program and appropriates funding for sexual assault nurse examiners stipend, grant, and training programs.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Crime Victims Compensation Program. The Crime Victims Compensation Program (CVCP), within the Department of Labor and Industries (L&I), assists victims with costs associated with violent crimes. To qualify for benefits, a person must have:

- sustained a physical injury or mental health trauma as a result of a gross misdemeanor or felony crime in Washington;
- reported the crime to law enforcement within one year from the date of the crime or within one year from when it reasonably could have been reported; and
- applied for benefits within three years of the crime being reported to law enforcement or the date the rights of the beneficiaries accrued, or within five years in certain circumstances.

A person is not eligible for benefits if:

- the injury was the result of consent, provocation, or incitement by the victim;
- the injury was sustained while the victim was committing or attempting to commit a felony;
- the injury was sustained while the victim was incarcerated;
- the person making the claim refused to give reasonable cooperation to state or local law enforcement agencies to apprehend and convict the perpetrator of the crime giving rise to the claim;
- a victim has been convicted of a felony offense that is a violent offense or crime against person within five years preceding the criminal act giving rise to the claim, or if a person is convicted of such a felony offense after the criminal act; or
- a victim has not completely satisfied all legal financial obligations owed.

The CVCP is required to pay for sexual assault forensic examinations and forensic examinations for victims of domestic violence assault involving nonfatal strangulation. These exams are conducted at no cost to victims, and CVCP directly reimburses medical facilities for these services.

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.

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

Evidence of a Victim's Past Sexual History. In a prosecution for a sex offense, evidence of a victim's past sexual behavior is generally inadmissible to prove the victim's consent or attack the victim's credibility. In a prosecution for Rape, Trafficking, or an offense related to Commercial Sexual Abuse of a Minor, such evidence is inadmissible to attack the credibility of the victim but is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Rape in the First Degree. A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
- kidnaps the victim;
- inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
- feloniously enters into the building or vehicle where the victim is situated.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Crime Victims Compensation Program. The requirement for crime victims to give reasonable cooperation to state or local law enforcement agencies to apprehend and convict the perpetrator of the crime giving rise to the claim is removed.

Crime victims may be reimbursed for reasonable roundtrip travel expenses related to L&I medical examinations and interviews, and proper treatment for injuries.

The state shall pay the costs of forensic examinations performed in the state for the purposes of gathering evidence for possible prosecution of sexual assaults or domestic violence assault involving nonfatal strangulation that occurred in or outside the state.

L&I may attempt to request reimbursement to the crime victims' compensation fund from other states if this state pays the costs of sexual assault forensic examinations for nonresidents who are victims of sexual assaults that occurred in another state.

Victim's Rights. Crime victims rights are extended to include victims and survivors of victims in criminally insane civil commitment proceedings.

The right to be informed when charges have been filed, and the right to attend court proceedings or required interviews in person or remotely, are added to a crime victims rights.

Statute of Limitations. The statute of limitations for rape committed by first responders who use their position to facilitate the commission of the offense is removed.

Evidence of a Victim's Past Sexual History. Written pretrial motions concerning the relevancy of evidence of a victim's past sexual behavior on the issue of consent must be made in advance of the trial date. A court shall order a pretrial hearing before the jury is empaneled to determine the relevancy of the evidence. The victim, victim's attorney, a lawful representative of the victim, or the prosecutor may assert and seek enforcement of the procedures under the rape shield statute.

Rape in the First Degree. A person is guilty of rape in the first degree if the person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory feloniously enters into the building or vehicle where the victim is situated, or where the sexual intercourse occurs.

A person is guilty of rape in the first degree if the person engages in sexual intercourse with a victim who is incapable of consent by reason of being physically helpless or mentally incapacitated because of the person or an accessory willfully placing any substance in any edible substance or vapor product, or knowingly furnishing an edible substance or vapor product containing a substance to a victim.

Depictions of Victim. In a criminal proceeding, depictions of a victim's genitals created during a sexual assault medical forensic examination may not be shown in open judicial proceedings, must be filed as a confidential document within a court file, and an expert witness may provide testimony on such a depiction. A depiction of a victim created during a sexual assault medical forensic examination must be filed as a confidential document within a court file.

A procedure is created for sealing a depiction of a victim or a victim's genitals that was created during a sexual assault medical forensic examination if the depiction was marked as an exhibit in a criminal proceeding.

Juvenile Court Issued Protection Orders. The Department of Children, Youth, and Families (DCYF) may require a juvenile released from juvenile rehabilitation to refrain from violating any civil protection orders issued by a juvenile court.

Multidisciplinary Teams. The prosecuting attorney of each county in the state must coordinate the establishment of a multidisciplinary team to address adult sexual assault or coordinate with other local jurisdictions to ensure that resources are available to adult victims of sexual assault.

Statewide Forensic Nurse Coordination Program. The statewide forensic nurse coordination program is created in the Department of Health (DOH). The duties of the program are established.

Minor Consent to Forensic Examinations Related to Sexual Assault. Any minor age 13 or older may consent to a sexual assault forensic examination conducted for the purposes of

gathering evidence for possible prosecution. Any minor age 13 or older may consent to testing for any sexually transmitted disease or suspected sexually transmitted disease as a result of a sexual assault.

Sexual Assault Nurse Examiners Stipend, Grant, and Training Programs. Funding is allocated to DOH to:

- continue a stipend program for licensed nurses participating in training to become certified sexual assault nurse examiners;
- continue a grant program for hospitals to obtain the services of certified sexual assault nurse examiners if such services are unavailable at the hospital; and
- create a statewide training program for nurses and other hospital staff to provide services to adult, pediatric, or adolescent victims of sexual assault.

Appropriation: The bill contains an appropriation(s) totaling \$2,453,000 from various accounts.

Fiscal Note: Available.

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

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony On Proposed Substitute: PRO: A lot of work has been done over the years to make the system more trauma-informed and centered to provide the resources necessary for victims to heal. The crime victims compensation fund only reimburses for one-way care to a hospital for treatment, which is redressed by this bill. Removing the requirement for cooperation with law enforcement is appreciated, especially for instances when victims are unfairly deemed uncooperative. A statewide program will help reduce barriers for sexual assault nurse examiner (SANE) programs across the state and standardize statewide care. Coordination, stipend, grant, and training programs will help create the necessary infrastructure to assist all SANE nurses, including those treating adolescent and child victims, and increase their availability statewide. Expanding the right to participate remotely will help victims attend meetings. Utilization of multidisciplinary teams will improve victim experience and improve engagement. Expanding the age of consent for minors to receive sexual assault forensic examinations will help expand evidence collection for youth after a sexual assault occurs.

OTHER: Correspondence with victims by law enforcement is valuable to aid the victim and apprehend perpetrators. The unintended consequence of removing the requirement to reasonably cooperate is that there will be reduced information flow to law enforcement which will reduce apprehension rates. This is not conducive to public safety. The existing law regarding reasonable cooperation with law enforcement should be maintained. Other avenues to allow victims to access victims benefits should be considered. Language encouraging victims to participate remotely may be broader than intended since certain

jurisdictions may not have video equipment necessary to provide video options. Since the crime victim penalty assessment was eliminated, the funding to prosecuting attorney's offices to help witnesses testify have been reduced by one-third to half in most offices. Restoring this funding would be appreciated. Prosecuting attorneys may already make a motion to enforce procedures in the rape shield statute, and the changes in the bill could be read in the negative if a victim does not make a request to the prosecuting attorney.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Roshelle Cleland, Lutheran Community Services Northwest (LCSNW); Michelle Gillig; Joanna Shelton, Harborview Abuse & Trauma Center; Emi Koyama, Coalition for Rights & Safety for People in the Sex Trade; Paula Reed, Children's Advocacy Centers of Washington; Martha Phillips; Laurel Redden, King County Sexual Assault Resource Center; Em Stone, WA State Coalition Against Domestic Violence.

OTHER: Russell Brown, WA Association of Prosecuting Attorneys; Taylor Gardner, WA Assn of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: No one.