
ENGROSSED SUBSTITUTE HOUSE BILL 2318

AS AMENDED BY THE SENATE

Passed Legislature - 2020 Regular Session

State of Washington 66th Legislature 2020 Regular Session

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

READ FIRST TIME 01/27/20.

1 AN ACT Relating to advancing criminal investigatory practices;
2 amending RCW 5.70.010, 70.125.090, 70.125.100, 43.43.545, 43.43.754,
3 63.21.010, 63.21.020, 63.21.030, 63.21.050, and 63.21.060; adding new
4 sections to chapter 5.70 RCW; adding a new section to chapter 43.101
5 RCW; adding a new section to chapter 63.21 RCW; adding a new section
6 to chapter 63.32 RCW; adding a new section to chapter 63.40 RCW;
7 creating a new section; recodifying RCW 70.125.090 and 70.125.100;
8 providing an effective date; and providing an expiration date.

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

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

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

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

1 (b) Where a defendant has been convicted and sentenced under RCW
2 9.94A.507 in connection with the case, the DNA work product and
3 investigatory reports and records must be maintained for ninety-nine
4 years or until the death of the defendant, whichever is sooner; and

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

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

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

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

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

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

33 ~~(B) Blood;~~

34 ~~(C) Semen;~~

35 ~~(D) Hair;~~

36 ~~(E) Saliva;~~

37 ~~(F) Skin tissue;~~

38 ~~(G) Fingerprints;~~

39 ~~(H) Bones;~~

40 ~~(I) Teeth; or~~

1 ~~(J) Any other identifiable human biological material or physical~~
2 ~~evidence.~~

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

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

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

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

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

35 The definitions in this section apply throughout this chapter
36 unless the context clearly requires otherwise.

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

1 (2) "DNA work product" means (a) product generated during the
2 process of scientific analysis of such material, except amplified
3 DNA, material that had been subjected to DNA extraction, screening
4 byproducts, and DNA extracts from reference samples; or (b) any
5 material contained on a microscope slide, swab, in a sample tube,
6 cutting, DNA extract, or some other similar retention method used to
7 isolate potential biological evidence that has been collected by law
8 enforcement or a forensic nurse as part of an investigation and
9 prepared for scientific analysis, whether or not it is submitted for
10 scientific analysis and derived from:

- 11 (i) The contents of a sexual assault examination kit;
- 12 (ii) Blood;
- 13 (iii) Semen;
- 14 (iv) Hair;
- 15 (v) Saliva;
- 16 (vi) Skin tissue;
- 17 (vii) Fingerprints;
- 18 (viii) Bones;
- 19 (ix) Teeth; or
- 20 (x) Any other identifiable human biological material or physical
21 evidence.

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

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

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

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

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

1 (7) "Unreported sexual assault kit" means a sexual assault kit
2 where a law enforcement agency has not received a related report or
3 complaint alleging a sexual assault or other crime has occurred.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) Active investigations where public safety is an immediate
16 concern;

17 (c) Violent crimes investigations, including active sexual
18 assault investigations;

19 (d) Postconviction cases; and

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

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

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

37 ((+4)) (5) A person accused or convicted of committing a crime
38 against a victim has no standing to object to any failure to comply
39 with the requirements of this section, and the failure to comply with

1 the requirements of this section is not grounds for setting aside the
2 conviction or sentence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (1) The Washington state patrol shall create and operate a
39 statewide sexual assault kit tracking system. The Washington state

1 patrol may contract with state or nonstate entities including, but
2 not limited to, private software and technology providers, for the
3 creation, operation, and maintenance of the system.

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

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

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

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

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

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

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

25 (3) The Washington state patrol may use a phased implementation
26 process in order to launch the system and facilitate entry and use of
27 the system for required participants. The Washington state patrol may
28 phase initial participation according to region, volume, or other
29 appropriate classifications. All entities having custody of sexual
30 assault kits shall fully participate in the system no later than June
31 1, 2018. The Washington state patrol shall submit a report on the
32 current status and plan for launching the system, including the plan
33 for phased implementation, to the joint legislative task force on
34 sexual assault forensic examination best practices, the appropriate
35 committees of the legislature, and the governor no later than January
36 1, 2017.

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

1 governor. The Washington state patrol may publish the current report
2 on its web site. The first report is due July 31, 2018, and
3 subsequent reports are due January 31st and July 31st of each year.
4 The report must include the following:

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

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

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

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

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

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

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

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

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

36 (5) For the purpose of reports under subsection (4) of this
37 section, a sexual assault kit must be assigned to the jurisdiction
38 associated with the law enforcement agency anticipated to receive the
39 sexual assault kit or otherwise having custody of the sexual assault
40 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 a law enforcement agency has received a related report or
15 complaint alleging a sexual assault or other crime has occurred;

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

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

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

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

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

30 (ii) Assault in the fourth degree with sexual motivation (RCW
31 9A.36.041, 9.94A.835);

32 (iii) Communication with a minor for immoral purposes (RCW
33 9.68A.090);

34 (iv) Custodial sexual misconduct in the second degree (RCW
35 9A.44.170);

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

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

38 (vii) Patronizing a prostitute (RCW 9A.88.110);

1 (viii) Sexual misconduct with a minor in the second degree (RCW
2 9A.44.096);

3 (ix) Stalking (RCW 9A.46.110);

4 (x) Indecent exposure (RCW 9A.88.010);

5 (xi) Violation of a sexual assault protection order granted under
6 chapter 7.90 RCW; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~((+7))~~ (6) Any biological sample taken pursuant to RCW 43.43.752
39 through 43.43.758 may be retained by the forensic laboratory services
40 bureau, and shall be used solely for the purpose of providing DNA or

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

6 ~~((+8))~~ (7) The forensic laboratory services bureau of the
7 Washington state patrol is responsible for testing performed on all
8 biological samples that are collected under this section, to the
9 extent allowed by funding available for this purpose. Known duplicate
10 samples may be excluded from testing unless testing is deemed
11 necessary or advisable by the director.

12 ~~((+9))~~ (8) This section applies to:

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

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

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

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

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

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

27 ~~((+10))~~ (9) This section creates no rights in a third person. No
28 cause of action may be brought based upon the noncollection or
29 nonanalysis or the delayed collection or analysis of a biological
30 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

31 ~~((+11))~~ (10) The detention, arrest, or conviction of a person
32 based upon a database match or database information is not
33 invalidated if it is determined that the sample was obtained or
34 placed in the database by mistake, or if the conviction or juvenile
35 adjudication that resulted in the collection of the biological sample
36 was subsequently vacated or otherwise altered in any future
37 proceeding including but not limited to posttrial or postfact-finding
38 motions, appeals, or collateral attacks. No cause of action may be
39 brought against the state based upon the analysis of a biological
40 sample authorized to be taken pursuant to a municipal ordinance if

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

5 ~~((12))~~ (11) A person commits the crime of refusal to provide
6 DNA if the person willfully refuses to comply with a legal request
7 for a DNA sample as required under this section. The refusal to
8 provide DNA is a gross misdemeanor.

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

11 (1) Subject to the availability of amounts appropriated for this
12 specific purpose, the commission shall develop a proposal for a case
13 review program. The commission shall research, design, and develop
14 case review strategies designed to optimize outcomes in sexual
15 assault investigations through improved training and investigatory
16 practices. The proposed program must evaluate whether current
17 training and practices foster a trauma-informed, victim-centered
18 approach to victim interviews that identifies best practices and
19 current gaps in training and assesses the integration of the
20 community resiliency model. The program will include a comparison of
21 cases involving investigators and interviewers who have participated
22 in training to cases involving investigators and interviewers who
23 have not participated in training. The program will also include
24 other randomly selected cases for a systematic review to assess
25 whether current practices conform to national best practices for a
26 multidisciplinary approach to investigating sexual assault cases and
27 interacting with survivors.

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

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

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

1 NEW SECTION. **Sec. 9.** The legislature recognizes that proper
2 storage and preservation of evidence, including maintaining chain of
3 custody requirements, are critical to any successful investigation
4 and prosecution. Unreported sexual assault kits are, therefore, most
5 appropriately stored and preserved by law enforcement agencies. The
6 legislature further recognizes that some agencies are facing storage
7 capacity constraints. Agencies are currently responsible for storing
8 found property, regardless if the property is associated with a
9 criminal investigation. Therefore, the legislature hereby intends to
10 provide flexibility for local governments to designate an alternate
11 entity to store found property in order to allow those agencies with
12 capacity issues to prioritize storage space for evidence and
13 potential evidence in criminal investigations.

14 **Sec. 10.** RCW 63.21.010 and 1997 c 237 s 1 are each amended to
15 read as follows:

16 (1) Any person who finds property that is not unlawful to
17 possess, the owner of which is unknown, and who wishes to claim the
18 found property, shall:

19 (a) Within seven days of the finding acquire a signed statement
20 setting forth an appraisal of the current market value of the
21 property prepared by a qualified person engaged in buying or selling
22 like items or by a district court judge, unless the found property is
23 cash; and

24 (b) Within seven days report the find of property and surrender,
25 if requested, the property and a copy of the evidence of the value of
26 the property to the chief law enforcement officer, (~~or~~) his or her
27 designated representative, or other designated entity under section
28 15 of this act, of the governmental entity where the property was
29 found, and serve written notice upon the officer or designee of the
30 finder's intent to claim the property if the owner does not make out
31 his or her right to it under this chapter.

32 (2) Within thirty days of the report the governmental entity
33 shall cause notice of the finding to be published at least once a
34 week for two successive weeks in a newspaper of general circulation
35 in the county where the property was found, unless the appraised
36 value of the property is less than the cost of publishing notice. If
37 the value is less than the cost of publishing notice, the
38 governmental entity may cause notice to be posted or published in

1 other media or formats that do not incur expense to the governmental
2 entity.

3 **Sec. 11.** RCW 63.21.020 and 1979 ex.s. c 85 s 2 are each amended
4 to read as follows:

5 The finder's claim to the property shall be extinguished:

6 (1) If the owner satisfactorily establishes, within sixty days
7 after the find was reported to the appropriate officer or, if so
8 designated under section 15 of this act, the appropriate entity, the
9 owner's right to possession of the property; or

10 (2) If the chief law enforcement officer or designee determines
11 and so informs the finder that the property is illegal for the finder
12 to possess.

13 **Sec. 12.** RCW 63.21.030 and 1997 c 237 s 2 are each amended to
14 read as follows:

15 (1) The found property shall be released to the finder and become
16 the property of the finder sixty days after the find was reported to
17 the appropriate officer or designee if no owner has been found, or
18 sixty days after the final disposition of any judicial or other
19 official proceeding involving the property, whichever is later. The
20 property shall be released only after the finder has presented
21 evidence of payment to the treasurer of the governmental entity
22 handling the found property, the amount of ten dollars plus the
23 amount of the cost of publication of notice incurred by the
24 (~~government~~ ~~[governmental]~~) governmental entity pursuant to RCW
25 63.21.010, which amount shall be deposited in the general fund of the
26 governmental entity. If the appraised value of the property is less
27 than the cost of publication of notice of the finding, then the
28 finder is not required to pay any fee.

29 (2) When ninety days have passed after the found property was
30 reported to the appropriate officer or designee, or ninety days after
31 the final disposition of a judicial or other proceeding involving the
32 found property, and the finder has not completed the requirements of
33 this chapter, the finder's claim shall be deemed to have expired and
34 the found property may be disposed of as unclaimed property under
35 chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a
36 finder states in writing that he or she has no intention of claiming
37 the found property.

1 **Sec. 13.** RCW 63.21.050 and 2019 c 30 s 1 are each amended to
2 read as follows:

3 (1) The chief law enforcement officer (~~(or)~~), his or her
4 designated representative, or other designated entity under section
5 15 of this act to whom a finder surrenders property, must:

6 (a) Advise the finder if the found property is illegal for him or
7 her to possess;

8 (b) Advise the finder if the found property is to be held as
9 evidence in judicial or other official proceedings;

10 (c) Advise the finder in writing of the procedures to be followed
11 in claiming the found property;

12 (d) If the property is valued at one hundred dollars or less
13 adjusted for inflation under subsection (2) of this section, allow
14 the finder to retain the property if it is determined there is no
15 reason for the officer or designee to retain the property;

16 (e) If the property exceeds one hundred dollars adjusted for
17 inflation under subsection (2) of this section in value and has been
18 requested to be surrendered to the (~~law enforcement agency~~)
19 governmental entity, retain the property for sixty days before it can
20 be claimed by the finder under this chapter, unless the owner has
21 recovered the property;

22 (f) If the property is held as evidence in judicial or other
23 official proceedings, retain the property for sixty days after the
24 final disposition of the judicial or other official proceeding,
25 before it can be claimed by the finder or owner under the provisions
26 of this chapter;

27 (g) After the required number of days have passed, and if no
28 owner has been found, surrender the property to the finder according
29 to the requirements of this chapter; or

30 (h) If neither the finder nor the owner claim the property
31 retained by the officer or designee within thirty days of the time
32 when the claim can be made, the property must be disposed of as
33 unclaimed property under chapter 63.32 or 63.40 RCW.

34 (2)(a) The office of financial management must adjust the dollar
35 thresholds established in subsection (1)(d) and (e) of this section
36 for inflation every five years, beginning July 1, 2025, based upon
37 changes in the Seattle consumer price index during that time period.
38 The office of financial management must calculate the new dollar
39 threshold and transmit the new dollar threshold, rounded up to the
40 nearest dollar, to the office of the code reviser for publication in

1 the Washington State Register at least one month before the new
2 dollar threshold is to take effect.

3 (b) For the purposes of determining the thresholds in subsection
4 (1)(d) and (e) of this section, the chief law enforcement officer
5 (~~(e)~~), his or her designated representative, or other designated
6 entity under section 15 of this act must use the latest thresholds
7 published by the office of financial management in the Washington
8 State Register under (a) of this subsection.

9 **Sec. 14.** RCW 63.21.060 and 1979 ex.s. c 85 s 6 are each amended
10 to read as follows:

11 Any governmental entity that acquires lost property shall attempt
12 to notify the apparent owner of the property. If the property is not
13 returned to a person validly establishing ownership or right to
14 possession of the property, the governmental entity shall forward the
15 lost property within thirty days but not less than ten days after the
16 time the governmental entity acquires the lost property to the chief
17 law enforcement officer, (~~(e)~~) his or her designated representative,
18 or other designated entity under section 16 of this act, of the
19 county in which the property was found, except that if the property
20 is found within the borders of a city or town the property shall be
21 forwarded to the chief law enforcement officer of the city or town
22 (~~(e)~~), his or her designated representative, or other entity of the
23 city or town so designated under section 15 of this act. A
24 governmental entity may elect to retain property which it acquires
25 and dispose of the property as provided by chapter 63.32 or 63.40
26 RCW.

27 NEW SECTION. **Sec. 15.** A new section is added to chapter 63.21
28 RCW to read as follows:

29 (1) Except as provided in subsection (2) of this section, a
30 county, city, or town may designate an alternate department or
31 governmental entity to accept, store, retain, and dispose of found
32 property as required under this chapter, rather than the chief law
33 enforcement officer or his or her designee, so long as the alternate
34 department or governmental entity complies with the requirements and
35 procedures under this chapter.

36 (2) Regardless of whether a county, city, or town designates an
37 alternate department or governmental entity under subsection (1) of
38 this section, the chief law enforcement officer or his or her

1 designated representative is responsible for retaining any of the
2 following types of property in accordance with the requirements of
3 this chapter: A bank card; charge or credit card; cash; government-
4 issued document, financial document, or legal document; firearm;
5 evidence in a judicial or other official proceeding; or an item that
6 is not legal for the finder to possess. A county, city, or town
7 designating an alternate department or governmental entity under
8 subsection (1) of this section shall establish procedures for
9 ensuring these types of property are directed to the chief law
10 enforcement officer or his or her designated representative.

11 NEW SECTION. **Sec. 16.** A new section is added to chapter 63.32
12 RCW to read as follows:

13 (1) This chapter does not modify the requirements for a police
14 department to accept found property under chapter 63.21 RCW.

15 (2) If a city or town designates an alternate department or
16 governmental entity to accept found property under section 15 of this
17 act:

18 (a) The designated department or governmental entity shall comply
19 with the retention and disposition requirements under this chapter in
20 the same manner as would be required of a police department; and

21 (b) The police department is not required to accept found
22 property from a finder of said property, unless the property is any
23 of the following: A bank card; charge or credit card; cash;
24 government-issued document, financial document, or legal document;
25 firearm; evidence in a judicial or other official proceeding; or an
26 item that is not legal for the finder to possess. Such found property
27 accepted by a police department must be retained or disposed of in
28 accordance with this chapter and other applicable state laws.

29 NEW SECTION. **Sec. 17.** A new section is added to chapter 63.40
30 RCW to read as follows:

31 (1) This chapter does not modify the requirements for a sheriff
32 to accept found property under chapter 63.21 RCW.

33 (2) If a county designates an alternate department or
34 governmental entity to accept found property under section 15 of this
35 act:

36 (a) The designated department or governmental entity shall comply
37 with the disposition requirements under this chapter in the same
38 manner as would be required of the sheriff; and

1 (b) The sheriff is not required to accept found property from a
2 finder of said property, unless the property is any of the following:
3 A bank card; charge or credit card; cash; government-issued document,
4 financial document, or legal document; firearm; evidence in a
5 judicial or other official proceeding; or an item that is not legal
6 for the finder to possess. Such found property accepted by a sheriff
7 must be retained or disposed of in accordance with this chapter and
8 other applicable state laws.

9 NEW SECTION. **Sec. 18.** RCW 70.125.090 and 70.125.100 are each
10 recodified as sections in chapter 5.70 RCW.

11 NEW SECTION. **Sec. 19.** Section 3 of this act takes effect June
12 30, 2020.

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