

SENATE BILL REPORT

SB 5937

As of February 3, 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. [**Revised for 1st Substitute:** Supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses.]

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

Brief History:

Committee Activity: Law & Justice: 1/15/24, 1/18/24 [DPS-WM, w/oRec].
Ways & Means: 2/03/24.

Brief Summary of First Substitute 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.

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

Majority Report: That Substitute Senate Bill No. 5937 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Kuderer, Pedersen, Salomon, Torres and Valdez.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; McCune, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Monica Fontaine (786-7341)

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 (First Substitute): Crime Victims Compensation Program. Victims of sexual assault, sex trafficking, or domestic violence are eligible to receive crime victim benefits regardless if they refuse to give reasonable cooperation to law enforcement if the director of L&I determines that such cooperation may be impacted due to a victim's age, physical condition, psychological state, cultural or linguistic barriers, or any other health or safety concern that jeopardizes the victim's wellbeing.

Crime victims may be reimbursed for reasonable roundtrip travel expenses related to L&I medical examinations and interviews. Injured crime victims shall be reimbursed for reasonable transportation costs from the place of injury to a place of treatment, and from the place of treatment to a reasonable location of the victim's choice.

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 cost of sexual assault forensic examinations and domestic violence assault involving nonfatal strangulation forensic examinations for nonresidents who are victims of sexual assaults or domestic violence assault involving nonfatal strangulation that occur in another state. After an agreement is reached with another state, L&I must ensure that any reports provided to another state for purposes of reimbursement must not contain information related to protected health care services.

Victim's Rights. Crime victims rights are extended to include victims and survivors of victims in criminally insane civil commitment proceedings. Victims shall be informed by local law enforcement agencies or the prosecuting attorney when a defendant has been found not competent to stand trial and referred for restoration services.

The right to be informed when charges have been filed, and the right to attend court proceedings or required interviews in person or remotely, dependent on local jurisdiction resources, 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.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):

- Restores requirements for victims to give reasonable cooperation to law enforcement to qualify for crime victim benefits.
- Provides that victims of sexual assault, sex trafficking, or domestic violence are eligible to receive crime victim benefits regardless if they refuse to give reasonable cooperation to law enforcement if the director of L&I determines that such cooperation may be impacted due to a victim's age, physical condition, psychological state, cultural or linguistic barriers, or any other health or safety concern that jeopardizes the victim's wellbeing.
- Requires L&I to reimburse an injured victim for reasonable transportation costs from the place of injury to a place of treatment, and from the place of treatment to a reasonable location of the victim's choice.
- Clarifies that L&I can request reimbursement from other states for forensic examinations performed on non-Washington residents for domestic violence assault involving nonfatal strangulation and that L&I must ensure any reports provided to another state for purposes of reimbursement must not contain information related to protected health care services.
- Clarifies that the right to attend court proceedings or required interviews remotely is

- dependent on the availability of those resources in local jurisdictions.
- Provides that victims shall be informed by local law enforcement agencies or the prosecuting attorney when a defendant has been found not competent to stand trial and referred for restoration services.
 - Clarifies that a prosecutor does not need a victim request to enforce the procedures of the rape shield statute.
 - Provides that county multidisciplinary teams addressing adult sexual assault should have one member of a culturally specific sexual assault services program, if available.
 - Removes requirement for the statewide forensic nurse coordination program to develop and maintain a statewide toll-free information and referral hotline for victims of sexual assault, and instead requires the program to integrate existing resources for victims of sexual assault into local or state referral hotlines.
 - Removes appropriations for sexual assault nurse examiners stipend, grant, and training programs.

Appropriation: The bill contains a section or sections to limit implementation to the availability of amounts appropriated for that specific purpose.

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: *The committee recommended a different version of the bill than what was heard.* 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 (Law & Justice): 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 (Law & Justice): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This is a really good bill, but Section 17 should be highlighted. Many communities lack resources to implement this section. Language should be changed to be permissive rather than a requirement. Mid-size and small communities have a shortage of support services and compliance would be difficult. Investments in survivor services touch on so many areas, like homelessness and mental health. These are worthy investments to strengthen the response for survivors. Research shows that removing barriers for victims helps victims in healing and in prosecution. Short-term investment lead to long-term savings. Long-term impacts are related to medical care costs, job loss, etc. and can be as much as \$1 million per victim with states spending \$9.3 billion.

Persons Testifying (Ways & Means): PRO: Senator Manka Dhingra, Prime Sponsor; Laurel Redden, King County Sexual Assault Resource Center; Russell Brown, WA Association of Prosecuting Attorneys; Riddhi Mukhopadhyay, Sexual Violence Law Center.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.