



## 2019 LEGISLATIVE SESSION SUMMARY

### Session Overview

The fast-paced 2019 legislative session began January 14<sup>th</sup> and ended on April 28<sup>th</sup> with just 2 minutes remaining on the clock before a special session would be necessary.

2019 proved to be one of the most successful policy years on record for sexual assault issues in our great state! WCSAP had a robust legislative agenda and worked diligently to push forward key policies that would strengthen responses to sexual violence and advance the rights of survivors. We actively advocated for rape kit reform, the repair of a problematic supreme court ruling about sexual assault protection orders, eliminating/modifying the statute of limitations on sex crimes, revising the definition of Rape 3, protecting victim privacy, and maintaining critical victim service funding. We are thrilled to report that ALL WCSAP priority items passed the legislature and were signed into law by Governor Inslee.

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All WCSAP priority bills passed!  
Historic laws were made!  
Together we made a difference!

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This session, the State, made a strong commitment to sexual assault victims by not only passing supportive legislation, but also designating \$10.3 million dollars toward infrastructure that will improve the timeliness of sexual assault kit processing and related system responses.

The needs of sexual assault victims were acknowledged and heard! We thank all the survivors who shared their truths, our partners and stakeholders who worked alongside us, committed and passionate legislators, and our coalition programs for your critical policy contributions.

Together, we passed some of the most comprehensive sexual assault legislation in the nation.

## Budget Overview

This year lawmakers needed to create and pass a two-year operating budget. Lawmakers agreed on a \$52.4 billion two-year operating budget, plus capital and transportation budgets. Within the budgeting process, WCSAP worked to ensure that victim service funding was maintained and important policy like HB 1166 (rape kit reform) received adequate funding.

Approximately 2500 bills were introduced this session, of those just under 450 passed. WCSAP tracked and responded to 160 bills relevant to sexual violence, crime victims, corrections, health and safety, prevention, social justice, and community safety.

## Legislative Agenda

WCSAP's [legislative agenda](#) was centered on developing and strengthening responses to sexual violence and advancing victim protections.

This report includes information related to priority agenda items.

The laws become effective July 28, 2019 unless otherwise noted. Please know that some laws (like HB 1166) have multiple implementation dates. A hyperlink to each bill is provided. If clicked, the link will show you the full history of the policy, recorded testimony, and the final bill as signed into law by the Governor.

## Supporting Sexual Assault Survivors



[HB 1166](#) *Supporting Sexual Assault Survivors* is the result of years of work and an unwavering commitment to improving the system for survivors by WCSAP, legislators, partners, and the Sexual Assault Forensic Examination Taskforce. The law became effective April 23, 2019 but has multiple other implementation dates contained within it.

HB 1166, prime sponsored by Representative Tina Orwall was a historic victory and positioned Washington State as a leader in comprehensive statewide rape kit responses.

Passage of HB 1166 acknowledges that sexual assault victims have been denied justice for far too long and that the State can and will do better by them. The State invested \$10.3 million to build a much-needed infrastructure to test approximately 10,000 rape kits which have been sitting untested on shelves in custody rooms statewide. It will do this by adequately staffing and renovating the Vancouver crime lab into a high throughput lab that can expedite DNA testing. With this update to the lab, Washington is projected to complete testing of all eligible kits by Dec 1, 2021.

To ensure all previously unsubmitted kits are received for testing, law enforcement is required to forward kits dated before July 24, 2015 to the crime lab by October 1, 2019, unless the kit has already been tested or doesn't have victim consent for testing.

The bill also mandates, effective May 1, 2022, that newly submitted kits be tested within 45 days of receipt to the crime lab. This is a significant process improvement and commitment to survivors that the State will process exam evidence timely.

With the large volume of kits that will be advancing to the Crime Lab for testing, the State is preparing for the significant amount of results and related victim notification needs. To address this, the bill mandates the Criminal Justice Training Commission (CJCT) create a training for law enforcement regarding best practice victim notification in consultation with WCSAP and other named organizations.

In addition to the CJTC training, the State is working on constructing a model policy for victim notification. Upon completion, it will be shared out broadly and should be used in communities to inform and create consistency in notification practices statewide. WCSAP will pass along resources once they become available. Meanwhile, advocates, prosecutors, law enforcement, and other stakeholders may want to convene to discuss current victim notification practices and anticipated needs specific to your community.

HB 1166 also addresses needs associated with "unreported" kits. These are commonly referred to as anonymous or Jane Doe kits, but the State codified language to classify them as unreported to reduce confusion and assist with kit tracking and testing. Currently, in Washington, there is no statewide standard for storage, retention, or destruction of unreported kits. Given this, the State has placed a moratorium on the destruction of unreported kits while it continues to work toward long term solutions.

The moratorium went into effect April 23<sup>rd</sup> and will remain in place until June 30, 2020. Unreported kits in custody of hospitals or law enforcement cannot be destroyed during the moratorium. Entities in possession of unreported kits from before 4-23-2019 must keep them. Unreported kits collected during the moratorium period of April 23, 2019 to June 30, 2020 should be sent to the Washington State Crime lab for holding until the moratorium ends (the Washington State Patrol will issue guidance on shipping processes and procedures). The State intends to work on identifying remedies related to storage and destruction of unreported kits and will make recommendations to the legislature by Dec 1, 2019.

The new law increases the Statute of Limitations on unknown DNA from 1 to 2 years and enumerates certain rights for sexual assault victims. One right that we are particularly excited about allows rape victims to see their police report before it goes to

the prosecutor if they request it. Additionally, it provides a process for sexual assault survivors to report victim right violations. We want to make sure you know about these rights, so you can ensure they are shared and upheld in your community. In addition to victim rights already specified in law, the bill codified sexual assault survivors have the right to:

- Receive a forensic medical sexual assault examination at no cost.
- Consult with a sexual assault survivor's advocate during any medical evidentiary examination and during any interview by law enforcement officers, prosecuting attorneys, or defense attorneys, unless an advocate cannot be summoned in a timely manner, and regardless of whether a survivor has waived the right in a previous examination or interview.
- Be informed, upon the request of a survivor, of when the forensic analysis of one's sexual assault kit and other related physical evidence will be or was completed, the results of the forensic analysis, and whether the analysis yielded a DNA profile and match, provided that the disclosure is made at an appropriate time so as not to impede or compromise an ongoing investigation.
- Receive notice prior to the destruction or disposal of their sexual assault kit.
- Receive a copy of the police report related to the investigation without charge.
- Review one's own statement before law enforcement refers a case to the prosecuting attorney.
- A sexual assault survivor retains all these rights regardless of whether the survivor agrees to participate in the criminal justice system and regardless of whether the survivor agrees to receive a forensic examination to collect evidence.

If a survivor is denied any right, they can seek an order directing compliance by the relevant party or parties by filing a petition in the superior court in the county where the sexual assault occurred. They also must provide notice of the petition to the relevant party or parties. Compliance is the sole remedy available to the survivor and the court shall expedite consideration of a filed petition.

Lastly, the bill changes the taskforce to an advisory group, adds a SANE nurse as a member, and shifts the administration of the advisory group from the Legislature to the Office of the Attorneys General.

#### HB 1166 Key dates at a glance:

- April 23, 2019- Moratorium begins.
- October 1, 2019- Law enforcement kit forwarding deadline for eligible kits collected before July 24, 2015.

- June 30, 2020- Moratorium expires.
- Dec 1, 2021- Testing of 10K kits (those collected before July 24, 2015) completed.
- May 1, 2022- Reported kit 45-day testing timeline begins

## **Sexual Assault Nurse Examiner Access**



Survivors seeking a forensic sexual assault exam should not face barriers finding a hospital to provide them the care they need. However, not all WA hospitals offer forensic exams or have qualified staff available at the time a victim comes to the facility. This can result in victims leaving hospitals without any treatment, evidence collection, information about where they could obtain an exam, free transportation to that facility, or connection with an advocate.

A seemingly easy solution would be to mandate that all hospitals perform sexual assault exams to increase access statewide. However, it is essential that these exams are performed by well-trained specialized medical professionals- Sexual Assault Nurse

Examiners (SANEs). SANEs are skilled in addressing medical needs, recognizing trauma and providing victim-centered care. They also have advanced training to ensure evidence is collected and documented properly. Appropriate evidence collection is critical for reliable testing, investigation and prosecution needs. SANEs do all of this while compassionately assisting the patient through a multi-hour, very personal exam.

Hospitals across the State need more qualified SANEs and the state has been investing in SANE trainings to increase the number of qualified providers. While the number has grown, which is wonderful, statewide inequity to care still exists. While increasing the number of qualified professionals is important, the issue is complex and variables including, but not limited to, administrative support of programing, addressing provider vicarious trauma, kit reimbursement rates, and staffing ratios are also key factors impacting access.

[HB 1016](#), prime sponsored by Representative Michelle Caldier took a step forward in addressing access needs in an effort to help victims get the timely, qualified medical treatment they need and deserve. The new law requires a hospital that does not perform sexual assault evidence kit collection or have an appropriate provider available, to notify any individual who presents at the emergency department requesting a sexual assault evidence kit collection that it does not provide the service within 2 hours. The hospital must also coordinate victim support with the local community sexual assault agency to ensure that advocacy support and resources can be offered to the survivor. The new law provides a complaint mechanism for victims by reporting to the Department of Health if they are not notified by the hospital within 2-hours that it does not offer exams.

## Sexual Assault Protection Orders



[HB 1149](#) *Strengthening Protection for Sexual Assault Survivors* was prime sponsored by Representative Laurie Jenkins.

This bill is in direct response to the unjust *Roake vs. Delman* supreme court decision which ruled that a sexual assault survivor seeking a sexual assault protection order must also allege they have additional reasons beyond the sexual assault to fear their attacker in the future. The ruling by the court was not unanimous and this year the legislature updated Washington's statute language to make clear the legal intent that victims do not and should not have to prove extra fear in order to obtain an order of protection. We applaud the legislature for removing this additional burden that was placed on rape victims which prevented them from seeking lifesaving protection.



## Statute of Limitations (SOL) and Modifying the Definition of Rape 3



Passage of this comprehensive SOL law was 4 years in the making! Representative Dan Griffey prime sponsored two bills addressing SOL. However, a Senate version sponsored by Senator Dhingra that had identical SOL language and the inclusion of Rape 3 ended up being the vehicle that was signed into law.

[SB 5649](#) is not retroactive, but going forward, it significantly revises and simplifies the SOL for specific sex crimes.

The bill eliminates the Statute of Limitations (SOL) on specific sex crimes committed against persons 16 years old or younger. Included crimes are rape in the first or second degree when the victim is under age sixteen for the crimes of rape of a child in the first, second, or third degree; sexual misconduct with a minor in the first degree; custodial sexual misconduct in the first degree; child molestation in the first, second, or third degree; and sexual exploitation of a minor.

The new law also extends the SOL by 10 years for victims who are older than 16 years of age when the crime was committed. The revised SOL law allows for charges to be brought forward up to 20 years after the commission of the crime for Rape 1, Rape 2, and indecent liberties.

It also modifies the definition of Rape 3 to be trauma informed by removing victim blaming language that required a victim to show through “their action and words” (in addition to lack of consent) that they didn’t want to engage in sexual contact. This change aligns our law with neurobiology and what we know about tonic immobility that victims commonly experience.

### **Additional Child Focused Bills**

**Child abuse multi-disciplinary teams**, [SB 5461](#) (Senator Cleveland) clarified guidelines for information sharing between multi-disciplinary team members and specifies that no party should breach or feel compelled to breach confidentiality or professional/legal obligations when participating on an MDT. It also adds commercial sexual abuse of minors to crimes that should be considered in the child MDT model.

**Juvenile offenses with depictions of minors**, [HB 1742](#) (Representative Frame) acknowledges that exchange of intimate images by minors is increasingly common, and that such actions may lead to harm and long-term consequences for youth. The legislature intends to develop age appropriate prevention and interventions to prevent harm and to hold accountable youth who harm others through exchange of intimate images.

The law is known as the responsible teen communication act. The bill exempts minors from being charged for crimes involving depictions of a minor engaged in sexually explicit conduct. It creates a new class of crimes that apply exclusively to minors and limits the criminal culpability of a minor dealing in depictions of another minor thirteen years of age or older engaged in sexually explicit conduct to a gross misdemeanor.

It also exempts a minor from criminal culpability for dealing in depictions of themselves engaged in sexually explicit conduct unless the minor sells the depiction. The bill requires a prosecutor to divert certain qualifying offenses involving dealing in depictions of a minor if it is a juvenile's first violation of such an offense. Lastly, it requires the Washington Coalition of Sexual Assault Programs to convene a workgroup on addressing harm caused by the exchange of intimate images by minors and to make recommendations to the legislature by Dec 2019.

**Protecting Child Sexual Assault Victim Information**, [HB 1505](#) (Representative Klippert) will protect information of alleged and proven child victims of sexual assault from public disclosure under the Public Records Act and the Criminal Records Privacy Act. It updated existing law to add identifiers like social media accounts, cell numbers, and email accounts that didn’t exist when the original bill classified protected information.

## Sexual Harassment

In the wake of #MeToo and following a year in which several state lawmakers either lost an election or resigned amid sexual misconduct allegations, the Washington State Legislature passed measures making sexual harassment a violation of the State's Ethics in Public Service Act and Code of Conduct.

The measures require training and prohibits harassment or sexual harassment of another person by legislators and legislative branch employees under the Ethics Act and makes it a Code of Conduct violation for all members of the legislative community.

Broader sexual harassment employment legislation also passed that applies statewide regarding records protections. [HB 1692](#) sponsored by Laurie Jenkins made the names of complainants, other accusers, and witnesses in an investigation of employment discrimination exempt from public disclosure requirements after the investigation is complete unless the agency has notified the complainant of the investigation's outcome and the person named in the record has consented to disclose their name.

[Preventing the sexual harassment and sexual assault of certain isolated workers, HB 5258](#) (Senator Keiser). This new law mandates hotel, motel, retail, or a security guard entity or property services contractor to adopt a sexual harassment policy; provide mandatory training to the employer's managers, supervisors, and employees to prevent sexual assault, harassment, and discrimination in the workplace; educate the workforce about protections for employees who report violations; provide a list of resources for the employer's employees to utilize—at a minimum these resources must include contact information for the Equal Employment Opportunity Commission, the Human Rights Commission, and local advocacy groups focused on preventing sexual harassment and sexual assault; and provide a panic button to each employee.

The new law also mandates the Department of Labor and Industries to publish resource information for employers.

## Other Notables



Immunity from prostitution charges, [HB 1382](#) (Representative Pellicciotti) the new law provides immunity from prosecution for a prostitution offense where the individual was a victim of crime or was seeking emergency assistance/medical support.

Hate Crimes, [HB 1732](#) (Representative Valdez) stresses the severity the crime by renaming the charge of Malicious Harassment to Hate Crime Offense. It includes "gender identity or expression" as a protected category under the statute; increases the maximum punitive damages available in a civil action; clarifies actions considered threatening to a victim that would meet Hate Crime Offense prosecution criteria; and it requires the Office of the Attorney General to coordinate and convene a multidisciplinary advisory work group to address hate crimes in Washington State. The group will make recommendations for raising awareness, prevention, and quality response.

**There were a few bills relevant to sexual assault that unfortunately did not pass.**

Sex Education- [SB 5395/](#)[HB 1407](#) that would have made age appropriate sex education mandatory in K-12 failed to advance.

Another school bill [HB 1998](#) addressing [campus sexual violence](#) that would have established a working group to ensure that Title IX protections and campus responses to sexual assault are upheld passed out of committee but didn't advance further.

While these two bills didn't make it to the finish line, important progress was made on both for future work on the issues.

### **Looking Ahead**

WCSAP will continue to monitor public policy issues throughout the interim and send messages accordingly.

In the interim, we anticipate working on taskforces, meeting with legislators and working with stakeholders toward solutions for unreported kit storage and destruction practices, increasing trauma-informed practices statewide, advancing victim rights, exploring juvenile justice issues, and much more.

Building and maintaining relationships with your legislators both in and out of session is critical to our public policy efforts. We strongly encourage you to contact your legislators now that they are back home. We recommend that you invite them to your programs, drop by and visit their district offices, share information about your program, send a card when they win an award or are featured in a story in your local paper, and keep the relationship current.

You are their constituents and they want to meet and learn from you.