

# HOUSE BILL REPORT

## HB 1916

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**As Reported by House Committee On:**  
Public Safety

**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:** Representatives Orwall, Mosbrucker, Santos, Simmons, Ortiz-Self, Walen, Johnson, J., Taylor, Wylie, Rule, Steele, Goodman, Griffey, Wicks, Senn, Graham, Bronoske, Riccelli, Davis, Macri and Valdez.

**Brief History:**

**Committee Activity:**

Public Safety: 1/25/22, 2/1/22 [DPS].

**Brief Summary of Substitute Bill**

- Requires the Crime Victim Compensation Program to reimburse a state resident for any costs billed to them for a sexual assault forensic examination by an out-of-state facility.
- Expands the current statutory rights afforded to crime victims, survivors, and witnesses to apply to any forensic civil commitment proceeding and any sexually violent predator civil commitment proceeding.
- Requires peace officers to complete training through the Criminal Justice Training Commission (CJTC) on a victim-centered, trauma-informed approach to responding to gender-based violence.
- Requires the CJTC to develop and conduct specialized training for persons responsible for prosecuting sexual assault cases involving adult victims.
- Creates a grant program for establishing a statewide resource prosecutor

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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.*

for sexual assault cases.

- Requires the Office of Superintendent of Public Instruction to conduct research on best practices and develop training for responding to sexual assault and supporting survivors in schools.

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## HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Goodman, Chair; Johnson, J., Vice Chair; Mosbrucker, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Davis, Graham, Griffey, Hackney, Orwall, Ramos, Simmons, Thai and Young.

**Staff:** Kelly Leonard (786-7147).

### **Background:**

#### 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.

#### 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 or class of persons to whom the information is to be disclosed; identify the provider or class of providers who are to make the disclosure; identify the patient; and contain an expiration date or an expiration event that relates to the patient or the purpose of the use or disclosure.

#### 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.

#### Sexual Assault Forensic Examination Best Practices Advisory Group.

The Sexual Assault Forensic Examination Best Practices Advisory Group (SAFE Advisory Group) is convened by the Attorney General's Office. The SAFE Advisory Group included 17 members representing specific interests and entities. State law directed the SAFE Advisory Group to reduce the number of untested sexual assault kits in Washington and review best practice models for managing all aspects of sexual assault investigations. The SAFE Advisory Group expired on December 31, 2021.

#### Trauma-Informed Training and Case Reviews for Law Enforcement Agencies.

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 certified law enforcement officers. The CJTC is specifically required to develop and conduct additional training on a victim-centered, trauma-informed approach to interacting with sexual assault victims. The CJTC must develop a training for patrol officers not regularly assigned to investigate sexual assault cases. The training is currently designed for remote access and participation. The CJTC must also provide ongoing, specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. 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.

The CJTC is directed to conduct an annual, ongoing case review program. 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. If a law enforcement agency has not participated in the CJTC's specialized training for conducting sexual assault investigations by July 1, 2022, the CJTC may prioritize the agency for selection to participate in the case review program.

#### Training for Prosecutors.

State law requires the CJTC to annually offer an intensive, integrated training session on investigating and prosecuting sexual assault cases. The training must be self-supporting through fees charged to the participants of the training.

#### Office of the Superintendent of Public Instruction.

The Office of the Superintendent of Public Instruction (OSPI) supervises all matters pertaining to public schools. In 2018 the state directed the OSPI to establish a coordinated program for the prevention of sexual abuse of students in kindergarten through twelfth grade. Furthermore, the OSPI is required to collect and disseminate to school districts a curriculum for the program and adopt rules addressing prevention.

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### **Summary of Substitute Bill:**

#### Payment for Sexual Assault Forensic Examinations.

The Crime Victim Compensation Program (CVCP) must reimburse a state resident for any costs billed to them for a sexual assault forensic examination by an out-of-state facility. The CVCP may establish arrangements with any hospital or facility located out of state to allow costs for examinations of state residents to be paid according to the same procedures for in-state hospitals so as to prevent such residents from being charged directly or indirectly for the examination.

#### 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 must be 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.

#### Rights of Crime Victims, Survivors of Victims, and Witnesses.

The current statutory rights afforded to crime victims, survivors, and witnesses apply to any adult or juvenile criminal proceeding and any forensic or sexually violent predator commitment proceeding. A mechanism for enforcing rights is established. If a victim, survivor of a victim, or witness of a crime is denied a right, 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 crime occurred and providing notice of such petition to the relevant party or parties. Compliance with the right is the sole available remedy.

#### Sexual Assault Forensic Examination Best Practices Advisory Group.

The SAFE Advisory Group is reenacted and extended until July 1, 2026. 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 removing issues relating to the testing and storage of untested or unreported sexual assault kits. The SAFE Advisory Group is directed to research and make recommendations on opportunities to increase access to, and availability of, critical sexual assault nurse examiner services, and also to continue monitor the testing of the sexual assault kit backlog and the supply chain and distribution of sexual assault kits.

### Trauma-Informed Training and Case Reviews for Law Enforcement Agencies.

The trauma-informed training for patrol officers is modified. Effective July 1, 2023, the CJTC must modify the training to relate to all gender-based violence. All peace officers are required to complete the training every three years.

The case review program is modified by specifying that the CJTC may prioritize agencies for case reviews if they did not participate in the specialized training for sexual assault investigators in the previous two years.

### Training for Prosecutors.

The fee-based training for prosecutors is repealed. Instead, subject to an appropriation, the CJTC must develop and conduct specialized training for persons responsible for prosecuting sexual assault cases involving adult victims. The training must use a victim-centered, trauma-informed approach to prosecuting sexual assaults, including specified goals. The training must be offered at least once per calendar year and be deployed in different locations across the state, or through some other broadly accessible means, in order to improve access to the training for prosecutors serving in small offices or rural areas.

### Special Resource Prosecutor.

Subject to an appropriation, the CJTC must 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, including, for example: assisting with the development and implementation of the specialized training for prosecutors; providing technical assistance and research to prosecutors for prosecuting sexual assault cases; and providing additional training and resources to prosecutors to support a trauma-informed, victim-centered approach to prosecuting sexual assault cases.

### Office of the Superintendent of Public Instruction.

Subject to an appropriation, the OSPI must conduct research on best practices, review mandatory reporting laws, conduct listening sessions, update model protocols, and develop training with respect to responding to sexual assault and supporting survivors in schools. In the process, the OSPI must consult with the Department of Children, Youth, and Families, law enforcement professionals, national and state organizations supporting the interests of sexual assault survivors, victims' advocates, educators, school administrators, school counselors, and sexual assault survivors. The OSPI must submit a preliminary report by December 1, 2022, and a final report by October 1, 2023, to the Governor and the appropriate committees of the Legislature.

### **Substitute Bill Compared to Original Bill:**

The substitute bill modifies the provision pertaining to the applicability of statutory rights afforded to crime victims survivors, and witnesses. Those rights apply to any adult or juvenile criminal proceedings, forensic civil commitment proceeding, and any sexually

violent predator civil commitment proceeding, rather than providing that those rights apply to any judicial proceeding as provided in the underlying bill. The substitute bill restores current law providing that, with respect to violent and sex crimes, victims have a right to have a crime victim advocate or other support person present any judicial proceeding related to criminal acts committed against them, rather than at any judicial proceeding as provided in the underlying bill.

The substitute bill modifies the reenactment of the SAFE Advisory Group. The membership is expanded to include: a representative of the CJTC; two law enforcement officers, one from a rural area and one from an urban area; a prosecuting attorney serving in a county in a rural area; and two community-based advocates, one from a rural area and one from an urban area. The Attorney General must solicit recommendations from statewide labor organizations representing law enforcement officers when appointing the law enforcement officer members of the SAFE Advisory Group. The following duties are removed: researching and determining the number of untested sexual assault kits in Washington; researching the locations where the untested sexual assault kits are stored; researching, reviewing, and making recommendations regarding legislative policy options for reducing the number of untested sexual assault kits; researching, identifying, and making recommendations for securing nonstate funding for testing the sexual assault kits, and reporting on progress made toward securing such funding; and developing policies and submitting recommendations on the storage, retention, and destruction of unreported sexual assault kits as well as protocols for engaging with survivors associated with unreported sexual assault kits. The following duties are added: researching and making recommendations on opportunities to increase access to, and availability of, critical sexual assault nurse examiner services; and monitoring the testing of the backlog of sexual assault kits and the supply chain and distribution of sexual assault kits. The annual reporting date is changed from December 1 to December 15.

The substitute bill modifies the specialized training for persons responsible for prosecuting sexual assault cases involving adult victims. The training must use a victim-centered, trauma-informed approach to prosecuting sexual assaults, rather than be based on that approach. The training must include, but is not limited to, the goals specified in the underlying bill, rather than providing an exhaustive list of goals. The training must share best practices for communicating with victims, rather than requiring the training to educate prosecutors on the best practices for communicating with victims. The training must also include additional content relevant to and informed by best practices for improving outcomes in sexual assault prosecutions, as deemed appropriate by the CJTC.

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**Appropriation:** None.

**Fiscal Note:** Preliminary fiscal note available.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of the

session in which the bill is passed, except for section 5, relating to peace officer training on responding to gender-based violence, which takes effect July 1, 2023.

**Staff Summary of Public Testimony:**

(In support) This bill is the next step in a journey that began in 2015. Since mandating the testing of all sexual assault kits, the state has taken incremental steps to incorporate a victim-centered, trauma-informed approach into the criminal justice process.

It is important to broaden victims' rights to apply to civil commitment proceedings. Victims should be supported in every case. It is possible that some amendatory language is necessary to ensure clarity for the courts.

This is a difficult time for the law enforcement community. It is important to support them by supporting critical training. The CJTC has done an excellent job in developing victim-centered and trauma-informed training, and the expansion relating to gender-based violence will be helpful in supporting officers in their interactions with victims.

This bill establishes specialized training for prosecutors through the CJTC. This builds upon current specialized training for detectives. Improvements to investigatory practices are meaningless without improving prosecution practices. Many prosecutors have attended the specialized training for detectives, but are asking for and supporting the development of specialized training for prosecutors. This training will improve the experiences of survivors and also improve the outcomes of prosecutions. Prosecutors can and should do better. Other states have comparable training and have seen significant improvements in case outcomes. It is important to recognize the challenges associated with prosecuting these cases. Prosecutors must be supported and given the tools to tackle difficult cases. Otherwise, they may end up becoming agents of pain and trauma. Prosecuting these cases can feel like climbing a mountain. It is easy to fail and resort to victim-blaming. Many victims have had negative experiences in Washington; it is not limited to a single case. This happens because prosecutors are trying to avoid taking on hard cases. However, by shifting the approach and using the right tools, prosecutors can change the way they see sexual assault cases and victims. The state can prepare them to climb these mountains successfully. This is important for reducing trauma and preventing victims from being dismissed and ignored.

The bill establishes important requirements relating to schools. Survivors are not being supported in schools. Most teachers do not have training and do not know about sexual assault advocates. Students and survivors need to be heard, and schools need to take steps to incorporate best practices. This is only a first step.

The expansion of the CVCP to cover out-of-state forensic exams for state residents is important. Washington is a border state with many points of entry, and there shouldn't be gaps in coverage for someone who is treated at an out-of-state hospital. It should be

expanded to cover additional benefits for victims who have recently had their sexual assault kits tested for cold cases.

The extension of the SAFE Advisory Group is necessary for continuing important reform efforts.

(Opposed) None.

**Persons Testifying:** Representative Tina Orwall, prime sponsor; Jen Wallace, Washington State Criminal Justice Training Commission; Sophia Arnold, Youth Against Sexual Violence; Riddhi Mukhopadhyay, Sexual Violence Law Center; Leah Griffin, Sexual Assault Forensic Examination Working Group; Kate Hemann, Washington State Attorney General's Office; Michelle Dixon-Wall, Washington Coalition of Sexual Assault Programs; Mary Ellen Stone, King County Sexual Assault Resource Center; Colleen McIngalls, King County Prosecuting Attorneys Office; Julia Hartnell; and Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.