

ESHB 2318 - S COMM AMD

By Committee on Law & Justice

ADOPTED 03/04/2020

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 5.70.010 and 2015 c 221 s 1 are each amended to
4 read as follows:

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

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

15 (b) Where a defendant has been convicted and sentenced under RCW
16 9.94A.507 in connection with the case, the DNA work product and
17 investigatory reports and records must be maintained for ninety-nine
18 years or until the death of the defendant, whichever is sooner; and

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

24 (2) Notwithstanding subsection (1) of this section, in any felony
25 case regardless of whether the identity of the offender is known and
26 law enforcement has probable cause sufficient to believe the elements
27 of a violent or sex offense as defined in RCW 9.94A.030 have been
28 committed, a governmental entity shall preserve any DNA work
29 product (~~(, including a sexual assault examination kit,)~~) secured in
30 connection with the criminal case and investigatory reports and

1 records for ninety-nine years or throughout the period of the statute
2 of limitations pursuant to RCW 9A.04.080, whichever is sooner.

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

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

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

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

17 ~~(B) Blood;~~

18 ~~(C) Semen;~~

19 ~~(D) Hair;~~

20 ~~(E) Saliva;~~

21 ~~(F) Skin tissue;~~

22 ~~(G) Fingerprints;~~

23 ~~(H) Bones;~~

24 ~~(I) Teeth; or~~

25 ~~(J) Any other identifiable human biological material or physical~~
26 ~~evidence.~~

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

31 ~~(c) "Governmental entity" means any general law enforcement~~
32 ~~agency or any person or organization officially acting on behalf of~~
33 ~~the state or any political subdivision of the state involved in the~~
34 ~~collection, examination, tracking, packaging, storing, or disposition~~
35 ~~of biological material collected in connection with a criminal~~
36 ~~investigation relating to a felony offense.~~

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

1 ~~(4))~~) The failure of a law enforcement agency to preserve DNA
2 work product does not constitute grounds in any criminal proceeding
3 for challenging the admissibility of other DNA work product that was
4 preserved in a case, and any evidence offered may not be excluded by
5 a court on those grounds. The court may not set aside the conviction
6 or sentence or order the reversal of a conviction under this section
7 on the grounds that the DNA work product is no longer available.
8 Unless the court finds that DNA work product was destroyed with
9 malicious intent to violate this section, a person accused of
10 committing a crime against a person has no cause of action against a
11 law enforcement agency for failure to comply with the requirements of
12 this section. If the court finds that DNA work product was destroyed
13 with malicious intent to violate this section, the court may impose
14 appropriate sanctions. Nothing in this section may be construed to
15 create a private right of action on the part of any individual or
16 entity against any law enforcement agency or any contractor of a law
17 enforcement agency.

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

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

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

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

- 34 (i) The contents of a sexual assault examination kit;
- 35 (ii) Blood;
- 36 (iii) Semen;
- 37 (iv) Hair;
- 38 (v) Saliva;
- 39 (vi) Skin tissue;

- 1 (vii) Fingerprints;
- 2 (viii) Bones;
- 3 (ix) Teeth; or
- 4 (x) Any other identifiable human biological material or physical
- 5 evidence.

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

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

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

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

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

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

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

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

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

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

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

4 (3) The term "applicable local law enforcement agency" refers to
5 the local law enforcement agency that would have jurisdiction to
6 investigate any related criminal allegations if they were to be
7 reported to law enforcement. The applicable local law enforcement
8 agency is determined through consultation between the collecting
9 entity or, in the case of unreported sexual assault kits stored
10 according to the requirements of RCW 70.125.101, the Washington state
11 patrol, and local law enforcement agencies.

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

14 (1) When a law enforcement agency receives a sexual assault kit,
15 the law enforcement agency must, within thirty days of its receipt,
16 submit a request for laboratory examination to the Washington state
17 patrol crime laboratory for prioritization for testing by it or
18 another accredited laboratory that holds an outsourcing agreement
19 with the Washington state patrol if:

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

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

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

26 (2) Beginning May 1, 2022, when the Washington state patrol
27 receives a request for laboratory examination of a sexual assault kit
28 from a law enforcement agency, the Washington state patrol shall
29 conduct the laboratory examination of the sexual assault kit, and
30 when appropriate, enter relevant information into the combined DNA
31 index system, within forty-five days of receipt of the request. The
32 Washington state patrol crime laboratory must give priority to the
33 laboratory examination of sexual assault kits at the request of a
34 local law enforcement agency for:

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

36 (b) Active investigations where public safety is an immediate
37 concern;

38 (c) Violent crimes investigations, including active sexual
39 assault investigations;

1 (d) Postconviction cases; and

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

6 (3) The requirements to request and complete laboratory
7 examination of sexual assault kits under subsections (1) and (2) of
8 this section do not include forensic toxicological analysis. However,
9 nothing in this section limits or modifies the authority of a law
10 enforcement agency to request toxicological analysis of evidence
11 collected in a sexual assault kit.

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

19 ~~((4))~~ (5) A person accused or convicted of committing a crime
20 against a victim has no standing to object to any failure to comply
21 with the requirements of this section, and the failure to comply with
22 the requirements of this section is not grounds for setting aside the
23 conviction or sentence.

24 ~~((5))~~ (6) Nothing in this section may be construed to create a
25 private right of action or claim on the part of any individual,
26 entity, or agency against any law enforcement agency or any
27 contractor of any law enforcement agency.

28 ~~((6))~~ (7) This section applies ~~((prospectively only and not~~
29 ~~retroactively. It only applies))~~ to sexual assault examinations
30 performed on or after July 24, 2015.

31 ~~((7))~~ (8)(a) Until June 30, 2023, the Washington state patrol
32 shall compile the following information related to the sexual assault
33 kits identified in this section and RCW 70.125.100 (as recodified by
34 this act):

35 (i) The number of requests for laboratory examination made for
36 sexual assault kits and the law enforcement agencies that submitted
37 the requests; and

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

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

3 (c) Beginning in 2015, the Washington state patrol shall report
4 its findings and recommendations annually to the appropriate
5 committees of the legislature and the governor by December 1st of
6 each year.

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

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

21 (2) The Washington state patrol crime laboratory may consult with
22 local law enforcement agencies to coordinate the efficient submission
23 of requests for forensic analysis under this section in conjunction
24 with the implementation of the statewide tracking system under RCW
25 43.43.545, provided that all requests are submitted and all required
26 information is entered into the statewide sexual assault tracking
27 system by October 1, 2019. The Washington state patrol crime
28 laboratory shall facilitate the forensic analysis of all sexual
29 assault kits submitted under this section by December 1, 2021. The
30 analysis may be conducted by the Washington state patrol laboratory
31 or an accredited laboratory holding a contract or agreement with the
32 Washington state patrol. The Washington state patrol shall process
33 the forensic analysis of sexual assault kits in accordance with the
34 priorities in RCW 70.125.090(2) (as recodified by this act).

35 (3) The requirements to request and complete laboratory
36 examination of sexual assault kits under this section do not include
37 forensic toxicological analysis. However, nothing in this section
38 limits or modifies the authority of a law enforcement agency to

1 request toxicological analysis of evidence collected in a sexual
2 assault kit.

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

9 ~~((4))~~ (5) A person accused or convicted of committing a crime
10 against a victim has no standing to object to any failure to comply
11 with the requirements of this section, and the failure to comply with
12 the requirements of this section is not grounds for setting aside the
13 conviction or sentence.

14 ~~((5))~~ (6) Nothing in this section may be construed to create a
15 private right of action or claim on the part of any individual,
16 entity, or agency against any law enforcement agency or any
17 contractor of any law enforcement agency.

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

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

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

26 (a) Track the location and status of sexual assault kits
27 throughout the criminal justice process, including the initial
28 collection in examinations performed at medical facilities, receipt
29 and storage at law enforcement agencies, receipt and analysis at
30 forensic laboratories, and storage and any destruction after
31 completion of analysis;

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

33 (c) Indicate whether a sexual assault kit contains biological
34 materials collected for the purpose of forensic toxicological
35 analysis;

36 (d) Allow medical facilities performing sexual assault forensic
37 examinations, law enforcement agencies, prosecutors, the Washington
38 state patrol bureau of forensic laboratory services, and other

1 entities having custody of sexual assault kits to update and track
2 the status and location of sexual assault kits;

3 ~~((d))~~ (e) Allow victims of sexual assault to anonymously track
4 or receive updates regarding the status of their sexual assault kits;
5 and

6 ~~((e))~~ (f) Use electronic technology or technologies allowing
7 continuous access.

8 (3) The Washington state patrol may use a phased implementation
9 process in order to launch the system and facilitate entry and use of
10 the system for required participants. The Washington state patrol may
11 phase initial participation according to region, volume, or other
12 appropriate classifications. All entities having custody of sexual
13 assault kits shall fully participate in the system no later than June
14 1, 2018. The Washington state patrol shall submit a report on the
15 current status and plan for launching the system, including the plan
16 for phased implementation, to the joint legislative task force on
17 sexual assault forensic examination best practices, the appropriate
18 committees of the legislature, and the governor no later than January
19 1, 2017.

20 (4) The Washington state patrol shall submit a semiannual report
21 on the statewide sexual assault kit tracking system to the joint
22 legislative task force on sexual assault forensic examination best
23 practices, the appropriate committees of the legislature, and the
24 governor. The Washington state patrol may publish the current report
25 on its web site. The first report is due July 31, 2018, and
26 subsequent reports are due January 31st and July 31st of each year.
27 The report must include the following:

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

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

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

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

37 (e) The average and median length of time for sexual assault kits
38 to be submitted for forensic analysis after being added to the
39 system, including separate sets of data for all sexual assault kits
40 in the system statewide and by jurisdiction and for sexual assault

1 kits added to the system in the reporting period statewide and by
2 jurisdiction;

3 (f) The average and median length of time for forensic analysis
4 to be completed on sexual assault kits after being submitted for
5 analysis, including separate sets of data for all sexual assault kits
6 in the system statewide and by jurisdiction and for sexual assault
7 kits added to the system in the reporting period statewide and by
8 jurisdiction;

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

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

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

19 (5) For the purpose of reports under subsection (4) of this
20 section, a sexual assault kit must be assigned to the jurisdiction
21 associated with the law enforcement agency anticipated to receive the
22 sexual assault kit or otherwise having custody of the sexual assault
23 kit.

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

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

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

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

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

1 (c) "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 **Sec. 7.** RCW 43.43.754 and 2019 c 443 s 3 are each amended to
5 read as follows:

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

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

10 (i) Assault in the fourth degree where domestic violence as
11 defined in RCW 9.94A.030 was pleaded and proven (RCW 9A.36.041,
12 9.94A.030);

13 (ii) Assault in the fourth degree with sexual motivation (RCW
14 9A.36.041, 9.94A.835);

15 (iii) Communication with a minor for immoral purposes (RCW
16 9.68A.090);

17 (iv) Custodial sexual misconduct in the second degree (RCW
18 9A.44.170);

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

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

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

22 (viii) Sexual misconduct with a minor in the second degree (RCW
23 9A.44.096);

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

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

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

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

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

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

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

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

3 (b) When submitting a biological sample under this subsection,
4 the municipal jurisdiction must include a signed affidavit from the
5 municipal prosecuting authority of the jurisdiction in which the
6 conviction occurred specifying the state crime to which the municipal
7 offense is equivalent.

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

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

17 (5) Biological samples shall be collected in the following
18 manner:

19 (a) For persons convicted of any offense listed in subsection
20 (1)(a) of this section or adjudicated guilty of an equivalent
21 juvenile offense, who do not serve a term of confinement in a
22 department of corrections facility or a department of children,
23 youth, and families facility, and are serving a term of confinement
24 in a city or county jail facility, the city or county jail facility
25 shall be responsible for obtaining the biological samples.

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

28 (i) Persons convicted of any offense listed in subsection (1)(a)
29 of this section or adjudicated guilty of an equivalent juvenile
30 offense, who do not serve a term of confinement in a department of
31 corrections facility, department of children, youth, and families
32 facility, or a city or county jail facility; and

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

34 (c) For persons convicted of any offense listed in subsection
35 (1)(a) of this section or adjudicated guilty of an equivalent
36 juvenile offense, who are serving or who are to serve a term of
37 confinement in a department of corrections facility or a department
38 of children, youth, and families facility, the facility holding the
39 person shall be responsible for obtaining the biological samples as
40 part of the intake process. If the facility did not collect the

1 biological sample during the intake process, then the facility shall
2 collect the biological sample as soon as is practicable. For those
3 persons incarcerated before June 12, 2008, who have not yet had a
4 biological sample collected, priority shall be given to those persons
5 who will be released the soonest.

6 ~~((+6))~~ (d) For persons convicted of any offense listed in
7 subsection (1)(a) of this section or adjudicated guilty of an
8 equivalent juvenile offense, who will not serve a term of
9 confinement, the court shall ~~((order))~~: Order the person to report to
10 the local police department or sheriff's office as provided under
11 subsection (5)(b)(i) of this section within a reasonable period of
12 time established by the court in order to provide a biological
13 sample; or if the local police department or sheriff's office has a
14 protocol for collecting the biological sample in the courtroom, order
15 the person to immediately provide the biological sample to the local
16 police department or sheriff's office before leaving the presence of
17 the court. The court must further inform the person that refusal to
18 provide a biological sample is a gross misdemeanor under this
19 section.

20 ~~((+7))~~ (6) Any biological sample taken pursuant to RCW 43.43.752
21 through 43.43.758 may be retained by the forensic laboratory services
22 bureau, and shall be used solely for the purpose of providing DNA or
23 other tests for identification analysis and prosecution of a criminal
24 offense or for the identification of human remains or missing
25 persons. Nothing in this section prohibits the submission of results
26 derived from the biological samples to the federal bureau of
27 investigation combined DNA index system.

28 ~~((+8))~~ (7) The forensic laboratory services bureau of the
29 Washington state patrol is responsible for testing performed on all
30 biological samples that are collected under this section, to the
31 extent allowed by funding available for this purpose. Known duplicate
32 samples may be excluded from testing unless testing is deemed
33 necessary or advisable by the director.

34 ~~((+9))~~ (8) This section applies to:

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

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

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

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

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

7 (d) All samples submitted under subsections (2) and (3) of this
8 section.

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

13 ~~((11))~~ (10) The detention, arrest, or conviction of a person
14 based upon a database match or database information is not
15 invalidated if it is determined that the sample was obtained or
16 placed in the database by mistake, or if the conviction or juvenile
17 adjudication that resulted in the collection of the biological sample
18 was subsequently vacated or otherwise altered in any future
19 proceeding including but not limited to posttrial or postfact-finding
20 motions, appeals, or collateral attacks. No cause of action may be
21 brought against the state based upon the analysis of a biological
22 sample authorized to be taken pursuant to a municipal ordinance if
23 the conviction or adjudication that resulted in the collection of the
24 biological sample was subsequently vacated or otherwise altered in
25 any future proceeding including, but not limited to, posttrial or
26 postfact-finding motions, appeals, or collateral attacks.

27 ~~((12))~~ (11) A person commits the crime of refusal to provide
28 DNA if the person willfully refuses to comply with a legal request
29 for a DNA sample as required under this section. The refusal to
30 provide DNA is a gross misdemeanor.

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

33 (1) Subject to the availability of amounts appropriated for this
34 specific purpose, the commission shall develop a proposal for a case
35 review program. The commission shall research, design, and develop
36 case review strategies designed to optimize outcomes in sexual
37 assault investigations through improved training and investigatory
38 practices. The proposed program must evaluate whether current
39 training and practices foster a trauma-informed, victim-centered

1 approach to victim interviews that identifies best practices and
2 current gaps in training and assesses the integration of the
3 community resiliency model. The program will include a comparison of
4 cases involving investigators and interviewers who have participated
5 in training to cases involving investigators and interviewers who
6 have not participated in training. The program will also include
7 other randomly selected cases for a systematic review to assess
8 whether current practices conform to national best practices for a
9 multidisciplinary approach to investigating sexual assault cases and
10 interacting with survivors.

11 (2) In designing the program, the commission shall consult and
12 collaborate with experts in trauma-informed and victim-centered
13 training, experts in sexual assault investigations and prosecutions,
14 victim advocates, and other stakeholders identified by the
15 commission. The commission may form a multidisciplinary working group
16 for the purpose of carrying out the requirements of this section.

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

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

21 NEW SECTION. **Sec. 9.** The legislature recognizes that proper
22 storage and preservation of evidence, including maintaining chain of
23 custody requirements, are critical to any successful investigation
24 and prosecution. Unreported sexual assault kits are, therefore, most
25 appropriately stored and preserved by law enforcement agencies. The
26 legislature further recognizes that some agencies are facing storage
27 capacity constraints. Agencies are currently responsible for storing
28 found property, regardless if the property is associated with a
29 criminal investigation. Therefore, the legislature hereby intends to
30 provide flexibility for local governments to designate an alternate
31 entity to store found property in order to allow those agencies with
32 capacity issues to prioritize storage space for evidence and
33 potential evidence in criminal investigations.

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

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

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

6 (b) Within seven days report the find of property and surrender,
7 if requested, the property and a copy of the evidence of the value of
8 the property to the chief law enforcement officer, (~~(or)~~) his or her
9 designated representative, or other designated entity under section
10 15 of this act, of the governmental entity where the property was
11 found, and serve written notice upon the officer or designee of the
12 finder's intent to claim the property if the owner does not make out
13 his or her right to it under this chapter.

14 (2) Within thirty days of the report the governmental entity
15 shall cause notice of the finding to be published at least once a
16 week for two successive weeks in a newspaper of general circulation
17 in the county where the property was found, unless the appraised
18 value of the property is less than the cost of publishing notice. If
19 the value is less than the cost of publishing notice, the
20 governmental entity may cause notice to be posted or published in
21 other media or formats that do not incur expense to the governmental
22 entity.

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

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

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

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

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

35 (1) The found property shall be released to the finder and become
36 the property of the finder sixty days after the find was reported to
37 the appropriate officer or designee if no owner has been found, or
38 sixty days after the final disposition of any judicial or other

1 official proceeding involving the property, whichever is later. The
2 property shall be released only after the finder has presented
3 evidence of payment to the treasurer of the governmental entity
4 handling the found property, the amount of ten dollars plus the
5 amount of the cost of publication of notice incurred by the
6 (~~government~~~~[governmental]~~) governmental entity pursuant to RCW
7 63.21.010, which amount shall be deposited in the general fund of the
8 governmental entity. If the appraised value of the property is less
9 than the cost of publication of notice of the finding, then the
10 finder is not required to pay any fee.

11 (2) When ninety days have passed after the found property was
12 reported to the appropriate officer or designee, or ninety days after
13 the final disposition of a judicial or other proceeding involving the
14 found property, and the finder has not completed the requirements of
15 this chapter, the finder's claim shall be deemed to have expired and
16 the found property may be disposed of as unclaimed property under
17 chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a
18 finder states in writing that he or she has no intention of claiming
19 the found property.

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

22 (1) The chief law enforcement officer (~~(or)~~), his or her
23 designated representative, or other designated entity under section
24 15 of this act to whom a finder surrenders property, must:

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

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

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

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

35 (e) If the property exceeds one hundred dollars adjusted for
36 inflation under subsection (2) of this section in value and has been
37 requested to be surrendered to the (~~law enforcement agency~~)
38 governmental entity, retain the property for sixty days before it can

1 be claimed by the finder under this chapter, unless the owner has
2 recovered the property;

3 (f) If the property is held as evidence in judicial or other
4 official proceedings, retain the property for sixty days after the
5 final disposition of the judicial or other official proceeding,
6 before it can be claimed by the finder or owner under the provisions
7 of this chapter;

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

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

15 (2)(a) The office of financial management must adjust the dollar
16 thresholds established in subsection (1)(d) and (e) of this section
17 for inflation every five years, beginning July 1, 2025, based upon
18 changes in the Seattle consumer price index during that time period.
19 The office of financial management must calculate the new dollar
20 threshold and transmit the new dollar threshold, rounded up to the
21 nearest dollar, to the office of the code reviser for publication in
22 the Washington State Register at least one month before the new
23 dollar threshold is to take effect.

24 (b) For the purposes of determining the thresholds in subsection
25 (1)(d) and (e) of this section, the chief law enforcement officer
26 (~~(or)~~), his or her designated representative, or other designated
27 entity under section 15 of this act must use the latest thresholds
28 published by the office of financial management in the Washington
29 State Register under (a) of this subsection.

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

32 Any governmental entity that acquires lost property shall attempt
33 to notify the apparent owner of the property. If the property is not
34 returned to a person validly establishing ownership or right to
35 possession of the property, the governmental entity shall forward the
36 lost property within thirty days but not less than ten days after the
37 time the governmental entity acquires the lost property to the chief
38 law enforcement officer, (~~(or)~~) his or her designated representative,
39 or other designated entity under section 16 of this act, of the

1 county in which the property was found, except that if the property
2 is found within the borders of a city or town the property shall be
3 forwarded to the chief law enforcement officer of the city or town
4 (~~(or)~~), his or her designated representative, or other entity of the
5 city or town so designated under section 15 of this act. A
6 governmental entity may elect to retain property which it acquires
7 and dispose of the property as provided by chapter 63.32 or 63.40
8 RCW.

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

11 (1) Except as provided in subsection (2) of this section, a
12 county, city, or town may designate an alternate department or
13 governmental entity to accept, store, retain, and dispose of found
14 property as required under this chapter, rather than the chief law
15 enforcement officer or his or her designee, so long as the alternate
16 department or governmental entity complies with the requirements and
17 procedures under this chapter.

18 (2) Regardless of whether a county, city, or town designates an
19 alternate department or governmental entity under subsection (1) of
20 this section, the chief law enforcement officer or his or her
21 designated representative is responsible for retaining any of the
22 following types of property in accordance with the requirements of
23 this chapter: A bank card; charge or credit card; cash; government-
24 issued document, financial document, or legal document; firearm;
25 evidence in a judicial or other official proceeding; or an item that
26 is not legal for the finder to possess. A county, city, or town
27 designating an alternate department or governmental entity under
28 subsection (1) of this section shall establish procedures for
29 ensuring these types of property are directed to the chief law
30 enforcement officer or his or her designated representative.

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

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 19.** Section 3 of this act takes effect June
33 30, 2020."

ADOPTED 03/04/2020

1 On page 1, line 1 of the title, after "practices;" strike the
2 remainder of the title and insert "amending RCW 5.70.010, 70.125.090,
3 70.125.100, 43.43.545, 43.43.754, 63.21.010, 63.21.020, 63.21.030,
4 63.21.050, and 63.21.060; adding new sections to chapter 5.70 RCW;
5 adding a new section to chapter 43.101 RCW; adding a new section to
6 chapter 63.21 RCW; adding a new section to chapter 63.32 RCW; adding
7 a new section to chapter 63.40 RCW; creating a new section;
8 recodifying RCW 70.125.090 and 70.125.100; providing an effective
9 date; and providing an expiration date."

EFFECT: (1) Revises the CJTC sexual assault case review program to include review of randomly selected cases for a systematic review of conformity with national best practices.

(2) Adds legislative findings to the bill, providing that: Storing evidence and potential evidence in criminal cases is a priority for law enforcement agencies; some agencies are facing storage capacity constraints; and local governments are provided with flexibility to designate an alternate entity to store found property in order to allow agencies with capacity issues to prioritize storage space for evidence and potential evidence in criminal investigations.

(3) Adds provisions modifying requirements pertaining to found property by allowing a county, city, or town to designate an alternate department or entity to accept, store, retain, and dispose of found property. Specifies that certain types of property must continue to be stored by law enforcement agencies, including any of the following: A bank card; charge or credit card; cash; government-issued document, financial document, or legal document; firearm; evidence in a judicial or other official proceeding; or an item that is not legal for the finder to possess. Requires a county, city, or town designating an alternate department or entity to also establish procedures for ensuring that the above types of property continue to be directed to the law enforcement agency.

(4) Provides that a department or entity designated by a county, city, or town to accept, store, retain, and dispose of found property must comply with the same retention and disposition requirements as would apply to the law enforcement agency.

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