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ENGROSSED SUBSTITUTE HOUSE BILL 1109

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State of Washington

67th Legislature

2021 Regular Session

**By** House Public Safety (originally sponsored by Representatives Orwall, Mosbrucker, Simmons, Goodman, Leavitt, Valdez, Kloba, Graham, Morgan, Caldier, Rule, and Macri)

READ FIRST TIME 02/02/21.

1 AN ACT Relating to supporting victims of sexual assault; amending  
2 RCW 43.101.278 and 70.125.110; and adding new sections to chapter  
3 5.70 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 5.70 RCW  
6 to read as follows:

7 (1) Subject to the availability of amounts appropriated for this  
8 specific purpose, the association must, in consultation with the  
9 office of the attorney general, collect information on the  
10 investigational status of any sexual assault case where the sexual  
11 assault kit was in the possession of the law enforcement agency and a  
12 request for forensic examination had not been submitted by the law  
13 enforcement agency to the Washington state patrol crime laboratory as  
14 of July 24, 2015. The association must work with law enforcement  
15 agencies to update the investigational status of each open case not  
16 less than semiannually. Beginning in 2022, the association must  
17 submit reports on the information collected pursuant to this section  
18 to the governor and appropriate committees of the legislature by  
19 January 1st and July 1st of each year.

20 (2) For the purposes of this section:

- 1 (a) "Association" means the Washington association of sheriffs  
2 and police chiefs.
- 3 (b) "Investigational status" means:
- 4 (i) The agency case or incident number;
- 5 (ii) The date the request for forensic examination of the sexual  
6 assault kit was submitted to the Washington state patrol crime  
7 laboratory;
- 8 (iii) The date the forensic examination was complete and reported  
9 to the law enforcement agency;
- 10 (iv) Whether the case is open or closed;
- 11 (v) For open cases, whether the case remains:
- 12 (A) An active investigation;
- 13 (B) Open pending forensic examination results; or
- 14 (C) Open and inactive, in which case the agency must include a  
15 brief description as to why the case is inactive; and
- 16 (vi) For closed cases, whether the case was closed as a result  
17 of:
- 18 (A) A referral for prosecution where charges were filed or the  
19 prosecutor is reviewing the case;
- 20 (B) A referral for prosecution where the prosecutor declined to  
21 file charges based on the case being legally insufficient;
- 22 (C) A referral for prosecution where the prosecutor declined to  
23 files charges because the case failed to meet prosecutorial charging  
24 standards;
- 25 (D) After reviewing the results of the forensic examination,  
26 there was no evidence that a crime occurred, or there was lack of  
27 probable cause that a crime occurred;
- 28 (E) The inability to locate the victim or lack of victim  
29 participation; or
- 30 (F) Any other reason, in which case the agency must include a  
31 brief description as to why the case closed.
- 32 (3) Nothing in this section may be interpreted to require any law  
33 enforcement agency to disclose any information that would jeopardize  
34 an active criminal investigation.

35 NEW SECTION. **Sec. 2.** A new section is added to chapter 5.70 RCW  
36 to read as follows:

- 37 (1) For any sexual assault kit under RCW 5.70.050 where forensic  
38 analysis has generated a profile that has resulted in a hit in the  
39 combined DNA index system, the office of the attorney general may

1 request information from the applicable law enforcement agency and  
2 prosecuting attorney as to the case status of any related criminal  
3 investigation and prosecution, including information as provided  
4 under section 1(2)(b) of this act as well as any other relevant  
5 information. The law enforcement agency and prosecuting attorney  
6 shall provide requested case status updates to the office of the  
7 attorney general. The office of the attorney general shall consult  
8 with the Washington association of sheriffs and police chiefs when  
9 developing any procedures for requesting and collecting case status  
10 updates under this section.

11 (2) Nothing in this section may be interpreted to require any law  
12 enforcement agency or prosecuting attorney to disclose any  
13 information that would jeopardize an active criminal investigation or  
14 prosecution.

15 **Sec. 3.** RCW 43.101.278 and 2020 c 26 s 8 are each amended to  
16 read as follows:

17 (1) Subject to the availability of amounts appropriated for this  
18 specific purpose, the commission shall ~~((develop a proposal for a))~~  
19 conduct an annual case review program. The ~~((commission shall~~  
20 ~~research, design, and develop case review strategies designed to~~  
21 ~~optimize outcomes in sexual assault investigations through improved))~~  
22 program must review case files from law enforcement agencies and  
23 prosecuting attorneys selected by the commission in order to identify  
24 changes to training and investigatory practices necessary to optimize  
25 outcomes in sexual assault investigations and prosecutions involving  
26 adult victims. The ~~((proposed))~~ program must ~~((evaluate))~~ include:

27 (a) An evaluation of whether current training and practices  
28 foster a trauma-informed, victim-centered approach to victim  
29 interviews and that identifies best practices and current gaps in  
30 training and assesses the integration of the community resiliency  
31 model ~~((The program will include a))~~;

32 (b) A comparison of cases involving investigators and  
33 interviewers who have participated in training to cases involving  
34 investigators and interviewers who have not participated in  
35 training ~~((The program will also include other randomly))~~;

36 (c) Randomly selected cases for a systematic review to assess  
37 whether current practices conform to national best practices for a  
38 multidisciplinary approach to investigating sexual assault cases and  
39 interacting with survivors; and

1 (d) An analysis of the impact that race and ethnicity have on  
2 sexual assault case outcomes.

3 (2) The case review program may review and access files,  
4 including all reports and recordings, pertaining to closed cases  
5 involving allegations of adult sexual assault only. Any law  
6 enforcement agency or prosecuting attorney selected for the program  
7 by the commission shall make requested case files and other documents  
8 available to the commission, provided that the case files are not  
9 linked to ongoing, open investigations and that redactions may be  
10 made where appropriate and necessary. Agencies and prosecuting  
11 attorneys shall include available information on the race and  
12 ethnicity of all sexual assault victims in the relevant case files  
13 provided to the commission. Case files and other documents must be  
14 made available to the commission according to appropriate deadlines  
15 established by the commission in consultation with the agency or  
16 prosecuting attorney.

17 (3) If a law enforcement agency has not participated in the  
18 training under RCW 43.101.272 by July 1, 2022, the commission may  
19 prioritize the agency for selection to participate in the program  
20 under this section.

21 (4) In designing and conducting the program, the commission shall  
22 consult and collaborate with experts in trauma-informed and victim-  
23 centered training, experts in sexual assault investigations and  
24 prosecutions, victim advocates, and other stakeholders identified by  
25 the commission. The commission may form a multidisciplinary working  
26 group for the purpose of carrying out the requirements of this  
27 section.

28 ~~((3))~~ (5) The commission shall submit a report with a summary  
29 of its ~~((proposal))~~ work to the governor and the appropriate  
30 committees of the legislature by December ~~((1, 2020))~~ 1st of each  
31 year.

32 ~~((4) This section expires July 1, 2021.))~~

33 **Sec. 4.** RCW 70.125.110 and 2019 c 93 s 9 are each amended to  
34 read as follows:

35 (1) In addition to all other rights provided in law, a sexual  
36 assault survivor has the right to:

37 (a) Receive a medical forensic examination at no cost;

38 (b) Receive written notice of the right under (a) of this  
39 subsection and that he or she may be eligible for other benefits

1 under the crime victim compensation program, through a form developed  
2 by the office of crime victims advocacy, from the medical facility  
3 providing the survivor medical treatment relating to the sexual  
4 assault;

5 (c) Receive a referral to an accredited community sexual assault  
6 program or, in the case of a survivor who is a minor, receive a  
7 connection to services in accordance with the county child sexual  
8 abuse investigation protocol under RCW 26.44.180, which may include a  
9 referral to a children's advocacy center, when presenting at a  
10 medical facility for medical treatment relating to the assault and  
11 also when reporting the assault to a law enforcement officer;

12 (d) Consult with a sexual assault survivor's advocate throughout  
13 the investigatory process and prosecution of the survivor's case,  
14 including during ((any)): Any medical evidentiary examination ((and  
15 during)) at a medical facility; any interview by law enforcement  
16 officers, prosecuting attorneys, or defense attorneys((, unless an  
17 advocate cannot be summoned in a timely manner,)); and court  
18 proceedings, except while providing testimony in a criminal trial, in  
19 which case the advocate may be present in the courtroom. Medical  
20 facilities, law enforcement officers, prosecuting attorneys, defense  
21 attorneys, courts and other applicable criminal justice agencies,  
22 including correctional facilities, are responsible for providing  
23 advocates access to facilities where necessary to fulfill the  
24 requirements under this subsection. The right in this subsection  
25 applies regardless of whether a survivor has waived the right in a  
26 previous examination or interview;

27 ((e)) (e) Be informed, upon the request of a survivor, of when  
28 the forensic analysis of his or her sexual assault kit and other  
29 related physical evidence will be or was completed, the results of  
30 the forensic analysis, and whether the analysis yielded a DNA profile  
31 and match, provided that the disclosure is made at an appropriate  
32 time so as to not impede or compromise an ongoing investigation;

33 ((d)) (f) Receive notice prior to the destruction or disposal  
34 of his or her sexual assault kit;

35 ((e)) (g) Receive a copy of the police report related to the  
36 investigation without charge; ((and

37 +f)) (h) Review his or her statement before law enforcement  
38 refers a case to the prosecuting attorney;

1 (i) Receive timely notifications from the law enforcement agency  
2 and prosecuting attorney as to the status of the investigation and  
3 any related prosecution of the survivor's case;

4 (j) Be informed by the law enforcement agency and prosecuting  
5 attorney as to the expected and appropriate time frames for receiving  
6 responses to the survivor's inquiries regarding the status of the  
7 investigation and any related prosecution of the survivor's case; and  
8 further, receive responses to the survivor's inquiries in a manner  
9 consistent with those time frames;

10 (k) Access interpreter services where necessary to facilitate  
11 communication throughout the investigatory process and prosecution of  
12 the survivor's case; and

13 (l) Where the sexual assault survivor is a minor, have:

14 (i) The prosecutor consider and discuss the survivor's requests  
15 for remote video testimony under RCW 9A.44.150 when appropriate; and

16 (ii) The court consider requests from the prosecutor for  
17 safeguarding the survivor's feelings of security and safety in the  
18 courtroom in order to facilitate the survivor's testimony and  
19 participation in the criminal justice process.

20 (2) A sexual assault survivor retains all the rights of this  
21 section regardless of whether the survivor agrees to participate in  
22 the criminal justice system and regardless of whether the survivor  
23 agrees to receive a forensic examination to collect evidence.

24 (3) If a survivor is denied any right enumerated in subsection  
25 (1) of this section, he or she may seek an order directing compliance  
26 by the relevant party or parties by filing a petition in the superior  
27 court in the county in which the sexual assault occurred and  
28 providing notice of such petition to the relevant party or parties.  
29 Compliance with the right is the sole remedy available to the  
30 survivor. The court shall expedite consideration of a petition filed  
31 under this subsection.

32 (4) Nothing contained in this section may be construed to provide  
33 grounds for error in favor of a criminal defendant in a criminal  
34 proceeding. Except in the circumstances as provided in subsection (3)  
35 of this section, this section does not grant a new cause of action or  
36 remedy against the state, its political subdivisions, law enforcement  
37 agencies, or prosecuting attorneys. The failure of a person to make a  
38 reasonable effort to protect or adhere to the rights enumerated in  
39 this section may not result in civil liability against that person.

1 This section does not limit other civil remedies or defenses of the  
2 sexual assault survivor or the offender.

3 (5) For the purposes of this section:

4 (a) "Law enforcement officer" means a general authority  
5 Washington peace officer, as defined in RCW 10.93.020, or any person  
6 employed by a private police agency at a public school as described  
7 in RCW 28A.150.010 or an institution of higher education, as defined  
8 in RCW 28B.10.016.

9 (b) "Sexual assault survivor" means any person who is a victim,  
10 as defined in RCW 7.69.020, of sexual assault. However, if a victim  
11 is incapacitated, deceased, or a minor, sexual assault survivor also  
12 includes any lawful representative of the victim, including a parent,  
13 guardian, spouse, or other designated representative, unless the  
14 person is an alleged perpetrator or suspect.

15 (c) "Sexual assault survivor's advocate" means any person who is  
16 defined in RCW 5.60.060 as a sexual assault advocate, or a crime  
17 victim advocate.

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