
ENGROSSED 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)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (b) Active investigations where public safety is an immediate
12 concern;

13 (c) Violent crimes investigations, including active sexual
14 assault investigations;

15 (d) Postconviction cases; and

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

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

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

33 ((4)) (5) A person accused or convicted of committing a crime
34 against a victim has no standing to object to any failure to comply
35 with the requirements of this section, and the failure to comply with
36 the requirements of this section is not grounds for setting aside the
37 conviction or sentence.

38 ((5)) (6) Nothing in this section may be construed to create a
39 private right of action or claim on the part of any individual,

1 entity, or agency against any law enforcement agency or any
2 contractor of any law enforcement agency.

3 ~~((6))~~ (7) This section applies ~~((prospectively only and not~~
4 ~~retroactively. It only applies))~~ to sexual assault examinations
5 performed on or after July 24, 2015.

6 ~~((7))~~ (8)(a) Until June 30, 2023, the Washington state patrol
7 shall compile the following information related to the sexual assault
8 kits identified in this section and RCW 70.125.100 (as recodified by
9 this act):

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

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

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

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

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

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

36 (2) The Washington state patrol crime laboratory may consult with
37 local law enforcement agencies to coordinate the efficient submission
38 of requests for forensic analysis under this section in conjunction
39 with the implementation of the statewide tracking system under RCW

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

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

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

23 ~~((4))~~ (5) A person accused or convicted of committing a crime
24 against a victim has no standing to object to any failure to comply
25 with the requirements of this section, and the failure to comply with
26 the requirements of this section is not grounds for setting aside the
27 conviction or sentence.

28 ~~((5))~~ (6) Nothing in this section may be construed to create a
29 private right of action or claim on the part of any individual,
30 entity, or agency against any law enforcement agency or any
31 contractor of any law enforcement agency.

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

34 (1) The Washington state patrol shall create and operate a
35 statewide sexual assault kit tracking system. The Washington state
36 patrol may contract with state or nonstate entities including, but
37 not limited to, private software and technology providers, for the
38 creation, operation, and maintenance of the system.

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

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

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

8 (c) Indicate whether a sexual assault kit contains biological
9 materials collected for the purpose of forensic toxicological
10 analysis;

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

16 (~~(d)~~) (e) Allow victims of sexual assault to anonymously track
17 or receive updates regarding the status of their sexual assault kits;
18 and

19 (~~(e)~~) (f) Use electronic technology or technologies allowing
20 continuous access.

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

33 (4) The Washington state patrol shall submit a semiannual report
34 on the statewide sexual assault kit tracking system to the joint
35 legislative task force on sexual assault forensic examination best
36 practices, the appropriate committees of the legislature, and the
37 governor. The Washington state patrol may publish the current report
38 on its web site. The first report is due July 31, 2018, and
39 subsequent reports are due January 31st and July 31st of each year.
40 The report must include the following:

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

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

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

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

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

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

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

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

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

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

37 (6) Any public agency or entity, including its officials and
38 employees, and any hospital and its employees providing services to
39 victims of sexual assault may not be held civilly liable for damages
40 arising from any release of information or the failure to release

1 information related to the statewide sexual assault kit tracking
2 system, so long as the release was without gross negligence.

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

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

9 (a) "Reported sexual assault kit" means a sexual assault kit
10 where a law enforcement agency has received a related report or
11 complaint alleging a sexual assault or other crime has occurred;

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

14 (c) "Unreported sexual assault kit" means a sexual assault kit
15 where a law enforcement agency has not received a related report or
16 complaint alleging a sexual assault or other crime has occurred.

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

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

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

23 (i) Assault in the fourth degree where domestic violence as
24 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
25 9.94A.030);

26 (ii) Assault in the fourth degree with sexual motivation (RCW
27 9A.36.041, 9.94A.835);

28 (iii) Communication with a minor for immoral purposes (RCW
29 9.68A.090);

30 (iv) Custodial sexual misconduct in the second degree (RCW
31 9A.44.170);

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

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

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

35 (viii) Sexual misconduct with a minor in the second degree (RCW
36 9A.44.096);

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

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

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

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

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

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

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

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

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

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

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

31 (5) Biological samples shall be collected in the following
32 manner:

33 (a) For persons convicted of any offense listed in subsection
34 (1)(a) of this section or adjudicated guilty of an equivalent
35 juvenile offense, who do not serve a term of confinement in a
36 department of corrections facility or a department of children,
37 youth, and families facility, and are serving a term of confinement
38 in a city or county jail facility, the city or county jail facility
39 shall be responsible for obtaining the biological samples.

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

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

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

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

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

35 ~~((7))~~ (6) Any biological sample taken pursuant to RCW 43.43.752
36 through 43.43.758 may be retained by the forensic laboratory services
37 bureau, and shall be used solely for the purpose of providing DNA or
38 other tests for identification analysis and prosecution of a criminal
39 offense or for the identification of human remains or missing
40 persons. Nothing in this section prohibits the submission of results

1 derived from the biological samples to the federal bureau of
2 investigation combined DNA index system.

3 ~~((+8))~~ (7) The forensic laboratory services bureau of the
4 Washington state patrol is responsible for testing performed on all
5 biological samples that are collected under this section, to the
6 extent allowed by funding available for this purpose. Known duplicate
7 samples may be excluded from testing unless testing is deemed
8 necessary or advisable by the director.

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

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

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

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

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

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

22 (d) All samples submitted under subsections (2) and (3) of this
23 section.

24 ~~((+10))~~ (9) This section creates no rights in a third person. No
25 cause of action may be brought based upon the noncollection or
26 nonanalysis or the delayed collection or analysis of a biological
27 sample authorized to be taken under RCW 43.43.752 through 43.43.758.

28 ~~((+11))~~ (10) The detention, arrest, or conviction of a person
29 based upon a database match or database information is not
30 invalidated if it is determined that the sample was obtained or
31 placed in the database by mistake, or if the conviction or juvenile
32 adjudication that resulted in the collection of the biological sample
33 was subsequently vacated or otherwise altered in any future
34 proceeding including but not limited to posttrial or postfact-finding
35 motions, appeals, or collateral attacks. No cause of action may be
36 brought against the state based upon the analysis of a biological
37 sample authorized to be taken pursuant to a municipal ordinance if
38 the conviction or adjudication that resulted in the collection of the
39 biological sample was subsequently vacated or otherwise altered in

1 any future proceeding including, but not limited to, posttrial or
2 postfact-finding motions, appeals, or collateral attacks.

3 ~~((12))~~ (11) A person commits the crime of refusal to provide
4 DNA if the person willfully refuses to comply with a legal request
5 for a DNA sample as required under this section. The refusal to
6 provide DNA is a gross misdemeanor.

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

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

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

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

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

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

1 NEW SECTION. **Sec. 10.** Section 3 of this act takes effect June
2 30, 2020.

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