

WASHINGTON
SEXUAL ASSAULT
FORENSIC EXAMINATION
BEST PRACTICES
TASK FORCE

Annual Report to the Legislature and Governor
2017

This document is the annual report to the Washington State Legislature and Governor as directed by SHB 1068, 2015 Legislature. For more information on the Task Force's activities, please visit <http://leg.wa.gov/JointCommittees/USAEK/Pages/default.aspx>.

November 13, 2017

The Honorable Jay Inslee
Governor of Washington
P.O. Box 40002
Olympia, WA 98504-0002

The Honorable Cyrus Habib
Lieutenant Governor of Washington
P.O. Box 40482
Olympia, WA 98504-0482

The Honorable Frank Chopp
Speaker of the House
P.O. Box 40600
Olympia, WA 98504-0600

Dear Governor Inslee, Lieutenant Governor Habib, and Speaker Chopp:

We are pleased to present the Annual Report of the Sexual Assault Forensic Examination Best Practices Task Force.

Sincerely,



Rep. Tina Orwall
Co-Chair



Rep. Gina McCabe
Co-Chair

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Task Force Membership

Rep. Tina Orwall, Co-Chair

Washington House of Representatives

Sen. Ann Rivers

Washington Senate

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Representative of Survivors

Jean Johnston

Washington State Patrol

Barbara Maxwell

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Washington Association of County Officials

Andrea Piper-Wentland

Washington Coalition of Sexual Assault Programs

Zosia Stanley

Washington State Hospital Association

Rick Torrance

Office of Crime Victims Advocacy

Lana Weinmann

Office of the Attorney General

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Washington House of Representatives

Sen. David Frockt

Washington Senate

Lisa Johnson

Washington Association of Prosecuting Attorneys

Stacey MacDonald

Washington Defender Association

James McMahan

Washington Association of Sheriffs and Police Chiefs

Capt. Deanna Nollette

Association of Washington Cities

Greg Sandstrom

Washington State Forensic Investigations Council

Nicole Stephens

Representative of Survivors

Chief John Vinson

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Staff

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Kelly Leonard, Counsel

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Melissa Burke-Cain, Counsel

Carly Johnson, Committee Assistant

Introduction

Objectives.

The Sexual Assault Forensic Examination (SAFE) Best Practices Task Force, also referred to in this report as "Task Force," was created by Substitute House Bill 1068 in the 2015 legislative session. The Task Force is required to review best practice models for managing all aspects of sexual assault examinations and for reducing the number of untested sexual assault kits in Washington. To that end, the duties of the Task Force include, but are not limited to:

- 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 in-state and out-of-state best practice models for collaborative responses to victims of sexual assault (from the point a sexual assault kit is collected to the conclusion of the investigation), and providing recommendations regarding any existing gaps in Washington and resources that may be necessary to address those gaps; and
- Researching, identifying, and making recommendations for securing non-state funding for testing the sexual assault kits, and reporting on progress made toward securing such funding.

The Task Force membership is undertaking its mission with a shared belief that Washington can improve the care of sexual assault survivors, do a better job coordinating multidisciplinary efforts to obtain justice, and reduce the number of sexual assaults. To achieve this, the Task Force aims to undertake its mission by working openly and collaboratively and by viewing the process through the eyes of sexual assault survivors.

The Task Force must meet at least twice annually. The Task Force submitted a preliminary report and work plan in 2015, which can be found [here](#). The Task Force submitted a full annual report with recommendations in 2016, which can be found [here](#). Both reports contain extensive background information and summaries of the Task Force's activities. The Task Force is currently required to submit annual reports until the end of 2017, and it expires on June 30, 2018.

Terminology.

Sexual Assault Kit. After a person has been the victim of a sexual assault, the person may undergo a forensic examination for the purpose of collecting any evidence that may have been left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault forensic examination kit, also commonly referred to as a SAFE kit, sexual assault kit (SAK), or rape kit. This report uses the term "sexual assault kit" or "SAK."

Sexual Assault Nurse Examiners. A sexual assault nurse examiner (SANE) is a registered nurse specially trained to provide evidentiary examinations of victims of sexual assaults. Although there is no state-issued license or endorsement for a SANE, the International Association of Forensic Nurses (IAFN) grants SANE certification to registered nurses who: complete training that meets the IAFN SANE Education Guidelines; meet clinical practice requirements; pass an examination; and comply with ongoing training requirements.

Unsubmitted SAKs v. Testing Backlog. After an examination, custody of a SAK may be transferred to a law enforcement agency to be utilized during the investigation and subsequent criminal prosecution. Prior to 2015, law

enforcement agencies and prosecutors had the discretion to send SAKs to forensic laboratories for testing, but were not required to do so. Since the passage of SHB 1068 (2015), agencies are required to submit requests to test all SAKs within 30 days.¹ The 2015 mandatory testing law was prospective, meaning it did not apply to previously unsubmitted SAKs.

There are two distinct but related categories of untested SAKs. The first includes SAKs in police evidence storage facilities, where SAKs are booked into evidence, but a detective and/or prosecutor does not request forensic analysis. For the purposes of this report, this category is referred to as "unsubmitted SAKs" or "previously unsubmitted SAKs." As a result of the 2015 mandatory testing law, previously unsubmitted SAKs are generally from prior to June 24, 2015. The second category includes SAKs submitted to crime lab facilities for testing but remaining untested due to capacity issues. For the purposes of this report, this category is referred to as a testing "backlog."

¹ SHB 1068 (2015), codified as [RCW 70.125.090](#), requires a law enforcement agency to submit a SAK to the WSP Crime Laboratory within 30 days of receiving it, provided that the victim has consented to the testing. Consent is not a condition of submission if the SAFE kit was collected from a non-emancipated minor.

2015-17 Accomplishments

The Task Force and its membership have accomplished several policy, funding, and other goals from 2015-2017, including the following:

Testing

- ✓ [SHB 1068](#) (2015), codified as [RCW 70.125.090](#), requires all law enforcement agencies to submit a request for laboratory examination to Washington State Patrol (WSP) Crime Laboratory within 30 days of receiving a SAK, provided that the victim has consented to testing. The law also requires the WSP to prioritize testing for SAKs according to specified criteria.
- ✓ The State funded an expansion of the WSP Crime Laboratory to include an additional seven full time forensic scientists to support testing in the 2015-2017 Operating Budget.
- ✓ The State appropriated more than \$2.5 million for the testing of previously unsubmitted SAKs in the 2015-2017 Operating Budget.
- ✓ [2SHB 2530](#) (2016) authorizes the Department of Commerce to accept private donations to fund the testing of previously unsubmitted SAKs and training for SANEs. See the companion, [SB 6484](#) (Rivers).
- ✓ Testing of previously unsubmitted SAKs through the WSP as well as the NIJ-FBI partnership is long underway, and testing has yielded DNA profiles and CODIS hits.

SANE Services

- ✓ [SHB 2711](#) (2016) requires the Office of Crime Victims Advocacy (OCVA) to study and make recommendations regarding the availability of SANEs. The OCVA published its findings in 2017, entitled "Study of Sexual Assault Nurse Examiner Availability, Adequacy, Costs, and Training," which can be found [here](#). The study recommended eight strategies for increasing the availability of SANE services.
- ✓ The State funded grants for SANE training and services through the OCVA in the 2015-2017 Operating Budget.

Evidence Preservation

- ✓ [SHB 1069](#) (2015), codified as [chapter 5.70 RCW](#), requires the DNA products secured in connection with a felony violent or sex offense to be preserved through the length of the defendant's sentence, 99 years, or through the period of statute of limitations, depending on the circumstances.

Tracking

- ✓ [2SHB 2530](#) (2016), codified primarily in [RCW 43.43.545](#), requires the WSP to create and operate a statewide SAK tracking system. The system must track the location of all SAKs. All hospitals, law enforcement agencies, prosecutors, and the Washington State Patrol (Crime Laboratory) are required to participate in the system. Victims may anonymously track or receive updates regarding the status of their SAKs.

Law Enforcement Training and Best Practices

- ✓ [ESHB 1109²](#) (2017) requires the Criminal Justice Training Commission (CJTC) to incorporate into existing training and develop new training with a victim-centered, trauma-informed approach. The training has three components. First, the CJTC must incorporate victim-centered, trauma-informed approaches into the Basic Law Enforcement Academy curriculum. Second, the CJTC must provide specialized, intensive, and integrative training for persons responsible for investigating sexual assault cases involving adult victims. Third, the CJTC must develop training on the victim-centered, trauma informed approach to responding to sexual assault calls, which must be designed for commissioned patrol officers not regularly assigned to sexual assault cases.
- ✓ The Task Force continues to build a state coalition to address gaps in SAK policies and practices. The Task Force supports the development and implementation of best practices for law enforcement and other professionals, taking into account the experiences of sexual assault survivors. The Task Force continues to support the use of a victim-centered, trauma-informed approach to responding to sexual assault.

SAKI Grant

- ✓ In October 2017 the Washington Attorney General's Office (AGO) was awarded a federal grant through the federal Sexual Assault Kit Initiative (SAKI). Over the next three years, the AGO will use \$3 million of federal grant funds through a partnership with Task Force members. The grant will fund a full inventory of SAKs, fund the testing of 2,100 SAKs not funded through the state, develop new training for professionals, and establish an investigative team to guide local jurisdictions with certain investigations.

² ESHB 1109 (2017) also creates the Washington Sexual Assault Kit Initiative (SAKI) Project to fund the creation of locally based multidisciplinary community response teams to conduct cold case investigations tied to previously unsubmitted sexual assault kits (SAKs). However, the Project was not funded in the Operating Budget.

2017 Task Force Activities

The Task Force convened two meetings during the 2017 legislative interim, occurring on September 14 and November 6. Task Force meetings included staff briefings, presentations from experts and practitioners, and discussions. All meetings were open to the public. Meetings were recorded by TVW and are available to the public online at tvw.org. Specific agenda items from the 2017 interim included:

- Monitoring the implementation of the WSP Statewide SAK Tracking System;
- Receiving a briefing from the Campus Sexual Violence Prevention Task Force;
- Receiving a briefing from the OCVA on the 2016 SANE study;
- Receiving updates from the AGO on the SAKI Grant;
- Developing policies for managing anonymous SAKs; and
- Discussing the survivors' bill of rights.

Task Force Members consulted with stakeholders and advocates throughout the Task Force's operations. Task Force members formed informal work groups to carry on discussions and policy development on issues of funding, training, and anonymous SAKs. The Task Force engaged in wide-ranging work and discussion of issues related to SAKs and sexual assault policies.

Recommendations to the Legislature and Governor

The Task Force reviewed and voted on proposals at its last meeting on November 6, 2017. The Task Force adopted the following recommendations by a majority vote. The order does not reflect priority.

1. **Unreported SAKs.** The Task Force recommends that unreported SAKs³ are stored at a location other than hospitals or law enforcement settings. The Task Force recommends the state reassess whether the state's vacant data hall or some other state-funded centralized or regional locations could be used.
2. **Availability of SANE Services.** The Task Force recommends the state enact legislation requiring the Office of Crime Victims Advocacy (OCVA) to develop best practices for local communities to use for the creation of sexual assault nurse examiner (SANE) teams and multidisciplinary teams to serve sexual assault survivors in the community. The Task Force recommends such legislation also require the OCVA to develop strategies to make SANE training available to nurses in all regions of the state. To this end, the Task Force recommends passage of HB 2101 (2017) or similar legislation.
3. **Resources for forensic examinations and medical care.** The Task Force recommends the state expand resources available to medical providers, hospitals, and medical facilities for sexual assault forensic examinations and for treatment associated with sexual assaults. The Task Force aims to create a system where victims are not billed or charged and do not otherwise incur any out-of-pocket expenses for the SAK, examination, treatment for injuries associated with the incident, and any medications associated with the examination and incident.
4. **SAK Summit.** The Task Force recommends the state make necessary policy and funding changes to facilitate the hosting of a SAK Summit in Washington.
5. **State-funded multidisciplinary teams and institution of best practices.** The Task Force recommends that the Washington Association of Sheriffs and Police Chiefs, the Attorney General's Office (AGO), the Washington State Patrol, local law enforcement agencies, county prosecuting attorneys, the Washington Coalition of Sexual Assault Programs, and other appropriate entities collaborate to establish, and the state fund, multidisciplinary cold case teams to investigate and prosecute sexual assault cases tied to previously unsubmitted SAKs (SAKs in the possession of a Washington law enforcement agency but not submitted for forensic analysis as of July 24, 2015). The state should fund a competitive grant program to support the multidisciplinary teams engaged in seeking a just resolution to sexual assault cases resulting from evidence found in previously unsubmitted SAKs.

The above entities should engage in collaborative efforts to, when appropriate, participate in sexual assault response and investigation training offered and/or designed by the Washington Criminal Justice Training Commission, establish protocols for notifying victims of the results of testing SAKs, and institute best practices for victim-centered, trauma-informed approaches to responding to sexual assault.

³ An "unreported SAK" refers to a SAK collected from a victim who has consented to the collection of the SAK but has not consented to participate in the criminal justice process or to testing of the SAK. This is different from an "anonymous SAK," which is a term used by practitioners nationally to refer to a SAK collected from a victim who has consented to the collection and testing of the SAK, but who otherwise wishes to remain anonymous.

6. ***Expansion of the SAFE Task Force.*** The Task Force recommends the state enact legislation extending and expanding the Task Force by:
 - Extending the Task Force to September 30, 2020, to coincide with the period of the Sexual Assault Kit Initiative (SAKI) grant received by the AGO;
 - Adding a sexual assault nurse examiner as a member of the Task Force; and
 - Expanding the Task Force's objectives to include: Monitoring implementation of state and federal legislative changes; collaborating with the AGO on its efforts to implement reforms pursuant to its SAKI grant requirements; and recommending and promoting institutional reforms to prevent sexual assault and improve the experiences of sexual assault survivors in the criminal justice system.

7. ***Survivors' rights.*** The Task Force recommends the state enact legislation establishing a survivors' bill of rights by passing SB 5686 (2017) or similar legislation, which should include, at a minimum, the following:
 - The right to receive a forensic medical examination at no cost;
 - The right to consult with a survivor's advocate during any medical evidentiary or physical examination, unless an advocate cannot be summoned in a reasonable timely manner;
 - The right to know whether a SAK has been tested and the results of such testing, including whether the testing yielded a DNA profile and match;
 - The right to receive notification prior to destruction or disposal of a SAK;
 - The right to receive a free copy of the police report; and
 - The right to review his or her statement before law enforcement refers a case to a prosecuting attorney.

The rights above are in addition to those already delineated in law, including those in chapters 7.68, 7.69, and 70.125 RCW.

8. ***Mandatory testing of previously unsubmitted SAKs.*** The Task Force recommends the state enact legislation mandating the testing of previously unsubmitted SAKs, specifically those not captured by the current mandatory testing law (RCW 70.125.090). All SAKs in the possession of law enforcement prior to July 24, 2015 must be tested, unless, for circumstances involving an adult victim or emancipated minor, there is an indication that a victim did not consent to testing.