
SUBSTITUTE HOUSE BILL 2318

State of Washington

66th Legislature

2020 Regular Session

By House Public Safety (originally sponsored by Representatives Orwall, Lovick, Slatter, Morgan, Wylie, Mosbrucker, and Pollet)

1 AN ACT Relating to advancing criminal investigatory practices;
2 amending RCW 5.70.010, 70.125.090, 70.125.100, 43.43.545, and
3 43.43.754; adding a new section to chapter 43.101 RCW; adding new
4 sections to chapter 5.70 RCW; recodifying RCW 70.125.090 and
5 70.125.100; providing an effective date; and providing an expiration
6 date.

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

8 **Sec. 1.** RCW 5.70.010 and 2015 c 221 s 1 are each amended to read
9 as follows:

10 (1) In any felony case initially charged as a violent or sex
11 offense, as defined in RCW 9.94A.030, a governmental entity shall
12 preserve any DNA work product that has been secured in connection
13 with the criminal case, including related investigatory reports and
14 records, according to the following guidelines:

15 (a) Except as provided in (b) of this subsection, where a
16 defendant has been charged and convicted in connection with the case,
17 the DNA work product and investigatory reports and records must be
18 maintained throughout the length of the sentence, including any
19 period of community custody extending through final discharge;

20 (b) Where a defendant has been convicted and sentenced under RCW
21 9.94A.507 in connection with the case, the DNA work product and

1 investigatory reports and records must be maintained for ninety-nine
2 years or until the death of the defendant, whichever is sooner; and

3 (c) Where no conviction has been made in connection with the
4 case, the DNA work product and investigatory reports and records must
5 be maintained for ninety-nine years or throughout the period of the
6 statute of limitations pursuant to RCW 9A.04.080, whichever is
7 sooner.

8 (2) Notwithstanding subsection (1) of this section, in any felony
9 case regardless of whether the identity of the offender is known and
10 law enforcement has probable cause sufficient to believe the elements
11 of a violent or sex offense as defined in RCW 9.94A.030 have been
12 committed, a governmental entity shall preserve any DNA work
13 product (~~(, including a sexual assault examination kit,)~~) secured in
14 connection with the criminal case and investigatory reports and
15 records for ninety-nine years or throughout the period of the statute
16 of limitations pursuant to RCW 9A.04.080, whichever is sooner.

17 (3) (~~For purposes of this section:~~

18 ~~(a) "Amplified DNA" means DNA generated during scientific~~
19 ~~analysis using a polymerase chain reaction.~~

20 ~~(b) "DNA work product" means (i) product generated during the~~
21 ~~process of scientific analysis of such material, except amplified~~
22 ~~DNA, material that had been subjected to DNA extraction, and DNA~~
23 ~~extracts from reference samples; or (ii) any material contained on a~~
24 ~~microscope slide, swab, in a sample tube, cutting, DNA extract, or~~
25 ~~some other similar retention method used to isolate potential~~
26 ~~biological evidence that has been collected by law enforcement as~~
27 ~~part of its investigation and prepared for scientific analysis,~~
28 ~~whether or not it is submitted for scientific analysis and derived~~
29 ~~from:~~

30 ~~(A) The contents of a sexual assault examination kit;~~

31 ~~(B) Blood;~~

32 ~~(C) Semen;~~

33 ~~(D) Hair;~~

34 ~~(E) Saliva;~~

35 ~~(F) Skin tissue;~~

36 ~~(G) Fingerprints;~~

37 ~~(H) Bones;~~

38 ~~(I) Teeth; or~~

39 ~~(J) Any other identifiable human biological material or physical~~
40 ~~evidence.~~

1 ~~Notwithstanding the foregoing, "DNA work product" does not~~
2 ~~include a reference sample collected unless it has been shown through~~
3 ~~DNA comparison to associate the source of the sample with the~~
4 ~~criminal case for which it was collected.~~

5 ~~(c) "Governmental entity" means any general law enforcement~~
6 ~~agency or any person or organization officially acting on behalf of~~
7 ~~the state or any political subdivision of the state involved in the~~
8 ~~collection, examination, tracking, packaging, storing, or disposition~~
9 ~~of biological material collected in connection with a criminal~~
10 ~~investigation relating to a felony offense.~~

11 ~~(d) "Reference sample" means a known sample collected from an~~
12 ~~individual by a governmental entity for the purpose of comparison to~~
13 ~~DNA profiles developed in a criminal case.~~

14 (4)) The failure of a law enforcement agency to preserve DNA
15 work product does not constitute grounds in any criminal proceeding
16 for challenging the admissibility of other DNA work product that was
17 preserved in a case, and any evidence offered may not be excluded by
18 a court on those grounds. The court may not set aside the conviction
19 or sentence or order the reversal of a conviction under this section
20 on the grounds that the DNA work product is no longer available.
21 Unless the court finds that DNA work product was destroyed with
22 malicious intent to violate this section, a person accused of
23 committing a crime against a person has no cause of action against a
24 law enforcement agency for failure to comply with the requirements of
25 this section. If the court finds that DNA work product was destroyed
26 with malicious intent to violate this section, the court may impose
27 appropriate sanctions. Nothing in this section may be construed to
28 create a private right of action on the part of any individual or
29 entity against any law enforcement agency or any contractor of a law
30 enforcement agency.

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

33 The definitions in this section apply throughout this chapter
34 unless the context clearly requires otherwise.

35 (1) "Amplified DNA" means DNA generated during scientific
36 analysis using a polymerase chain reaction.

37 (2) "DNA work product" means (a) product generated during the
38 process of scientific analysis of such material, except amplified
39 DNA, material that had been subjected to DNA extraction, screening

1 byproducts, and DNA extracts from reference samples; or (b) any
2 material contained on a microscope slide, swab, in a sample tube,
3 cutting, DNA extract, or some other similar retention method used to
4 isolate potential biological evidence that has been collected by law
5 enforcement or a forensic nurse as part of an investigation and
6 prepared for scientific analysis, whether or not it is submitted for
7 scientific analysis and derived from:

8 (i) The contents of a sexual assault examination kit;

9 (ii) Blood;

10 (iii) Semen;

11 (iv) Hair;

12 (v) Saliva;

13 (vi) Skin tissue;

14 (vii) Fingerprints;

15 (viii) Bones;

16 (ix) Teeth; or

17 (x) Any other identifiable human biological material or physical
18 evidence.

19 Notwithstanding the foregoing, "DNA work product" does not
20 include a reference sample collected unless it has been shown through
21 DNA comparison to associate the source of the sample with the
22 criminal case for which it was collected.

23 (3) "Governmental entity" means any general law enforcement
24 agency or any person or organization officially acting on behalf of
25 the state or any political subdivision of the state involved in the
26 collection, examination, tracking, packaging, storing, or disposition
27 of biological material collected in connection with a criminal
28 investigation relating to a felony offense.

29 (4) "Reference sample" means a known sample collected from an
30 individual by a governmental entity for the purpose of comparison to
31 DNA profiles developed in a criminal case.

32 (5) "Screening byproduct" means a product or waste generated
33 during examination of DNA evidence, or the screening process of such
34 evidence, that is not intended for long-term storage.

35 (6) "Sexual assault kit" includes all evidence collected during a
36 sexual assault medical forensic examination.

37 (7) "Unreported sexual assault kit" means a sexual assault kit
38 collected from an adult or emancipated minor victim who has not
39 consented to forensic analysis of the sexual assault kit or where the

1 law enforcement agency has not received a related report or complaint
2 alleging a sexual assault or other crime has occurred.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 5.70 RCW
4 to read as follows:

5 (1)(a) Any unreported sexual assault kit collected on or after
6 the effective date of this section must be transported from the
7 collecting entity to the applicable local law enforcement agency.

8 (b) By January 1, 2021, unreported sexual assault kits collected
9 prior to the effective date of this section and stored according to
10 the requirements of RCW 70.125.101 must be transported to the
11 applicable local law enforcement agency.

12 (2)(a) The applicable local law enforcement agency is responsible
13 for conducting the transport of the unreported sexual assault kit
14 from the collecting entity to the agency as required under subsection
15 (1) of this section.

16 (b) The applicable law enforcement agency shall store and
17 preserve the unreported sexual assault kit for twenty years from the
18 date of collection.

19 (3) The term "applicable local law enforcement agency" refers to
20 the local law enforcement agency that would have jurisdiction to
21 investigate any related criminal allegations if they were to be
22 reported to law enforcement. The applicable local law enforcement
23 agency is determined through consultation between the collecting
24 entity or, in the case of unreported sexual assault kits stored
25 according to the requirements of RCW 70.125.101, the Washington state
26 patrol, and local law enforcement agencies.

27 **Sec. 4.** RCW 70.125.090 and 2019 c 93 s 6 are each amended to
28 read as follows:

29 (1) When a law enforcement agency receives a sexual assault kit,
30 the law enforcement agency must, within thirty days of its receipt,
31 submit a request for laboratory examination to the Washington state
32 patrol crime laboratory for prioritization for testing by it or
33 another accredited laboratory that holds an outsourcing agreement
34 with the Washington state patrol if:

35 (a) The law enforcement agency has received a related report or
36 complaint alleging a sexual assault or other crime has occurred; and

37 (b)(i) Consent for laboratory examination has been given by the
38 victim; or

1 (ii) The victim is a person under the age of eighteen who is not
2 emancipated pursuant to chapter 13.64 RCW.

3 (2) Beginning May 1, 2022, when the Washington state patrol
4 receives a request for laboratory examination of a sexual assault kit
5 from a law enforcement agency, the Washington state patrol shall
6 conduct the laboratory examination of the sexual assault kit, and
7 when appropriate, enter relevant information into the combined DNA
8 index system, within forty-five days of receipt of the request. The
9 Washington state patrol crime laboratory must give priority to the
10 laboratory examination of sexual assault kits at the request of a
11 local law enforcement agency for:

12 (a) Active investigations and cases with impending court dates;

13 (b) Active investigations where public safety is an immediate
14 concern;

15 (c) Violent crimes investigations, including active sexual
16 assault investigations;

17 (d) Postconviction cases; and

18 (e) Other crimes' investigations and nonactive investigations,
19 such as previously unsubmitted older sexual assault kits or recently
20 collected sexual assault kits that the submitting agency has
21 determined to be lower priority based on their initial investigation.

22 (3) The requirements to request and complete laboratory
23 examination of sexual assault kits under subsections (1) and (2) of
24 this section do not include forensic toxicological analysis. However,
25 nothing in this section limits or modifies the authority of a law
26 enforcement agency to request toxicological analysis of evidence
27 collected in a sexual assault kit.

28 (4) The failure of a law enforcement agency to submit a request
29 for laboratory examination, or the failure of the Washington state
30 patrol to facilitate laboratory examination, within the time periods
31 prescribed under this section does not constitute grounds in any
32 criminal proceeding for challenging the validity of a DNA evidence
33 association, and any evidence obtained from the sexual assault kit
34 may not be excluded by a court on those grounds.

35 ((4)) (5) A person accused or convicted of committing a crime
36 against a victim has no standing to object to any failure to comply
37 with the requirements of this section, and the failure to comply with
38 the requirements of this section is not grounds for setting aside the
39 conviction or sentence.

1 ~~((5))~~ (6) Nothing in this section may be construed to create a
2 private right of action or claim on the part of any individual,
3 entity, or agency against any law enforcement agency or any
4 contractor of any law enforcement agency.

5 ~~((6))~~ (7) This section applies ~~((prospectively only and not~~
6 ~~retroactively. It only applies))~~ to sexual assault examinations
7 performed on or after July 24, 2015.

8 ~~((7))~~ (8)(a) Until June 30, 2023, the Washington state patrol
9 shall compile the following information related to the sexual assault
10 kits identified in this section and RCW 70.125.100 (as recodified by
11 this act):

12 (i) The number of requests for laboratory examination made for
13 sexual assault kits and the law enforcement agencies that submitted
14 the requests; and

15 (ii) The progress made towards testing the sexual assault kits,
16 including the status of requests for laboratory examination made by
17 each law enforcement agency.

18 (b) The Washington state patrol shall make recommendations for
19 increasing the progress on testing any untested sexual assault kits.

20 (c) Beginning in 2015, the Washington state patrol shall report
21 its findings and recommendations annually to the appropriate
22 committees of the legislature and the governor by December 1st of
23 each year.

24 **Sec. 5.** RCW 70.125.100 and 2019 c 93 s 7 are each amended to
25 read as follows:

26 (1) Law enforcement agencies shall submit requests for forensic
27 analysis of all sexual assault kits collected prior to July 24, 2015,
28 and in the possession of the agencies to the Washington state patrol
29 crime laboratory by October 1, 2019, except submission for forensic
30 analysis is not required when: (a) Forensic analysis has previously
31 been conducted; (b) there is documentation of an adult victim or
32 emancipated minor victim expressing that he or she does not want his
33 or her sexual assault kit submitted for forensic analysis; or (c) a
34 sexual assault kit is noninvestigatory and held by a law enforcement
35 agency pursuant to an agreement with a hospital or other medical
36 provider. The requirements of this subsection apply regardless of the
37 statute of limitations or the status of any related investigation.

38 (2) The Washington state patrol crime laboratory may consult with
39 local law enforcement agencies to coordinate the efficient submission

1 of requests for forensic analysis under this section in conjunction
2 with the implementation of the statewide tracking system under RCW
3 43.43.545, provided that all requests are submitted and all required
4 information is entered into the statewide sexual assault tracking
5 system by October 1, 2019. The Washington state patrol crime
6 laboratory shall facilitate the forensic analysis of all sexual
7 assault kits submitted under this section by December 1, 2021. The
8 analysis may be conducted by the Washington state patrol laboratory
9 or an accredited laboratory holding a contract or agreement with the
10 Washington state patrol. The Washington state patrol shall process
11 the forensic analysis of sexual assault kits in accordance with the
12 priorities in RCW 70.125.090(2) (as recodified by this act).

13 (3) The requirements to request and complete laboratory
14 examination of sexual assault kits under this section do not include
15 forensic toxicological analysis. However, nothing in this section
16 limits or modifies the authority of a law enforcement agency to
17 request toxicological analysis of evidence collected in a sexual
18 assault kit.

19 (4) The failure of a law enforcement agency to submit a request
20 for laboratory examination within the time prescribed under this
21 section does not constitute grounds in any criminal proceeding for
22 challenging the validity of a DNA evidence association, and any
23 evidence obtained from the sexual assault kit may not be excluded by
24 a court on those grounds.

25 ~~((4))~~ (5) A person accused or convicted of committing a crime
26 against a victim has no standing to object to any failure to comply
27 with the requirements of this section, and the failure to comply with
28 the requirements of this section is not grounds for setting aside the
29 conviction or sentence.

30 ~~((5))~~ (6) Nothing in this section may be construed to create a
31 private right of action or claim on the part of any individual,
32 entity, or agency against any law enforcement agency or any
33 contractor of any law enforcement agency.

34 **Sec. 6.** RCW 43.43.545 and 2019 c 93 s 4 are each amended to read
35 as follows:

36 (1) The Washington state patrol shall create and operate a
37 statewide sexual assault kit tracking system. The Washington state
38 patrol may contract with state or nonstate entities including, but

1 not limited to, private software and technology providers, for the
2 creation, operation, and maintenance of the system.

3 (2) The statewide sexual assault kit tracking system must:

4 (a) Track the location and status of sexual assault kits
5 throughout the criminal justice process, including the initial
6 collection in examinations performed at medical facilities, receipt
7 and storage at law enforcement agencies, receipt and analysis at
8 forensic laboratories, and storage and any destruction after
9 completion of analysis;

10 (b) Designate sexual assault kits as unreported or reported;

11 (c) Indicate whether a sexual assault kit contains biological
12 materials collected for the purpose of forensic toxicological
13 analysis;

14 (d) Allow medical facilities performing sexual assault forensic
15 examinations, law enforcement agencies, prosecutors, the Washington
16 state patrol bureau of forensic laboratory services, and other
17 entities having custody of sexual assault kits to update and track
18 the status and location of sexual assault kits;

19 ~~((d))~~ (e) Allow victims of sexual assault to anonymously track
20 or receive updates regarding the status of their sexual assault kits;
21 and

22 ~~((e))~~ (f) Use electronic technology or technologies allowing
23 continuous access.

24 (3) The Washington state patrol may use a phased implementation
25 process in order to launch the system and facilitate entry and use of
26 the system for required participants. The Washington state patrol may
27 phase initial participation according to region, volume, or other
28 appropriate classifications. All entities having custody of sexual
29 assault kits shall fully participate in the system no later than June
30 1, 2018. The Washington state patrol shall submit a report on the
31 current status and plan for launching the system, including the plan
32 for phased implementation, to the joint legislative task force on
33 sexual assault forensic examination best practices, the appropriate
34 committees of the legislature, and the governor no later than January
35 1, 2017.

36 (4) The Washington state patrol shall submit a semiannual report
37 on the statewide sexual assault kit tracking system to the joint
38 legislative task force on sexual assault forensic examination best
39 practices, the appropriate committees of the legislature, and the
40 governor. The Washington state patrol may publish the current report

1 on its web site. The first report is due July 31, 2018, and
2 subsequent reports are due January 31st and July 31st of each year.
3 The report must include the following:

4 (a) The total number of sexual assault kits in the system
5 statewide and by jurisdiction;

6 (b) The total and semiannual number of sexual assault kits where
7 forensic analysis has been completed statewide and by jurisdiction;

8 (c) The number of sexual assault kits added to the system in the
9 reporting period statewide and by jurisdiction;

10 (d) The total and semiannual number of sexual assault kits where
11 forensic analysis has been requested but not completed statewide and
12 by jurisdiction;

13 (e) The average and median length of time for sexual assault kits
14 to be submitted for forensic analysis after being added to the
15 system, including separate sets of data for all sexual assault kits
16 in the system statewide and by jurisdiction and for sexual assault
17 kits added to the system in the reporting period statewide and by
18 jurisdiction;

19 (f) The average and median length of time for forensic analysis
20 to be completed on sexual assault kits after being submitted for
21 analysis, including separate sets of data for all sexual assault kits
22 in the system statewide and by jurisdiction and for sexual assault
23 kits added to the system in the reporting period statewide and by
24 jurisdiction;

25 (g) The total and semiannual number of sexual assault kits
26 destroyed or removed from the system statewide and by jurisdiction;

27 (h) The total number of sexual assault kits, statewide and by
28 jurisdiction, where forensic analysis has not been completed and six
29 months or more have passed since those sexual assault kits were added
30 to the system; and

31 (i) The total number of sexual assault kits, statewide and by
32 jurisdiction, where forensic analysis has not been completed and one
33 year or more has passed since those sexual assault kits were added to
34 the system.

35 (5) For the purpose of reports under subsection (4) of this
36 section, a sexual assault kit must be assigned to the jurisdiction
37 associated with the law enforcement agency anticipated to receive the
38 sexual assault kit or otherwise having custody of the sexual assault
39 kit.

1 (6) Any public agency or entity, including its officials and
2 employees, and any hospital and its employees providing services to
3 victims of sexual assault may not be held civilly liable for damages
4 arising from any release of information or the failure to release
5 information related to the statewide sexual assault kit tracking
6 system, so long as the release was without gross negligence.

7 (7) The Washington state patrol shall adopt rules as necessary to
8 implement this section.

9 (8) For the purposes of this section(~~(, an "unreported sexual~~
10 ~~assault kit" refers to a sexual assault kit collected from a victim~~
11 ~~who has consented to the collection of the sexual assault kit but who~~
12 ~~has not reported the alleged crime to law enforcement)~~):

13 (a) "Reported sexual assault kit" means a sexual assault kit
14 where forensic analysis is required under RCW 70.125.090 or
15 70.125.100 (as recodified by this act);

16 (b) "Sexual assault kit" includes all evidence collected during a
17 sexual assault medical forensic examination; and

18 (c) "Unreported sexual assault kit" means a sexual assault kit
19 collected from an adult or emancipated minor victim who has not
20 consented to laboratory examination of the sexual assault kit or
21 where the law enforcement agency has not received a related report or
22 complaint alleging a sexual assault or other crime has occurred.

23 **Sec. 7.** RCW 43.43.754 and 2019 c 443 s 3 are each amended to
24 read as follows:

25 (1) A biological sample must be collected for purposes of DNA
26 identification analysis from:

27 (a) Every adult or juvenile individual convicted of a felony, or
28 any of the following crimes (or equivalent juvenile offenses):

29 (i) Assault in the fourth degree where domestic violence as
30 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
31 9.94A.030);

32 (ii) Assault in the fourth degree with sexual motivation (RCW
33 9A.36.041, 9.94A.835);

34 (iii) Communication with a minor for immoral purposes (RCW
35 9.68A.090);

36 (iv) Custodial sexual misconduct in the second degree (RCW
37 9A.44.170);

38 (v) Failure to register (chapter 9A.44 RCW);

39 (vi) Harassment (RCW 9A.46.020);

1 (vii) Patronizing a prostitute (RCW 9A.88.110);
2 (viii) Sexual misconduct with a minor in the second degree (RCW
3 9A.44.096);
4 (ix) Stalking (RCW 9A.46.110);
5 (x) Indecent exposure (RCW 9A.88.010);
6 (xi) Violation of a sexual assault protection order granted under
7 chapter 7.90 RCW; and

8 (b) Every adult or juvenile individual who is required to
9 register under RCW 9A.44.130.

10 (2) (a) A municipal jurisdiction may also submit any biological
11 sample to the laboratory services bureau of the Washington state
12 patrol for purposes of DNA identification analysis when:

13 (i) The sample was collected from a defendant upon conviction for
14 a municipal offense where the underlying ordinance does not adopt the
15 relevant state statute by reference but the offense is otherwise
16 equivalent to an offense in subsection (1) (a) of this section;

17 (ii) The equivalent offense in subsection (1) (a) of this section
18 was an offense for which collection of a biological sample was
19 required under this section at the time of the conviction; and

20 (iii) The sample was collected on or after June 12, 2008, and
21 before January 1, 2020.

22 (b) When submitting a biological sample under this subsection,
23 the municipal jurisdiction must include a signed affidavit from the
24 municipal prosecuting authority of the jurisdiction in which the
25 conviction occurred specifying the state crime to which the municipal
26 offense is equivalent.

27 (3) Law enforcement may submit to the forensic laboratory
28 services bureau of the Washington state patrol, for purposes of DNA
29 identification analysis, any lawfully obtained biological sample
30 within its control from a deceased offender who was previously
31 convicted of an offense under subsection (1) (a) of this section,
32 regardless of the date of conviction.

33 (4) If the Washington state patrol crime laboratory already has a
34 DNA sample from an individual for a qualifying offense, a subsequent
35 submission is not required to be submitted.

36 (5) Biological samples shall be collected in the following
37 manner:

38 (a) For persons convicted of any offense listed in subsection
39 (1) (a) of this section or adjudicated guilty of an equivalent
40 juvenile offense, who do not serve a term of confinement in a

1 department of corrections facility or a department of children,
2 youth, and families facility, and are serving a term of confinement
3 in a city or county jail facility, the city or county jail facility
4 shall be responsible for obtaining the biological samples.

5 (b) The local police department or sheriff's office shall be
6 responsible for obtaining the biological samples for:

7 (i) Persons convicted of any offense listed in subsection (1)(a)
8 of this section or adjudicated guilty of an equivalent juvenile
9 offense, who do not serve a term of confinement in a department of
10 corrections facility, department of children, youth, and families
11 facility, or a city or county jail facility; and

12 (ii) Persons who are required to register under RCW 9A.44.130.

13 (c) For persons convicted of any offense listed in subsection
14 (1)(a) of this section or adjudicated guilty of an equivalent
15 juvenile offense, who are serving or who are to serve a term of
16 confinement in a department of corrections facility or a department
17 of children, youth, and families facility, the facility holding the
18 person shall be responsible for obtaining the biological samples as
19 part of the intake process. If the facility did not collect the
20 biological sample during the intake process, then the facility shall
21 collect the biological sample as soon as is practicable. For those
22 persons incarcerated before June 12, 2008, who have not yet had a
23 biological sample collected, priority shall be given to those persons
24 who will be released the soonest.

25 ~~((6))~~ (d) For persons convicted of any offense listed in
26 subsection (1)(a) of this section or adjudicated guilty of an
27 equivalent juvenile offense, who will not serve a term of
28 confinement, the court shall ~~((order))~~: Order the person to report to
29 the local police department or sheriff's office as provided under
30 subsection (5)(b)(i) of this section within a reasonable period of
31 time established by the court in order to provide a biological
32 sample; or if the local police department or sheriff's office has a
33 protocol for collecting the biological sample in the courtroom, order
34 the person to immediately provide the biological sample to the local
35 police department or sheriff's office before leaving the presence of
36 the court. The court must further inform the person that refusal to
37 provide a biological sample is a gross misdemeanor under this
38 section.

39 ~~((7))~~ (6) Any biological sample taken pursuant to RCW 43.43.752
40 through 43.43.758 may be retained by the forensic laboratory services

1 bureau, and shall be used solely for the purpose of providing DNA or
2 other tests for identification analysis and prosecution of a criminal
3 offense or for the identification of human remains or missing
4 persons. Nothing in this section prohibits the submission of results
5 derived from the biological samples to the federal bureau of
6 investigation combined DNA index system.

7 ~~((+8))~~ (7) The forensic laboratory services bureau of the
8 Washington state patrol is responsible for testing performed on all
9 biological samples that are collected under this section, to the
10 extent allowed by funding available for this purpose. Known duplicate
11 samples may be excluded from testing unless testing is deemed
12 necessary or advisable by the director.

13 ~~((+9))~~ (8) This section applies to:

14 (a) All adults and juveniles to whom this section applied prior
15 to June 12, 2008;

16 (b) All adults and juveniles to whom this section did not apply
17 prior to June 12, 2008, who:

18 (i) Are convicted on or after June 12, 2008, of an offense listed
19 in subsection (1)(a) of this section on the date of conviction; or

20 (ii) Were convicted prior to June 12, 2008, of an offense listed
21 in subsection (1)(a) of this section and are still incarcerated on or
22 after June 12, 2008;

23 (c) All adults and juveniles who are required to register under
24 RCW 9A.44.130 on or after June 12, 2008, whether convicted before,
25 on, or after June 12, 2008; and

26 (d) All samples submitted under subsections (2) and (3) of this
27 section.

28 ~~((+10))~~ (9) This section creates no rights in a third person. No
29 cause of action may be brought based upon the noncollection or
30 nonanalysis or the delayed collection or analysis of a biological
31 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

32 ~~((+11))~~ (10) The detention, arrest, or conviction of a person
33 based upon a database match or database information is not
34 invalidated if it is determined that the sample was obtained or
35 placed in the database by mistake, or if the conviction or juvenile
36 adjudication that resulted in the collection of the biological sample
37 was subsequently vacated or otherwise altered in any future
38 proceeding including but not limited to posttrial or postfact-finding
39 motions, appeals, or collateral attacks. No cause of action may be
40 brought against the state based upon the analysis of a biological

1 sample authorized to be taken pursuant to a municipal ordinance if
2 the conviction or adjudication that resulted in the collection of the
3 biological sample was subsequently vacated or otherwise altered in
4 any future proceeding including, but not limited to, posttrial or
5 postfact-finding motions, appeals, or collateral attacks.

6 ~~((12))~~ (11) A person commits the crime of refusal to provide
7 DNA if the person willfully refuses to comply with a legal request
8 for a DNA sample as required under this section. The refusal to
9 provide DNA is a gross misdemeanor.

10 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.101
11 RCW to read as follows:

12 (1) Subject to the availability of amounts appropriated for this
13 specific purpose, the commission shall develop a proposal for a case
14 review program. The commission shall research, design, and develop
15 case review strategies designed to optimize outcomes in sexual
16 assault investigations through improved training and investigatory
17 practices. The proposed program must evaluate whether current
18 training and practices foster a trauma-informed, victim-centered
19 approach to witness and victim interviews and other investigatory
20 practices, including identifying gaps in training and assessing
21 whether the integration of the community resilience model results in
22 improved case outcomes and prolonged victim engagement in the
23 criminal justice system by comparing cases involving investigators
24 and interviewers who have participated in training to cases involving
25 investigators and interviewers who have not participated in training;
26 and assessing whether current practices conform to national best
27 practices for a multidisciplinary approach to investigating sexual
28 assault cases and interacting with survivors.

29 (2) In designing the program, the commission shall consult and
30 collaborate with experts in trauma-informed and victim-centered
31 training, experts in sexual assault investigations and prosecutions,
32 victim advocates, and other stakeholders identified by the
33 commission. The commission may form a multidisciplinary working group
34 for the purpose of carrying out the requirements of this section.

35 (3) The commission shall submit a report with a summary of its
36 proposal to the governor and the appropriate committees of the
37 legislature by December 1, 2020.

38 (4) This section expires July 1, 2021.

1 NEW SECTION. **Sec. 9.** RCW 70.125.090 and 70.125.100 are each
2 recodified as sections in chapter 5.70 RCW.

3 NEW SECTION. **Sec. 10.** Section 3 of this act takes effect June
4 30, 2020.

--- **END** ---