

FINAL BILL REPORT

ESHB 1109

C 118 L 21

Synopsis as Enacted

Brief Description: Concerning victims of sexual assault.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Orwall, Mosbrucker, Simmons, Goodman, Leavitt, Valdez, Kloba, Graham, Morgan, Caldier, Rule and Macri).

House Committee on Public Safety
Senate Committee on Law & Justice

Background:

Sexual Assault Kits. A victim of sexual assault may elect to 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 sexual assault kit (SAK), also commonly referred to as a rape kit. In some cases, forensic analysis conducted on the contents of a SAK can yield a DNA (deoxyribonucleic acid) profile of a potential suspect. The profile is uploaded into the Combined DNA Indexing System (CODIS) where it could potentially match profiles collected from other investigations or from arrested or convicted persons. A match, or "CODIS hit," functions as an investigative lead for the investigation of the sexual assault.

In 2015 the state established mandatory testing requirements for SAKs. A law enforcement agency is required to submit every SAK to the Washington State Patrol (WSP) Crime Laboratory for testing within 30 days of receiving it, with some exceptions. The requirement to test SAKs is prospective as of July 24, 2015, meaning it did not apply to SAKs collected previously. In 2019 the state required all law enforcement agencies to submit those previously collected SAKs for testing no later than October 1, 2019, with some exceptions. The WSP Crime Laboratory must facilitate the forensic analysis of these SAKs by December 1, 2021. In October 2017 the Office of the Attorney General (AGO) received a federal grant to establish the Washington Sexual Assault Kit Initiative (SAKI) to address the accumulation of unsubmitted SAKs in the possession of local law enforcement agencies

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.

and hospitals. The SAKI actively monitors the implementation of the state submission and testing requirements.

Law Enforcement Training and Case Review Program Proposal. The Criminal Justice Training Commission (CJTC) provides basic law enforcement training for law enforcement recruits prior to certification as well as advanced training and educational programming for certified law enforcement officers. As of 2018, the CJTC must provide ongoing, specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. The training must be based on a victim-centered, trauma-informed approach to responding to sexual assault. Officers assigned to regularly investigate sexual assault involving adult victims must complete the training within one year of being assigned or by July 1, 2020, whichever is later.

In 2020 the state required and provided funding for the CJTC to develop a proposal for a case review program. The CJTC was required to research, design, and develop case review strategies designed to optimize outcomes in sexual assault investigations through improved training and investigatory practices.

Rights of Sexual Assault Survivors. The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. There are also statutory rights specifically afforded to sexual assault survivors. A sexual assault survivor has the right to:

- receive a medical forensic examination at no cost;
- consult with a sexual assault survivor's advocate during any medical evidentiary examination and during any interview by law enforcement officers, prosecuting attorneys, or defense attorneys, unless an advocate cannot be summoned in a timely manner, and regardless of whether a survivor has waived the right in a previous examination or interview;
- be informed, upon the request of the survivor, of when the forensic analysis of his or her SAK 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 such disclosure is made at an appropriate time so as to not impede or compromise an ongoing investigation;
- receive notice prior to the destruction or disposal of his or her SAK;
- receive a copy of the police report related to the investigation without charge; and
- review his or her statement before law enforcement refers a case to the prosecuting attorney.

If a sexual assault survivor is denied a right, he or she may seek a court order directing compliance by the relevant party. Compliance with the right is the sole remedy available to the survivor.

Summary:

Sexual Assault Kits. For any sexual assault case with a SAK collected prior to July 24, 2015 where subsequent forensic analysis has resulted in a CODIS hit, the AGO must request a case status update from the applicable law enforcement agency and prosecuting attorney. The law enforcement agency and prosecuting attorney must provide any requested case status update. The AGO must provide quarterly reports to the Washington Association of Sheriffs and Police Chiefs (WASPC) on the case status updates, and then the WASPC must submit reports on those updates to the Governor and the Legislature by January 1 and July 1 of each year, beginning in 2022.

Case Review Program. The case review program proposal is modified to be an annual, ongoing program conducted by the CJTC. The program must review case files from law enforcement agencies and prosecuting attorneys selected by the CJTC in order to identify changes to training and investigatory practices necessary to optimize outcomes in sexual assault investigations and prosecutions involving adult victims. The program must also include an analysis of the impact of race and ethnicity on sexual assault case outcomes.

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 must make requested case files and other documents available to the CJTC, provided that the cases are not linked to ongoing, open investigations and that redactions may be made where appropriate and necessary. Agencies and prosecuting attorneys must include available information on the race and ethnicity of all sexual assault victims in the relevant case files.

If a law enforcement agency has not participated in the CJTC's specialized training for conducting sexual assault investigations, the CJTC may prioritize the agency for selection to participate in the case review program.

Rights of Sexual Assault Survivors. The statutory rights of sexual assault survivors are expanded.

The right to consult with a sexual assault survivor's advocate is modified to provide that it applies throughout the investigatory process and prosecution of the case. However, the survivor's right to consult with an advocate while providing testimony in a criminal trial is fulfilled by having the advocate present in the court room. The exception for the inability to summon an advocate is removed. 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 associated with a survivor's right to consult with an advocate.

The following rights are added:

- the right to receive written notice of benefits under the Crime Victim Compensation Program;

- the right to receive a referral to an accredited community sexual assault program or, in the case of a survivor who is a minor, to receive a connection to services in accordance with the county child sexual abuse investigation protocol, 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;
- the right to receive timely notifications as to the status of the investigation and any related prosecution of the survivor's case;
- the right to be informed 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;
- the right to access interpreter services where necessary to facilitate communication throughout the investigatory process and prosecution of the survivor's case; and
- where the sexual assault survivor is a minor, the right to have the prosecutor consider and discuss the survivor's requests for remote video testimony, and the right to have the court consider requests from the prosecutor for safeguarding the survivor's feelings of security and safety in the courtroom.

Votes on Final Passage:

House	98	0	
Senate	49	0	(Senate amended)
House	98	0	(House concurred)

Effective: April 26, 2021