

FINAL BILL REPORT

HB 1564

C 296 L 23
Synopsis as Enacted

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

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

House Committee on Community Safety, Justice, & Reentry
Senate Committee on Law & Justice

Background:

Sexual Assault Kits.

After a person has been the victim of a sexual assault, the person may 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. 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.

Mandatory testing requirements for SAKs have been established. A law enforcement agency is required to submit a SAK to the Washington State Patrol (WSP) Crime Laboratory for testing within 30 days of receipt, provided that the victim has consented to the testing. Consent is not a condition of submission if the SAK was collected from a non-emancipated minor. The WSP is also required to operate a statewide sexual assault kit tracking system, which must:

- track the location and status of SAKs from the point of collection and then throughout the criminal justice process;
- allow participants in the system to update and track the status and location of SAKs;
- allow victims of sexual assault to anonymously track or receive updates regarding the status of their SAKs; and
- use electronic technology or technologies that allow continuous access.

Payment for Sexual Assault Forensic Examinations.

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.

Hospitals and other emergency medical facilities are prohibited 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 or deceptive acts or practices in trade or commerce. Persons injured by violations of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorney's fees. Courts may increase awarded damages up to three times the actual damages sustained.

The Attorney General is also authorized to investigate and bring claims under the CPA on behalf of the state or individuals in the state, to enjoin violations of the CPA and obtain restitution. The prevailing party may, in the discretion of the court, recover costs and attorney's fees. The Attorney General may also seek civil penalties up to statutorily authorized maximums against any person who violates the CPA, which are paid to the state.

Summary:

Prohibition.

A person (including a legal or commercial entity) may not sell, offer for sale, or otherwise make available a sexual assault kit:

- that is marketed or otherwise presented as over-the-counter, at-home, or self-collected in any manner that indicates that the sexual assault kit may be used to collect evidence other than by law enforcement or a health care provider; or
- if the person intends, knows, or reasonably should know that the sexual assault kit will be used to collect evidence other than by law enforcement or a health care provider.

This prohibition does not apply to a government or governmental instrumentality. Sexual assault kit is defined as a product with which evidence of sexual assault is collected.

The prohibition on selling, offering for sale, or otherwise making available a sexual assault kit under specified circumstances is deemed a matter vitally affecting the public interest, not reasonable in relation to the development and preservation of business, an unfair or deceptive act in trade or commerce, and an unfair method of competition for purposes of applying the Consumer Protection Act.

Votes on Final Passage:

House	96	0	
Senate	42	7	(Senate amended)
House	96	0	(House concurred)

Effective: July 23, 2023