

Chapter 43.43 RCW
WASHINGTON STATE PATROL

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RCW 43.43.005 Comprehensive outreach and marketing strategic plan. To ensure that it is adequately and thoroughly reaching potential recruits, the Washington state patrol must develop a comprehensive outreach and marketing strategic plan that expands on the success of current strategies and looks for ways to tap into groups or individuals that do not currently show an interest in the state patrol or law enforcement as a career. The plan must include, but is not limited to, expanding marketing and outreach efforts online and through other media outlets and expanding recruitment relationships in respective communities. The plan must also include polling applicants about their application. Results from the polling must be tracked to determine the success of each outreach method. [2016 c 28 § 7.]

Intent—2016 c 28: See note following RCW 43.43.380.

RCW 43.43.010 Patrol created. There shall be a department of state government known as the "Washington state patrol." The chief thereof shall be known as the chief of the Washington state patrol, and members thereof shall be known as Washington state patrol officers. [1965 c 8 § 43.43.010. Prior: 1933 c 25 § 1; RRS § 6362-59.]

RCW 43.43.012 Chief for a day program. (1) To promote positive relationships between law enforcement and the citizens of the state of Washington, the Washington state patrol may participate in the chief for a day program. The chief of the Washington state patrol may designate staff who may participate in organizing the event. The Washington state patrol may accept grants of funds and gifts to be utilized in furtherance of this purpose, and may use their public facilities for such purpose. At all times, the participation of the Washington state patrol must comply with chapter 42.52 RCW.

(2) For the purposes of this section, "chief for a day program" means a program in which the Washington state patrol partners with other local, state, and federal law enforcement agencies, hospitals, and the community to provide a day of special attention to chronically ill children. Each child is selected and sponsored by a law enforcement agency. The event, chief for a day, may occur on the grounds and in the facilities of the Washington state patrol. The program may include any appropriate honoring of the child as a chief, such as a certificate swearing them in as a chief, a badge, a uniform, and donated gifts. The gifts may include, but are not limited to, games, puzzles, and art supplies. [2010 c 10 § 2.]

Finding—2010 c 10: "The legislature finds that the Washington state patrol's participation in charitable work, such as the chief for a day program that provides special attention to chronically ill

children through recognition by various law enforcement agencies within the state, advances the overall purposes of the department by promoting positive relationships between law enforcement and the citizens of the state of Washington." [2010 c 10 § 1.]

RCW 43.43.013 Donations, gifts, conveyances, devises, and grants. The Washington state patrol may accept any and all donations, bequests, gifts, conveyances, devices [devises], and grants conditional or otherwise; or money, property, service, or other things of value which may be received from the United States or any agency thereof, any governmental agency, institution, person, firm, or corporation, public and private, to be held, used, or applied for the purpose of fulfilling its mission. [2009 c 108 § 1.]

RCW 43.43.015 Affirmative action. For the purposes of this chapter, "affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system. [1985 c 365 § 4; (2019 c 160 § 4, Referendum Measure No. 88 failed to become law).]

RCW 43.43.020 Appointment of personnel. The governor, with the advice and consent of the senate, shall appoint the chief of the Washington state patrol, determine his compensation, and may remove him at will.

The chief shall appoint a sufficient number of competent persons to act as Washington state patrol officers, may remove them for cause, as provided in this chapter, and shall make promotional appointments, determine their compensation, and define their rank and duties, as hereinafter provided. Before a person may be appointed to act as a Washington state patrol officer, the person shall meet the minimum standards for employment with the Washington state patrol, including successful completion of a psychological examination and polygraph examination or similar assessment procedure administered by the chief or his or her designee in accordance with the requirements of RCW 43.101.095(2).

The chief may appoint employees of the Washington state patrol to serve as special deputies, with such restricted police authority as the chief shall designate as being necessary and consistent with their assignment to duty. Such appointment and conferral of authority shall not qualify said employees for membership in the Washington state patrol retirement system, nor shall it grant tenure of office as a regular officer of the Washington state patrol.

The chief may personally appoint, with the consent of the state treasurer, employees of the office of the state treasurer who are qualified under the standards of the criminal justice training commission, or who have comparable training and experience, to serve as special deputies. The law enforcement powers of any special deputies appointed in the office of the state treasurer shall be designated by the chief and shall be restricted to those powers necessary to provide for statewide security of the holdings or property of or under the custody of the office of the state treasurer. These appointments may be revoked by the chief at any time and shall

be revoked upon the written request of the state treasurer or by operation of law upon termination of the special deputy's employment with the office of the state treasurer or thirty days after the chief who made the appointment leaves office. The chief shall be civilly immune for the acts of such special deputies. Such appointment and conferral of authority shall not qualify such employees for membership in the Washington state patrol retirement system, nor shall it grant tenure of office as a regular officer of the Washington state patrol. [2005 c 434 § 4; 1983 c 144 § 1; 1981 c 338 § 4; 1973 1st ex.s. c 80 § 1; 1965 c 8 § 43.43.020. Prior: 1949 c 192 § 1; 1933 c 25 § 3; Rem. Supp. 1949 § 6362-61.]

Civil service exemptions: RCW 41.06.070.

RCW 43.43.030 Powers and duties—Peace officers. The chief and other officers of the Washington state patrol shall have and exercise, throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally, and such other powers and duties as are prescribed by law. [1965 c 8 § 43.43.030. Prior: 1933 c 25 § 2; RRS § 6362-60.]

General authority law enforcement agency: RCW 10.93.020.

RCW 43.43.035 Governor, lieutenant governor, and governor-elect—Security and protection—Duty to provide. The chief of the Washington state patrol is directed to provide security and protection for the governor, the governor's family, and the lieutenant governor to the extent and in the manner the governor and the chief of the Washington state patrol deem adequate and appropriate.

In the same manner the chief of the Washington state patrol is directed to provide security and protection for the governor-elect from the time of the November election. [1991 c 63 § 1; 1965 ex.s. c 96 § 1.]

RCW 43.43.037 Legislature—Security and protection—Duty to provide. The chief of the Washington state patrol is directed to provide such security and protection for both houses of the legislative building while in session as in the opinion of the speaker of the house and the president of the senate may be necessary therefor upon the advice of the respective sergeant-at-arms of each legislative body. [1965 ex.s. c 96 § 2.]

RCW 43.43.040 Disability of patrol officers. (1) The chief of the Washington state patrol shall relieve from active duty Washington state patrol officers who, while in the performance of their official duties, or while on standby or available for duty, have been or hereafter may be injured or incapacitated to such an extent as to be mentally or physically incapable of active service: PROVIDED, That:

(a) Any officer disabled while performing line duty who is found by the chief to be physically incapacitated shall be placed on disability leave for a period not to exceed six months from the date of injury or the date incapacitated. During this period, the officer

shall be entitled to all pay, benefits, insurance, leave, and retirement contributions awarded to an officer on active status, less any compensation received through the department of labor and industries. No such disability leave shall be approved until an officer has been unavailable for duty for more than forty consecutive work hours. Prior to the end of the six-month period, the chief shall either place the officer on disability status or return the officer to active status.

For the purposes of this section, "line duty" is active service which encompasses the traffic law enforcement duties and/or other law enforcement responsibilities of the state patrol. These activities encompass all enforcement practices of the laws, accident and criminal investigations, or actions requiring physical exertion or exposure to hazardous elements.

The chief shall define by rule the situations where a disability has occurred during line duty;

(b) Benefits under this section for a disability that is incurred while in other employment will be reduced by any amount the officer receives or is entitled to receive from workers' compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability;

(c) An officer injured while engaged in willfully tortious or criminal conduct shall not be entitled to disability benefits under this section; and

(d) Should a disability beneficiary whose disability was not incurred in line of duty, prior to attaining age fifty, engage in a gainful occupation, the chief shall reduce the amount of his or her retirement allowance to an amount which when added to the compensation earned by him or her in such occupation shall not exceed the basic salary currently being paid for the rank the retired officer held at the time he or she was disabled. All such disability beneficiaries under age fifty shall file with the chief every six months a signed and sworn statement of earnings and any person who shall knowingly swear falsely on such statement shall be subject to prosecution for perjury. Should the earning capacity of such beneficiary be further altered, the chief may further alter his or her disability retirement allowance as indicated above. The failure of any officer to file the required statement of earnings shall be cause for cancellation of retirement benefits.

(2) (a) Officers on disability status shall receive one-half of their compensation at the existing wage, during the time the disability continues in effect, less any compensation received through the department of labor and industries. They shall be subject to mental or physical examination at any state institution or otherwise under the direction of the chief of the patrol at any time during such relief from duty to ascertain whether or not they are able to resume active duty.

(b) In addition to the compensation provided in (a) of this subsection, the compensation of an officer who is totally disabled during line duty shall include reimbursement for any payments of premiums made after June 10, 2010, for employer-provided medical insurance. An officer is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined

by the department of retirement systems based on federal social security disability standards. An officer in receipt of reimbursement for any payments of premium rates for employer-provided medical insurance under this subsection is required to file with the chief any financial records that are necessary to determine continued eligibility for such reimbursement. The failure of any officer to file the required financial records is cause for cancellation of the reimbursement. The legislature reserves the right to amend or repeal the benefits provided in this subsection (2)(b) in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time. [2010 c 259 § 3; 2009 c 549 § 5122; 1998 c 194 § 1; 1987 c 185 § 17; 1981 c 165 § 1; 1973 2nd ex.s. c 20 § 1; 1965 c 8 § 43.43.040. Prior: 1947 c 174 § 1; 1943 c 215 § 1; RRS § 6362-65.]

Short title—2010 c 259: See note following RCW 41.26.470.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1981 c 165: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 165 § 2.]

Effective date—1981 c 165: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect January 1, 1981." [1981 c 165 § 3.]

RCW 43.43.050 Tenure of patrol officers. Washington state patrol officers shall be entitled to retain their ranks and positions until death or resignation, or until suspended, demoted, or discharged in the manner hereinafter provided. [1965 c 8 § 43.43.050. Prior: 1943 c 205 § 1; Rem. Supp. 1943 § 6362-66.]

RCW 43.43.060 Suspension or demotion of probationary officers. The chief of the Washington state patrol may suspend or demote any officer with probationary status, without preferring charges against the officer, and without a hearing. [1984 c 141 § 1; 1965 c 8 § 43.43.060. Prior: 1943 c 205 § 2; Rem. Supp. 1943 § 6362-67.]

RCW 43.43.070 Discharge of probationary officers—Discharge, demotion, or suspension of nonprobationary officers—Complaint—Hearing. Discharge of any officer with probationary status and discharge, demotion, or suspension of any officer with nonprobationary status shall be only for cause, which shall be clearly stated in a written complaint, sworn to by the person preferring the charges, and served upon the officer complained of.

Upon being so served, any such officer shall be entitled to a public hearing before a trial board consisting of two Washington state patrol officers of the rank of captain, and one officer of equal rank with the officer complained of, who shall be selected by the chief of

the Washington state patrol by lot from the roster of the patrol. In the case of complaint by an officer, such officer shall not be a member of the trial board. [1984 c 141 § 2; 1965 c 8 § 43.43.070. Prior: 1943 c 205 § 3; Rem. Supp. 1943 § 6362-68.]

RCW 43.43.080 Criminal complaint—Authority to suspend officer—Hearing. When the complaint served upon an officer is of a criminal nature calling for the discharge of the officer, the chief of the patrol may immediately suspend the officer without pay pending a trial board hearing. The board shall be convened no later than forty-five days from the date of suspension. However, this does not preclude the granting of a mutually agreed upon extension; in such cases the officer shall remain on suspension without pay.

An officer complained of may waive a hearing and accept the proposed discipline by written notice to the chief of the patrol. [1989 c 28 § 1; 1965 c 8 § 43.43.080. Prior: 1943 c 205 § 4; Rem. Supp. 1943 § 6362-69.]

RCW 43.43.090 Procedure at hearing. At the hearing, an administrative law judge appointed under chapter 34.12 RCW shall be the presiding officer, and shall make all necessary rulings in the course of the hearing, but shall not be entitled to vote.

The complainant and the officer complained of may submit evidence, and be represented by counsel, and a full and complete record of the proceedings, and all testimony, shall be taken down by a stenographer.

After hearing, the findings of the trial board shall be submitted to the chief. Such findings shall be final if the charges are not sustained. In the event the charges are sustained the chief may determine the proper disciplinary action and declare it by written order served upon the officer complained of. [1989 c 28 § 2; 1984 c 141 § 3; 1965 c 8 § 43.43.090. Prior: 1943 c 205 § 5; Rem. Supp. 1943 § 6362-70.]

RCW 43.43.100 Review of order. Any officer subjected to disciplinary action may, within ten days after the service of the order upon the officer, apply to the superior court of Thurston county for a writ of review to have the reasonableness and lawfulness of the order inquired into and determined.

The superior court shall review the determination of the chief of the Washington state patrol in a summary manner, based upon the record of the hearing before the trial board, and shall render its decision within ninety days, either affirming or reversing the order of the chief, or remanding the matter to the chief for further action. A transcript of the trial board hearing shall be provided to the court by the state patrol after being paid for by the officer subjected to disciplinary action. However, if the officer prevails before the court, the state patrol shall reimburse the officer for the cost of the transcript. [1984 c 141 § 4; 1965 c 8 § 43.43.100. Prior: 1943 c 205 § 6; Rem. Supp. 1943 § 6362-71.]

RCW 43.43.110 Reinstatement on acquittal. If as a result of any trial board hearing, or review proceeding, an officer complained of is found not guilty of the charges against him or her, he or she shall be immediately reinstated to his or her former position, and be reimbursed for any loss of salary suffered by reason of the previous disciplinary action. [2009 c 549 § 5123; 1965 c 8 § 43.43.110. Prior: 1943 c 205 § 7; Rem. Supp. 1943 § 6362-72.]

RCW 43.43.111 Patrol officer vehicle accidents. To ensure transparency, integrity, and credibility during Washington state patrol vehicle accident investigations, the agency will continue to review and reform the agency policies and procedures regarding Washington state patrol officers that are involved in vehicle accidents. The agency shall develop agency policies and include as part of the terms of their collective bargaining agreements a progressive corrective process addressing Washington state patrol officer vehicle accidents that may include retraining in vehicle handling, wage or benefit reductions, and termination of employment. The agency shall develop a process for tracking accidents and an accident review process. Annually, a collision data report must be produced designating each accident during the year as minor or severe and any resulting disciplinary actions and be available for review by the legislature. The agency shall implement communication procedures for the victims involved in the accidents from the time the accident occurs until the investigative process has been concluded. The policies must also provide for outside supervision of accident investigations by a qualified independent agency under certain circumstances.

Before the legislative committee assembly in September 2005, the Washington state patrol shall have an outside entity that has a reputation for and has proven experience in law enforcement management and reviewing law enforcement and criminal justice policies and procedures review the agency's proposed law enforcement vehicle accident policies and procedures where a law enforcement officer is involved. The agency will present the proposed policies and procedures to the legislature and finalize the policies and procedures based on input from the legislature. The Washington state patrol shall report to the house and senate transportation committees by November 30, 2005, on the updated policies, processes, and procedures. Once the policies and procedures are completed, other law enforcement agencies may adopt the policies and procedures for their agencies. [2005 c 27 § 2.]

Intent—2005 c 27: "It is the intent of the legislature that accidents involving Washington state patrol officers follow a process that provides a high degree of integrity and credibility both within the investigation of the accident and the perception of the investigation from persons outside the investigation. It is the intent of the legislature to have a communication process in place for the Washington state patrol to communicate accident information to the persons and their families who are involved in the vehicle accidents. It is the intent of the legislature to have early detections in place to reduce future vehicle accidents." [2005 c 27 § 1.]

Short title—2005 c 27: "This act may be known and cited as the "Brock Loshbaugh Act."" [2005 c 27 § 3.]

Effective date—2005 c 27: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2005]." [2005 c 27 § 4.]

RCW 43.43.112 Private law enforcement off-duty employment—Guidelines. Washington state patrol officers may engage in private law enforcement off-duty employment, in uniform or in plainclothes for private benefit, subject to guidelines adopted by the chief of the Washington state patrol. These guidelines must ensure that the integrity and professionalism of the Washington state patrol is preserved. Use of Washington state patrol officer's uniforms shall be considered de minimis use of state property. [2005 c 124 § 1; 1997 c 375 § 1.]

RCW 43.43.115 Real property—Sale or disposal of surplus—Distribution of proceeds. Whenever real property owned by the state of Washington and under the jurisdiction of the Washington state patrol is no longer required, it may be sold at fair market value, or otherwise disposed as permitted under RCW 39.33.015. Any such sale or disposal must be in accordance with RCW 43.17.400. All proceeds received from the sale of real property, less any real estate broker commissions up to four percent of the sale price, shall be deposited into the state patrol highway account: PROVIDED, That if accounts or funds other than the state patrol highway account have contributed to the purchase or improvement of the real property, the office of financial management shall determine the proportional equity of each account or fund in the property and improvements, and shall direct the proceeds to be deposited proportionally therein. [2018 c 217 § 6; 1993 c 438 § 1.]

RCW 43.43.120 Patrol retirement system—Definitions. As used in this section and RCW 43.43.130 through 43.43.320, unless a different meaning is plainly required by the context:

(1) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(2) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

(3) (a) "Average final salary," for members commissioned prior to January 1, 2003, shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(b) "Average final salary," for members commissioned on or after January 1, 2003, shall mean the average monthly salary received by a

member for the highest consecutive sixty service credit months; or if the member has less than sixty months of service, then the average monthly salary received by the member during the member's total months of service.

(c) In calculating average final salary under (a) or (b) of this subsection, the department of retirement systems shall include:

(i) Any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, mandatory or voluntary leave without pay, temporary reduction in pay implemented prior to December 11, 2010, or temporary layoffs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief;

(ii) Any compensation forgone by a member during the 2011-2013 fiscal biennium as a result of reduced work hours, mandatory leave without pay, temporary layoffs, or reductions to current pay if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief. Reductions to current pay shall not include elimination of previously agreed upon future salary reductions; and

(iii) Any compensation forgone by a member during the 2019-2021 and 2021-2023 fiscal biennia as a result of reduced work hours, mandatory leave without pay, temporary layoffs, furloughs, reductions to current pay, or other similar measures resulting from the COVID-19 budgetary crisis, if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the chief. Reductions to current pay shall not include elimination of previously agreed upon future salary increases.

(4) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(5) (a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrol officers; drivers' license examiners; weighmasters; vehicle safety inspectors; central wireless operators; and warehouse workers.

(6) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under chapter 41.45 RCW.

(7) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department of retirement systems.

(10) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.040.

(11) "Employee" means any commissioned employee of the Washington state patrol.

(12) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(13) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(14) "Member" means any person included in the membership of the retirement fund.

(15) "Plan 2" means the Washington state patrol retirement system plan 2, providing the benefits and funding provisions covering commissioned employees who first become members of the system on or after January 1, 2003.

(16) "Prior service" shall mean all services rendered by a member to the state of Washington, or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington.

(17) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(18) "Retirement board" means the board provided for in this chapter.

(19) "Retirement fund" means the Washington state patrol retirement fund.

(20) "Retirement system" means the Washington state patrol retirement system.

(21)(a) "Salary," for members commissioned prior to July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040, or any voluntary overtime, earned on or after July 1, 2001, and prior to July 1, 2017. On or after July 1, 2017, salary shall exclude overtime earnings in excess of seventy hours per year in total related to either RCW 47.46.040 or any voluntary overtime.

(b) "Salary," for members commissioned from July 1, 2001, to December 31, 2002, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, earned prior to July 1, 2017, lump sum payments for deferred annual sick leave, or any form of severance pay. On or after July 1, 2017, salary shall exclude overtime earnings in excess of seventy hours per year in total related to either RCW 47.46.040 or any voluntary overtime.

(c) "Salary," for members commissioned on or after January 1, 2003, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, earned prior to July 1, 2017, lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, holiday pay, or any form of severance pay. On or after July 1, 2017, salary shall exclude overtime earnings in excess of seventy hours per year in total related to either RCW 47.46.040 or any voluntary overtime.

(d) The addition of overtime earnings related to RCW 47.46.040 or any voluntary overtime earned on or after July 1, 2017, in chapter 181, Laws of 2017 is a benefit improvement that increases the member maximum contribution rate under RCW 41.45.0631(1) by 1.10 percent.

(22)(a) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall

be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(b) Reduction efforts such as furloughs, reduced work hours, mandatory leave without pay, temporary layoffs, or other similar situations as contemplated by subsection (3)(c)(iii) of this section do not result in a reduction in service credit that otherwise would have been earned for that month of work, and the member shall receive the full service credit for the hours that were scheduled to be worked before the reduction.

(23) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(24) "State treasurer" means the treasurer of the state of Washington.

Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender. [2021 c 12 § 8; 2020 c 97 § 2; 2017 c 181 § 1; 2011 1st sp.s. c 5 § 6; 2010 2nd sp.s. c 1 § 907; 2010 1st sp.s. c 32 § 9. Prior: 2009 c 549 § 5124; 2009 c 522 § 1; 2001 c 329 § 3; 1999 c 74 § 1; 1983 c 81 § 1; 1982 1st ex.s. c 52 § 24; 1980 c 77 § 1; 1973 1st ex.s. c 180 § 1; 1969 c 12 § 1; 1965 c 8 § 43.43.120; prior: 1955 c 244 § 1; 1953 c 262 § 1; 1951 c 140 § 1; 1947 c 250 § 1; Rem. Supp. 1947 § 6362-81.]

Retroactive application—2021 c 12: See note following RCW 41.26.030.

Intent—2020 c 97: "(1) In 2001, the legislature passed chapter 329, Laws of 2001 which, beginning July 1, 2001, removed the ability for newly commissioned officers in the Washington state patrol to include certain types of earnings in their final average salary used for calculating their pension at the time of retirement. Chapter 329, Laws of 2001 also created the Washington state patrol retirement system plan 2 which applied to commissioned employees who first become members of the system on or after January 1, 2003.

(2) The legislature intends to allow state patrol troopers who were commissioned between July 1, 2001, and December 31, 2002, to include unused vacation, annual leave, and holiday pay in their salary average at retirement." [2020 c 97 § 1.]

Effective date—2011 1st sp.s. c 5: See note following RCW 41.26.030.

Effective date—2010 2nd sp.s. c 1: See note following RCW 38.52.105.

Intent—Conflict with federal requirements—Effective date—2010 1st sp.s. c 32: See notes following RCW 42.04.060.

Effective date—2001 c 329: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 329 § 14.]

Effective date—1983 c 81: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983." [1983 c 81§ 4.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: "The provisions of this 1969 amendatory act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of this act." [1969 c 12 § 8.]

RCW 43.43.130 Retirement fund created—Membership. (1) A Washington state patrol retirement fund is hereby established for members of the Washington state patrol which shall include funds created and placed under the management of a retirement board for the payment of retirement allowances and other benefits under the provisions hereof.

(2) Any employee of the Washington state patrol, upon date of commissioning, shall be eligible to participate in the retirement plan and shall start contributing to the fund immediately. Any employee of the Washington state patrol employed by the state of Washington or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington shall receive full credit for such prior service but after that date each new commissioned employee must automatically participate in the fund. If a member shall terminate service in the patrol and later reenter, he or she shall be treated in all respects as a new employee.

(3) (a) A member who reenters or has reentered service within ten years from the date of his or her termination, shall upon completion of six months of continuous service and upon the restoration of all withdrawn contributions, plus interest as determined by the director, which restoration must be completed within five years after resumption of service, be returned to the status of membership he or she earned at the time of termination.

(b) A member who does not meet the time limitations for restoration under (a) of this subsection, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under RCW 41.50.165(2) prior to retirement.

(4) (a) An employee of the Washington state patrol who becomes a member of the retirement system after June 12, 1980, and who has service as a cadet in the patrol training program may make an irrevocable election to transfer the service to the retirement system. Any member upon making such election shall have transferred all existing service credited in a prior public retirement system in this state for periods of employment as a cadet. Transfer of credit under this subsection is contingent on completion of the transfer of funds specified in (b) of this subsection.

(b) Within sixty days of notification of a member's cadet service transfer as provided in (a) of this subsection, the department of retirement systems shall transfer the employee's accumulated

contributions attributable to the periods of service as a cadet, including accumulated interest.

(5) A member of the retirement system who has served or shall serve on active federal service in the armed forces of the United States pursuant to and by reason of orders by competent federal authority, who left or shall leave the Washington state patrol to enter such service, and who within one year from termination of such active federal service, resumes employment as a state employee, shall have his or her service in such armed forces credited to him or her as a member of the retirement system: PROVIDED, That no such service in excess of five years shall be credited unless such service was actually rendered during time of war or emergency.

(6) An active employee of the Washington state patrol who either became a member of the retirement system prior to June 12, 1980, and who has prior service as a cadet in the public employees' retirement system may make an irrevocable election to transfer such service to the retirement system within a period ending June 30, 1985, or, if not an active employee on July 1, 1983, within one year of returning to commissioned service, whichever date is later. Any member upon making such election shall have transferred all existing service credited in the public employees' retirement system which constituted service as a cadet together with the employee's contributions plus credited interest. If the employee has withdrawn the employee's contributions, the contributions must be restored to the public employees' retirement system before the transfer of credit can occur and such restoration must be completed within the time limits specified in this subsection for making the elective transfer.

(7) An active employee of the Washington state patrol who either became a member of the retirement system prior to June 12, 1980, or who has prior service as a cadet in the public employees' retirement system may make an irrevocable election to transfer such service to the retirement system if they have not met the time limitations of subsection (6) of this section by paying the amount required under RCW 41.50.165(2) less the contributions transferred. Any member upon making such election shall have transferred all existing service credited in the public employees' retirement system that constituted service as a cadet together with the employee's contributions plus credited interest. If the employee has withdrawn the employee's contributions, the contributions must be restored to the public employees' retirement system before the transfer of credit can occur and such restoration must be completed within the time limits specified in subsection (6) of this section for making the elective transfer.

(8) An active employee of the Washington state patrol may establish up to six months' retirement service credit in the state patrol retirement system for any period of employment by the Washington state patrol as a cadet if service credit for such employment was not previously established in the public employees' retirement system, subject to the following:

(a) Certification by the patrol that such employment as a cadet was for the express purpose of receiving on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper.

(b) Payment by the member of employee contributions in the amount of seven percent of the total salary paid for each month of service to be established, plus interest at seven percent from the date of the

probationary service to the date of payment. This payment shall be made by the member no later than July 1, 1988.

(c) If the payment required under (b) of this subsection was not made by July 1, 1988, the member may establish the probationary service by paying the amount required under RCW 41.50.165(2).

(d) A written waiver by the member of the member's right to ever establish the same service in the public employees' retirement system at any time in the future.

(9) The department of retirement systems shall make the requested transfer subject to the conditions specified in subsections (6) and (7) of this section or establish additional credit as provided in subsection (8) of this section. Employee contributions and credited interest transferred shall be credited to the employee's account in the Washington state patrol retirement system. [2009 c 549 § 5125; 1994 c 197 § 33; 1987 c 215 § 1; 1986 c 154 § 1; 1983 c 81 § 2; 1980 c 77 § 2; 1965 c 8 § 43.43.130. Prior: 1953 c 262 § 2; 1951 c 140 § 2; 1947 c 250 § 2; Rem. Supp. 1947 § 6362-82.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective date—1987 c 215: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 215 § 3.]

Effective date—1983 c 81: See note following RCW 43.43.120.

RCW 43.43.135 Membership in more than one retirement system. In any case where the Washington state patrol retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, an employee holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who is by reason of his or her current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan, shall be allowed membership rights should the agreement so provide. [2009 c 549 § 5126; 1965 c 8 § 43.43.135. Prior: 1951 c 140 § 10.]

RCW 43.43.137 Reestablishment of service credit by former members who are members of the public employees' retirement system—Conditions. Former members of the retirement system established under this chapter who are currently members of the retirement system governed by chapter 41.40 RCW are permitted to reestablish service credit with the system subject to the following:

(1) The former member must have separated and withdrawn contributions from the system prior to January 1, 1966, and not returned to membership since that date;

(2) The former member must have been employed by the department of licensing, or its predecessor agency, in a capacity related to drivers' license examining within thirty days after leaving commissioned status with the state patrol; and

(3) The former member must make payment to the system of the contributions withdrawn with interest at the rate set by the director from the date of withdrawal to the date of repayment. Such payment must be made no later than June 30, 1986. [1986 c 154 § 2.]

RCW 43.43.138 Establishing, restoring service credit.

Notwithstanding any provision to the contrary, persons who fail to:

- (1) Establish allowable membership service not previously credited;
- (2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or
- (3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 5.]

RCW 43.43.139 Membership while serving as state legislator—

Conditions. Any member of the retirement system who, on or after January 1, 1995, is on leave of absence for the purpose of serving as a state legislator, may elect to continue to be a member of this retirement system. The member shall continue to receive service credit subject to the following:

- (1) The member will not receive more than one month's service credit in a calendar month;
- (2) Employer contributions shall be paid by the legislature;
- (3) Contributions shall be based on the regular compensation which the member would have received had such a member not served in the legislature;
- (4) The service and compensation credit under this section shall be granted only for periods during which the legislature is in session; and
- (5) No service credit for service as a legislator will be allowed after a member separates from employment with the Washington state patrol. [1997 c 123 § 1.]

RCW 43.43.142 Retirement board abolished—Transfer of powers, duties, and functions. The retirement board established by this chapter is abolished. All powers, duties, and functions of the board are transferred to the director of retirement systems. [1982 c 163 § 18.]

Severability—Effective date—1982 c 163: See notes following RCW 2.10.052.

RCW 43.43.165 Board may receive contributions from any source.

Contributions may be received by the Washington state patrol retirement board from any public or private source for deposit into the Washington state patrol retirement fund, and said contributions shall be dealt with in the same manner as other state patrol retirement funds and subject to the terms of the contribution. [1965 c 8 § 43.43.165. Prior: 1955 c 244 § 4.]

RCW 43.43.220 Retirement fund—Expenses. The Washington state patrol retirement fund shall be the fund from which shall be paid all retirement allowances or benefits in lieu thereof which are payable as provided herein. The expenses of operating the retirement system shall be paid from appropriations made for the operation of the Washington state patrol. [1989 c 273 § 25; 1973 1st ex.s. c 180 § 2; 1965 c 8 § 43.43.220. Prior: 1961 c 93 § 1; 1957 c 162 § 2; 1951 c 140 § 3; 1947 c 250 § 11; Rem. Supp. 1947 § 6362-91.]

RCW 43.43.230 Total service credit. Subject to the provisions of RCW 43.43.260, at retirement, the total service credited to a member shall consist of all the member's current service and accredited prior service. [1982 1st ex.s. c 52 § 25; 1965 c 8 § 43.43.230. Prior: 1953 c 262 § 3; 1947 c 250 § 12; Rem. Supp. 1947 § 6362-92.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

RCW 43.43.233 Purchase of additional service credit—Costs—Rules. (1) A member eligible to retire under RCW 43.43.250 may, at the time of filing a written application for retirement with the department, apply to the department to make a one-time purchase of up to five years of additional service credit.

(2) To purchase additional service credit under this section, a member shall pay the actuarial equivalent value of the resulting increase in the member's benefit.

(3) Subject to rules adopted by the department, a member purchasing additional service credit under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(4) Additional service credit purchased under this section is not membership service and shall be used exclusively to provide the member with a monthly annuity that is paid in addition to the member's retirement allowance. [2006 c 214 § 6.]

Effective date—2006 c 214: See note following RCW 41.40.034.

RCW 43.43.235 Service credit for paid leave of absence. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 43.43.120 through 43.43.310.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor

organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [2000 c 78 § 1.]

Retroactive application—2000 c 78 § 1: "Section 1 of this act applies on a retroactive basis to members for whom compensation and hours were reported under the circumstances described in section 1 of this act. Section 1 of this act may also be applied on a retroactive basis to November 23, 1987, to members for whom compensation and hours would have been reported except for explicit instructions from the department of retirement systems." [2000 c 78 § 2.]

RCW 43.43.240 Legal adviser. The attorney general shall be the legal adviser of the retirement board. [1965 c 8 § 43.43.240. Prior: 1947 c 250 § 13; Rem. Supp. 1947 § 6362-93.]

RCW 43.43.250 Retirement of members. (1)(a) Until July 1, 2007, any member who has attained the age of sixty years shall be retired on the first day of the calendar month next succeeding that in which the member has attained the age of sixty. However, the requirement to retire at age sixty does not apply to a member serving as chief of the Washington state patrol.

(b) Beginning July 1, 2007, any active member who has obtained the age of sixty-five years shall be retired on the first day of the calendar month next succeeding that in which the member has attained the age of sixty-five. However, the requirement to retire at age sixty-five does not apply to a member serving as chief of the Washington state patrol.

(2) Any member who has completed twenty-five years of credited service or has attained the age of fifty-five may apply to retire as provided in RCW 43.43.260, by completing and submitting an application form to the department, setting forth at what time the member desires to be retired. [2007 c 87 § 1; 1982 1st ex.s. c 52 § 26; 1975-'76 2nd ex.s. c 116 § 1; 1969 c 12 § 3; 1965 c 8 § 43.43.250. Prior: 1963 c 175 § 1; 1957 c 162 § 3; 1951 c 140 § 4; 1947 c 250 § 14; Rem. Supp. 1947 § 6362-94.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: See note following RCW 43.43.120.

RCW 43.43.260 Benefits—Military service credit. Upon retirement from service as provided in RCW 43.43.250, a member shall be granted a retirement allowance which shall consist of:

(1) A prior service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of prior service rendered by the member.

(2) A current service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of service rendered while a member of the retirement system.

(3) (a) Any member commissioned prior to January 1, 2003, with twenty-five years service in the Washington state patrol may have the member's service in the uniformed services credited as a member whether or not the individual left the employ of the Washington state patrol to enter such uniformed services: PROVIDED, That in no instance shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance, a member must restore all withdrawn accumulated contributions, which restoration must be completed on the date of the member's retirement, or as provided under RCW 43.43.130, whichever occurs first: AND PROVIDED FURTHER, That this section shall not apply to any individual, not a veteran within the meaning of RCW 41.06.150.

(b) A member who leaves the Washington state patrol to enter the uniformed services of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(i) The member qualifies for service credit under this subsection if:

(A) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(B) The member makes the employee contributions required under RCW 41.45.0631 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(C) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2); or

(D) If the member was commissioned on or after January 1, 2003, and, prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(ii) Upon receipt of member contributions under (b) (i) (B), (b) (iv) (C), and (b) (v) (C) of this subsection, or adequate proof under (b) (i) (D), (b) (iv) (D), or (b) (v) (D) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 for the period of military service, plus interest as determined by the department.

(iii) The contributions required under (b) (i) (B), (b) (iv) (C), and (b) (v) (C) of this subsection shall be based on the compensation the

member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(iv) The surviving spouse or lawful domestic partner or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or lawful domestic partner or eligible child or children:

(A) Provides to the director proof of the member's death while serving in the uniformed services;

(B) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(C) If the member was commissioned on or after January 1, 2003, pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(D) If the member was commissioned on or after January 1, 2003, and, prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(v) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(A) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(B) The member provides to the director proof of honorable discharge from the uniformed services; and

(C) If the member was commissioned on or after January 1, 2003, the member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(D) If the member was commissioned on or after January 1, 2003, and, prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form

provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(4) In no event shall the total retirement benefits from subsections (1), (2), and (3) of this section, of any member exceed seventy-five percent of the member's average final salary.

(5) Beginning July 1, 2001, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(a) The original dollar amount of the retirement allowance;

(b) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(c) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(d) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(i) Produce a retirement allowance which is lower than the original retirement allowance;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index for the Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

The provisions of this section shall apply to all members presently retired and to all members who shall retire in the future. [2021 c 98 § 1. Prior: 2009 c 522 § 2; 2009 c 205 § 9; 2005 c 64 § 10; 2002 c 27 § 3; 2001 c 329 § 4; 1994 c 197 § 34; 1982 1st ex.s. c 52 § 27; 1973 1st ex.s. c 180 § 3; 1971 ex.s. c 278 § 1; 1969 c 12 § 4; 1965 c 8 § 43.43.260; prior: 1963 c 175 § 2; 1957 c 162 § 4; 1955 c 244 § 2; 1951 c 140 § 5; 1947 c 250 § 15; Rem. Supp. 1947 § 6362-95.]

Effective date—2001 c 329: See note following RCW 43.43.120.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Effective date—1971 ex.s. c 278: "This 1971 amendatory act shall have an effective date of July 1, 1971." [1971 ex.s. c 278 § 2.]

Construction—1969 c 12: See note following RCW 43.43.120.

RCW 43.43.263 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase

in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 5.]

RCW 43.43.264 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 4.]

RCW 43.43.270 Retirement allowances—Survivors of disabled members—Members commissioned before January 1, 2003. For members commissioned prior to January 1, 2003:

(1) The normal form of retirement allowance shall be an allowance which shall continue as long as the member lives.

(2) If a member should die while in service, or a member leaves the employ of the employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the member's lawful spouse or lawful domestic partner shall be paid an allowance which shall be equal to fifty percent of the average final salary of the member. If the member should die after retirement the member's lawful spouse or lawful domestic partner shall be paid an allowance which shall be equal to the retirement allowance then payable to the member or fifty percent of the final average salary used in computing the member's retirement allowance, whichever is less. The allowance paid to the lawful spouse or lawful domestic partner shall continue as long as the spouse or domestic partner lives: PROVIDED, That if a surviving spouse or domestic partner who is receiving benefits under this subsection marries, or enters into a domestic partnership with, another member of this retirement system who subsequently predeceases such spouse or domestic partner, the spouse or domestic partner shall then be entitled to receive the higher of the two survivors' allowances for which eligibility requirements were met, but a surviving spouse or domestic partner shall not receive more than one survivor's allowance from this system at the same time under this subsection. To be eligible for an allowance the lawful surviving spouse or lawful domestic partner of a retired member shall have been married to, or in a domestic partnership with, the member prior to the member's retirement and continuously thereafter until the date of the member's death or shall have been married to, or in a domestic partnership with, the retired member at least two years prior to the member's death. The allowance paid to the lawful spouse or lawful domestic partner may be divided with an ex spouse or ex domestic partner of the member by a dissolution order as defined in RCW 41.50.500(3) incident to a dissolution occurring after July 1, 2002. The dissolution order must specifically divide both the member's benefit and any spousal or domestic partner survivor benefit, and must fully comply with RCW 41.50.670 and 41.50.700.

(3) If a member should die, either while in service or after retirement, the member's surviving unmarried children under the age of eighteen years shall be provided for in the following manner:

(a) If there is a surviving spouse or domestic partner, each child shall be entitled to a benefit equal to five percent of the final average salary of the member or retired member. The combined benefits to the surviving spouse or domestic partner and all children shall not exceed sixty percent of the final average salary of the member or retired member; and

(b) If there is no surviving spouse or domestic partner or the spouse or domestic partner should die, the child or children shall be entitled to a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary of the member or retired member. Payments under this subsection shall be prorated equally among the children, if more than one.

(4) If a member should die in the line of duty while employed by the Washington state patrol, or a member leaves the employ of the employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the member's surviving children under the age of twenty years and eleven months if attending any high school, college, university, or vocational or other educational institution accredited or approved by the state of Washington shall be provided for in the following manner:

(a) If there is a surviving spouse or domestic partner, each child shall be entitled to a benefit equal to five percent of the final average salary of the member. The combined benefits to the surviving spouse or domestic partner and all children shall not exceed sixty percent of the final average salary of the member;

(b) If there is no surviving spouse or domestic partner or the spouse or domestic partner should die, the unmarried child or children shall be entitled to receive a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary. Payments under this subsection shall be prorated equally among the children, if more than one; and

(c) If a beneficiary under this subsection reaches the age of twenty-one years during the middle of a term of enrollment the benefit shall continue until the end of that term.

(5) (a) The provisions of this section shall apply to members who have been retired on disability as provided in RCW 43.43.040 if the officer was a member of the Washington state patrol retirement system at the time of such disability retirement.

(b) For the purposes of this subsection, average final salary as used in subsection (2) of this section means:

(i) For members commissioned prior to January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the two years prior to the death of the disabled member; and

(ii) For members commissioned on or after January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the five years prior to the death of the disabled member.

(c) The changes to the definitions of average final salary for the survivors of disabled members in this subsection shall apply retroactively. The department shall correct future payments to eligible survivors of members disabled prior to June 7, 2006, and, as soon as administratively practicable, pay each survivor a lump sum payment reflecting the difference, as determined by the director, between the survivor benefits previously received by the member, and those the member would have received under the definitions of average final salary created in chapter 94, Laws of 2006. [2009 c 522 § 3; 2009 c 226 § 3; 2006 c 94 § 1; 2002 c 158 § 15; 2001 c 329 § 6; 1989 c 108 § 1; 1984 c 206 § 1; 1982 1st ex.s. c 52 § 28; 1973 2nd ex.s. c 14 § 3; 1973 1st ex.s. c 180 § 4. Prior: 1969 c 12 § 6; 1965 c 8 § 43.43.270; prior: 1963 c 175 § 3; 1961 c 93 § 2; 1951 c 140 § 6; 1947 c 250 § 16; Rem. Supp. 1947 § 6362-96.]

Reviser's note: This section was amended by 2009 c 226 § 3 and by 2009 c 522 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2001 c 329: See note following RCW 43.43.120.

Effective date—1989 c 108: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 108 § 2.]

Applicability—1984 c 206: "This act shall apply only to surviving spouses receiving benefits under RCW 43.43.270(2) on or after March 27, 1984. No surviving spouse whose benefits under RCW 43.43.270(2) were terminated before March 27, 1984, due to remarriage shall be governed by this act, and this act shall neither retroactively nor prospectively restore such terminated benefits. This act shall apply only to surviving unmarried children receiving benefits under RCW 43.43.270 (3) or (4) on or after March 27, 1984. No benefits shall be paid under RCW 43.43.270 (3)(b) or (4)(b) for any period before March 27, 1984." [1984 c 206 § 2.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: See note following RCW 43.43.120.

RCW 43.43.271 Retirement allowances—Members commissioned on or after January 1, 2003—Court-approved property settlement. (1) A member commissioned on or after January 1, 2003, upon retirement for service as prescribed in RCW 43.43.250 shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout the member's life. However, if the retiree dies before the total of the retirement allowance paid to the retiree equals the amount of the retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons,

trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse or domestic partner; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse or domestic partner, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married or in a domestic partnership, must provide the written consent of his or her spouse or domestic partner to the option selected under this section, except as provided in (b) and (c) of this subsection. If a member is married or in a domestic partnership and both the member and member's spouse or domestic partner do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse or domestic partner as the beneficiary. This benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless consent by the spouse or domestic partner is not required as provided in (b) and (c) of this subsection.

(b) Written consent from a spouse or domestic partner is not required if a member who is married or a domestic partner selects a joint and survivor option under subsection (1)(b) of this section and names the member's spouse or domestic partner as the survivor beneficiary.

(c) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spouse or domestic partner consent provisions of (a) of this subsection do not apply.

(3) No later than January 1, 2003, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse or domestic partner from a postretirement marriage or domestic partnership as a survivor during a one-year period beginning one year after the date of the postretirement marriage or domestic partnership provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage or domestic partnership prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse or

domestic partner as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a nonspouse or a nondomestic partner as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who has completed at least five years of service and the member's divorcing spouse or former domestic partner be divided into two separate benefits payable over the life of each spouse or domestic partner.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried or in a domestic partnership at the time of retirement remains subject to the spouse or domestic partner consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse or former domestic partner shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 43.43.250(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse or domestic partner if the nonmember ex spouse or former domestic partner was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse or former domestic partner shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution.

(5) Beginning on the date that the state receives a determination from the federal internal revenue service that this subsection (5) conforms with federal law, retirees have up to ninety calendar days after the receipt of their first retirement allowance to change their survivor election under subsections (1) and (2) of this section. If a member changes the member's survivor election under this subsection the change is effective the first of the following month and is prospective only. [2020 c 161 § 8; 2019 c 102 § 10; 2009 c 522 § 4; 2003 c 294 § 14; 2002 c 158 § 16; 2001 c 329 § 5.]

Effective date—2001 c 329: See note following RCW 43.43.120.

RCW 43.43.274 Minimum retirement allowance—Annual adjustment.

Effective January 1, 2003, the minimum retirement allowance under RCW 43.43.260 and 43.43.270(2) in effect on January 1, 2002, shall be increased by three percent. Each January 1st thereafter, the minimum retirement allowance of the preceding year shall be increased by three percent. [2001 c 329 § 8; 1999 c 74 § 3; 1997 c 72 § 1.]

Effective date—2001 c 329: See note following RCW 43.43.120.

RCW 43.43.278 Retirement option.

By July 1, 2000, the department of retirement systems shall adopt rules that allow a member to select an actuarially equivalent retirement option that pays the member a reduced retirement allowance and upon death shall be continued throughout the life of a lawful surviving spouse or lawful domestic partner. The continuing allowance to the lawful surviving spouse or lawful domestic partner shall be subject to the yearly increase provided by RCW 43.43.260(5). The allowance to the lawful surviving spouse or lawful domestic partner under this section, and the allowance for an eligible child or children under RCW 43.43.270, shall not be subject to the limit for combined benefits under RCW 43.43.270. [2009 c 522 § 5; 2001 c 329 § 9; 2000 c 186 § 9; 1999 c 74 § 4.]

Effective date—2001 c 329: See note following RCW 43.43.120.

RCW 43.43.280 Repayment of contributions on death or termination of employment—Election to receive reduced retirement allowance at age fifty-five.

(1) If a member dies before retirement, and has no surviving spouse or domestic partner or children under the age of eighteen years, all contributions made by the member, including any amount paid under RCW 41.50.165(2), with interest as determined by the director, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to such person or persons as the member shall have nominated by written designation duly executed and filed with the department, or if there be no such designated person or persons, then to the member's legal representative.

(2) If a member should cease to be an employee before attaining age sixty for reasons other than the member's death, or retirement, the individual shall thereupon cease to be a member except as provided under RCW 43.43.130 (2), (3), and (4) and, the individual may withdraw the member's contributions to the retirement fund, including any amount paid under RCW 41.50.165(2), with interest as determined by the director, by making application therefor to the department, except that: A member who ceases to be an employee after having completed at least five years of service shall remain a member during the period of the member's absence from employment for the exclusive purpose only of receiving a retirement allowance to begin at attainment of age sixty, however such a member may upon written notice to the department elect to receive a reduced retirement allowance on or after age fifty-five which allowance shall be the actuarial equivalent of the sum necessary

to pay regular retirement benefits as of age sixty: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions, the individual shall thereupon cease to be a member and this subsection shall not apply. [2009 c 522 § 6; 1994 c 197 § 35; 1991 c 365 § 32; 1987 c 215 § 2; 1982 1st ex.s. c 52 § 29; 1973 1st ex.s. c 180 § 5; 1969 c 12 § 7; 1965 c 8 § 43.43.280. Prior: 1961 c 93 § 3; 1951 c 140 § 7; 1947 c 250 § 17; Rem. Supp. 1947 § 6363-97.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 215: See note following RCW 43.43.130.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Construction—1969 c 12: See note following RCW 43.43.120.

RCW 43.43.285 Special death benefit—Course of employment—Occupational disease or infection—Annual adjustment. (1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) (a) The benefit under this section shall be paid only where death occurs as a result of (i) injuries sustained in the course of employment; or (ii) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(b) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment, as set forth in RCW 41.05.011(5), shall include reimbursement for any payments of premium rates to the Washington state health care authority under RCW 41.05.080.

(3) (a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A";

(ii) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied

beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index — Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(4) In addition to the survivor benefit payable under RCW 43.43.270 or 43.43.271, if the surviving spouse or domestic partner of a member whose death occurs as a result of (a) injuries sustained in the course of employment; or (b) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter is not eligible to receive industrial insurance payments pursuant to RCW 51.32.050 due to remarriage, the surviving spouse or domestic partner shall receive an amount equal to the benefit they would receive pursuant to RCW 51.32.050 but for the remarriage. This subsection applies to surviving spouses whose benefits under RCW 51.32.050 were suspended or terminated due to remarriage prior to July 24, 2015. The monthly payments to any surviving spouse or domestic partner who received a lump sum payment pursuant to RCW 51.32.050 shall be actuarially reduced to reflect the amount of the lump sum payment. [2015 c 78 § 2; 2010 c 261 § 7; 2009 c 522 § 7. Prior: 2007 c 488 § 1; 2007 c 487 § 9; 1996 c 226 § 2.]

Application—2010 c 261: See note following RCW 41.26.048.

Short title—2007 c 488: "This act shall be known as "The Steve Frink's and Jim Saunder's Law" in honor of Steve Frink and Jim Saunders, Washington state patrol officers who were killed in the line of duty." [2007 c 488 § 5.]

Effective date—1996 c 226: See note following RCW 41.26.048.

RCW 43.43.286 Rights reserved to the legislature—No future contractual rights. The legislature reserves the right to amend or repeal the reimbursement provisions of chapter 488, Laws of 2007 in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time. [2007 c 488 § 4.]

Short title—2007 c 488: See note following RCW 43.43.285.

RCW 43.43.290 Status in case of disablement. A person receiving benefits under RCW 43.43.040 will be a nonactive member. If any person who is or has been receiving benefits under RCW 43.43.040 returns or has returned to active duty with the Washington state patrol, the person shall become an active member of the retirement system on the first day of reemployment. The person may acquire service credit for the period of disablement by paying into the retirement fund all

contributions required based on the compensation which would have been received had the person not been disabled. To acquire service credit, the person shall complete the required payment within five years of return to active service or prior to retirement, whichever occurs first. Persons who return to active service prior to July 1, 1982, shall complete the required payment within five years of July 1, 1982, or prior to retirement, whichever occurs first. No service credit for the disability period may be allowed unless full payment is made. Interest shall be charged at the rate set by the director of retirement systems from the date of return to active duty or from July 1, 1982, whichever is later, until the date of payment. The Washington state patrol shall pay into the retirement system the amount which it would have contributed had the person not been disabled. The payment shall become due and payable, in total, when the person makes the first payment. If the person fails to complete the full payment required within the time period specified, any payments made to the retirement fund under this section shall be refunded with interest and any payment by the Washington state patrol to the retirement fund for this purpose shall be refunded. [1982 1st ex.s. c 52 § 30; 1965 c 8 § 43.43.290. Prior: 1947 c 250 § 18; Rem. Supp. 1947 § 6362-98.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

RCW 43.43.295 Accumulated contributions—Payment upon death of member. (1) For members commissioned on or after January 1, 2003, except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) If a member who is killed in the course of employment or a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or domestic partner or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 43.43.260, actuarially reduced, except under subsection (4) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW

43.43.278 and if the member was not eligible for normal retirement at the date of death a further reduction from age fifty-five or when the member could have attained twenty-five years of service, whichever is less; if a surviving spouse or domestic partner who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse or domestic partner, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse or domestic partner eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated under this section making the assumption that the ages of the spouse or domestic partner and member were equal at the time of the member's death; or

(b) (i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, and is not survived by a spouse or domestic partner or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction for early retirement if the member was not eligible for normal retirement or an actuarial reduction to reflect a joint and one hundred percent survivor option under RCW 43.43.278. The member is entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five. [2010 c 261 § 6. Prior: 2009 c 522 § 8; 2009 c 226 § 4; 2004 c 171 § 1; 2004 c 170 § 1; 2003 c 294 § 15; 2001 c 329 § 7.]

Application—2010 c 261 § 6: "Section 6 of this act applies prospectively to the benefits of all members killed in the course of employment since January 1, 2003." [2010 c 261 § 10.]

Effective date—2001 c 329: See note following RCW 43.43.120.

RCW 43.43.310 Benefits exempt from taxation and legal process—Assignability—Exceptions—Deductions for group insurance premiums or for state patrol memorial foundation contributions. (1) Except as provided in subsections (2) and (3) of this section, the right of any person to a retirement allowance or optional retirement allowance under the provisions hereof and all moneys and investments and income thereof are exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency laws, or other processes of law whatsoever, whether the same be in actual possession of the person or be deposited or loaned and shall be unassignable except as herein specifically provided.

(2) Subsection (1) of this section shall not prohibit the department of retirement systems from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to *RCW 26.23.060, (d) a mandatory benefits assignment order issued pursuant to chapter 41.50 RCW, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

(3) Subsection (1) of this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of members of the Washington state patrol or other public employees of the state of Washington, or for contributions to the Washington state patrol memorial foundation. [2012 c 159 § 28; 1991 c 365 § 23; 1989 c 360 § 29. Prior: 1987 c 326 § 25; 1987 c 63 § 1; 1982 1st ex.s. c 52 § 31; 1979 ex.s. c 205 § 8; 1977 ex.s. c 256 § 1; 1965 c 8 § 43.43.310; prior: 1951 c 140 § 8; 1947 c 250 § 20; Rem. Supp. 1947 § 6362-100.]

***Reviser's note:** RCW 26.23.060 was amended by 2021 c 35 § 15, changing "notice of payroll deduction" to "income withholding order."

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 326: See RCW 41.50.901.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

RCW 43.43.315 Optional actuarially equivalent life annuity benefit. (1) At the time of retirement, members may purchase an optional actuarially equivalent life annuity benefit from the Washington state patrol retirement fund established in RCW

43.43.130. A minimum payment of twenty-five thousand dollars is required.

(2) Subject to rules adopted by the department, a member purchasing an annuity under this section must pay all of the cost with an eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan.

(a) The department shall adopt rules to ensure that all eligible rollovers and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

(b) "Eligible retirement plan" means a tax qualified plan offered by a governmental employer. [2015 c 111 § 1.]

RCW 43.43.320 Penalty for falsification. Any person who knowingly makes any false statement or falsifies or permits to be falsified any record or records of the Washington state patrol retirement fund in any attempt to defraud such fund shall be guilty of a gross misdemeanor. [1965 c 8 § 43.43.320. Prior: 1947 c 250 § 21; Rem. Supp. 1947 § 6362-101.]

RCW 43.43.330 Examinations for promotion. Appropriate examinations shall be conducted for the promotion of commissioned patrol officers to the rank of sergeant and lieutenant. The examinations shall be prepared and conducted under the supervision of the chief of the Washington state patrol, who shall cause at least thirty days written notice thereof to be given to all patrol officers eligible for such examinations. The written notice shall specify the expected type of examination and relative weights to be assigned if a combination of tests is to be used. Examinations shall be given once every two years, or whenever the eligible list becomes exhausted as the case may be. After the giving of each such examination a new eligible list shall be compiled replacing any existing eligible list for such rank. Only grades attained in the last examination given for a particular rank shall be used in compiling each eligible list therefor. The chief, or in his or her discretion a committee of three individuals appointed by him or her, shall prepare and conduct the examinations, and thereafter grade and evaluate them in accordance with the following provisions, or factors: For promotion to the rank of sergeant or lieutenant, the examination shall consist of one or more of the following components: (1) Oral examination; (2) written examination; (3) service rating; (4) personnel record; (5) assessment center or other valid tests that measures the skills, knowledge, and qualities needed to perform these jobs. A cutoff score may be set for each testing component that allows only those scoring above the cutoff on one component to proceed to take a subsequent component. [2009 c 549 § 5127; 1993 c 155 § 1; 1985 c 4 § 1; 1969 ex.s. c 20 § 1; 1965 c 8 § 43.43.330. Prior: 1959 c 115 § 1; 1949 c 192 § 2; Rem. Supp. 1949 § 6362-61a.]

RCW 43.43.340 Eligible list, and promotions therefrom—

Affirmative action. (1) The names of all officers who have passed examinations satisfactorily shall be placed on an eligible list in the order of the grade attained in the examinations. The chief, or the committee mentioned in RCW 43.43.330 at the chief's request, may determine the lowest examination grade which will qualify an officer for inclusion of his or her name on an eligible list. Examination papers shall be graded promptly and an eligible list shall be made up immediately thereafter. All officers taking an examination shall be informed of the grade earned.

(2) After an eligible list is made up all promotions shall be made from the five top names on the applicable list, and if needed to comply with affirmative action goals three additional names referred under subsection (3) of this section. Not all three additional names need be promoted at the time they are referred and they may be referred more than once. Each officer shall be informed in writing as his or her name is included in the top five on an eligible list or referred under subsection (3) of this section. No officer whose name appears within the top five on any eligible list shall be passed over for promotion more than three times.

(3) If the vacancy to be filled is identified as part of the state patrol's affirmative action goals as established under its affirmative action plan, the chief may refer for consideration up to three additional names per vacancy of individuals who are on the eligible list and who are members of one or more of the protected groups under Title VII of the 1964 Civil Rights Act and chapter 49.60 RCW, or for federal contract compliance purposes, veterans and disabled veterans as defined in the Vietnam Era Veterans Readjustment Act of 1974, Title 41 C.F.R., chapter 60, part 60-250.

The three additional names referred for each vacancy shall be the top three members of the protected groups designated by the chief for referral for that vacancy in accordance with the state patrol's affirmative action goals. These names shall be drawn in rank order from the remaining names of protected group members on the eligible list, after ranking by examination grade. For each vacancy, a total of three supplementary names may be referred.

(4) After having qualified for promotion hereunder an officer must pass a medical examination and must be certified as to physical fitness to perform the duties of the advanced position by one of three doctors designated by the chief of the Washington state patrol.

(5) The state patrol shall consult with the human rights commission in the development of rules pertaining to affirmative action. The state patrol shall transmit a report annually to the human rights commission which states the progress the state patrol has made in meeting affirmative action goals and timetables. [1985 c 365 § 6; 1965 c 8 § 43.43.340. Prior: 1949 c 192 § 3; Rem. Supp. 1949 § 6362-61b.]

RCW 43.43.350 Determination of eligibility for examination for promotion. Eligibility for examination for promotion shall be determined as follows:

Patrol officers with one year of probationary experience, in addition to three years experience as a regular patrol officer before the date of the first examination occurrence, shall be eligible for examination for the rank of sergeant; patrol officers with one year of

probationary experience in the rank of sergeant before the date of the first examination occurrence, in addition to two years as a regular sergeant, shall be eligible for examination for the rank of lieutenant. [2009 c 549 § 5128; 1998 c 193 § 1; 1969 ex.s. c 20 § 2; 1965 c 8 § 43.43.350. Prior: 1949 c 192 § 4, part; Rem. Supp. 1949 § 6362-61c, part.]

RCW 43.43.360 Probationary period. All newly appointed or promoted officers shall serve a probationary period of one year after appointment or promotion, whereupon their probationary status shall terminate, and they shall acquire regular status in the particular grade, unless given notice in writing to the contrary by the chief prior to the expiration of the probationary period. [1984 c 141 § 5; 1965 c 8 § 43.43.360. Prior: 1949 c 192 § 4, part; Rem. Supp. 1949 § 6362-61c, part.]

RCW 43.43.370 Staff or technical officers. The chief of the Washington state patrol may appoint such staff or technical officers as he or she deems necessary for the efficient operation of the patrol, and he or she may assign whatever rank he or she deems necessary to such staff or technical officers for the duration of their service as such.

Staff or technical officers may be returned to their line rank or position whenever the chief so desires. Staff or technical officers without line command assignment and whose duties are of a special or technical nature shall hold their staff or technical rank on a continuing probationary basis; however, such staff or technical officers, if otherwise eligible, shall not be prevented from taking the line promotion examinations, and qualifying for promotion whenever the examinations may be held.

If a staff or technical officer returns to line operations he or she shall return in the rank that he or she holds in the line command, unless promoted to a higher rank through examination and appointment as herein provided: PROVIDED, Nothing contained herein shall be construed as giving the chief the right to demote or to reduce the rank of any officer of the patrol who was holding such office on April 1, 1949. [2009 c 549 § 5129; 1965 c 8 § 43.43.370. Prior: 1949 c 192 § 5; Rem. Supp. 1949 § 6362-61d.]

RCW 43.43.380 Minimum salaries—Report. (1)(a) The minimum monthly salary paid to state patrol troopers and sergeants must be competitive with law enforcement agencies within the boundaries of the state of Washington, guided by the results of a survey undertaken in the collective bargaining process during each biennium. Compensation must be calculated using base salary, premium pay (a pay received by more than a majority of employees), education pay, and longevity pay. The compensation comparison data is based on the Washington state patrol and the law enforcement agencies listed in this section. Increases for sergeants will be extended to the salary levels for captains and lieutenants through the collective bargaining process to ensure proportionality of increases.

(b)(i) Until July 1, 2028, the comparisons for determining competitiveness with other law enforcement agency salary levels must

be guided by the average of compensation paid to the corresponding rank from the Seattle police department, King county sheriff's office, Tacoma police department, Snohomish county sheriff's office, Spokane police department, and Vancouver police department.

(ii) Beginning July 1, 2028, the comparisons for determining competitiveness with other law enforcement agency salary levels must be guided by the average of compensation paid to the corresponding rank from the Seattle police department, King county sheriff's office, Tacoma police department, Snohomish county sheriff's office, Spokane police department, and Vancouver police department, unless the office of financial management determines that one or more agencies should be replaced in this comparison with another law enforcement agency pursuant to the periodic evaluation process specified in (b)(iii) of this subsection.

(iii) By January 1, 2028, and each decade thereafter, the office of financial management must conduct an evaluation of the six agencies that are relevant for comparison to ensure state patrol troopers and sergeant salary levels are competitive with other law enforcement agencies within the boundaries of the state of Washington. If the office of financial management determines that one or more agencies specified in (b)(ii) of this subsection should be replaced in this comparison with a different law enforcement agency that is more relevant to ensure salary competitiveness, the office of financial management may utilize that revised compensation comparison data in the survey undertaken in the collective bargaining process during each biennium.

(2) By December 1, 2024, as part of the salary survey required in this section, the office of financial management must report to the governor and transportation committees of the legislature on the efficacy of Washington state patrol recruitment and retention efforts. Using the results of the 2016 salary survey as the baseline data, the report must include an analysis of voluntary resignations of state patrol troopers and sergeants and a comparison of state patrol academy class sizes and trooper graduations. [2022 c 131 § 1; 2018 c 140 § 1; 2016 c 28 § 5; 1965 c 8 § 43.43.380. Prior: 1949 c 192 § 6; Rem. Supp. 1949 § 6362-61e.]

Intent—2016 c 28: "It is the intent of the legislature to recruit and retain the highest qualified commissioned officers of the Washington state patrol appointed under RCW 43.43.020. The "Joint Transportation Committee Recruitment and Retention Study" dated January 7, 2016, outlines several recommendations to fulfill this intent. The study recommendations were broken down into several areas, with the Washington state patrol, office of financial management, select committee on pension policy, and the legislature all supporting their respective authorizations and control over their respective areas of responsibility and accountability. It is also the intent of the legislature in the 2017-2019 fiscal biennium to increase the thirty dollar vehicle license fee distribution to the state patrol for the salaries and benefits of state patrol officers, including troopers, sergeants, lieutenants, and captains, and make adjustments as needed in the 2019-2021 fiscal biennium." [2016 c 28 § 1.]

RCW 43.43.385 Expedited recruitment incentive program. (1) The Washington state patrol shall develop and implement a state trooper

expedited recruitment incentive program for the purpose of recruiting and filling vacant trooper positions. Recruitment must redouble the effort to create a more diverse workforce and must also provide an accelerated pathway for joining the state patrol for individuals who have previously been employed as a general authority peace officer.

(2) The state trooper expedited recruitment incentive program established by the Washington state patrol may include:

(a) Hiring procedures and an accelerated training program for lateral hires from other agencies that recognizes the knowledge and experience of candidates previously employed in law enforcement; and

(b) A sign-on bonus or other bonus for each trooper hired through the expedited recruitment incentive program.

(3) The establishment of the state trooper expedited recruitment incentive program is subject to a change to the applicable collective bargaining agreements negotiated with the exclusive bargaining representatives.

(4) This section does not interfere with, impede, or in any way diminish the right of the officers of the Washington state patrol to bargain collectively with the state through the exclusive bargaining representatives as provided for in RCW 41.56.473.

(5) Expenditures and eligibility for the state trooper expedited recruitment incentive program established in this section are subject to the availability of amounts appropriated for this specific purpose. The specific amounts, requirements, and other provisions related to the bonus policy for cadet hires or lateral hires are subject to applicable provisions as set forth in an omnibus transportation appropriations act.

(6) For the purposes of this section:

(a) "Cadet" means a person employed for the express purpose of receiving the on-the-job training required for attendance at the Washington state patrol academy and for becoming a commissioned trooper.

(b) "Lateral hire" means an eligible employee previously employed as a general authority peace officer. [2023 c 459 § 2.]

Findings—2023 c 459: "The legislature finds that the Washington state patrol is experiencing historic levels of trooper vacancies, with almost 30 percent of trooper positions unfilled. At the same time, Washington is experiencing alarming increases in serious and fatal crashes on our roadways. The legislature recognizes that the Washington state patrol is working on strengthening its recruiting efforts, with a focus on broadening outreach to candidates from marginalized communities. This historic confluence of factors justifies extraordinary measures to assist the Washington state patrol in its efforts to attract and retain sufficient numbers of troopers for the protection of the citizens of the state of Washington." [2023 c 459 § 1.]

Effective date—2023 c 459: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2023]." [2023 c 459 § 3.]

RCW 43.43.390 Bicycle awareness program—Generally. Bicycling is increasing in popularity as a form of recreation and as an

alternative mode of transportation. To make bicycling safer, the various law enforcement agencies should enforce traffic regulations for bicyclists. By enforcing bicycle regulations, law enforcement officers are reinforcing educational programs. Bicycling takes more skill than most people realize. Since bicyclists have a low profile in traffic and are unprotected, they need more defensive riding skills than motorists do.

A bicycle awareness program is created within the Washington state patrol. In developing the curriculum for the bicycle awareness program the patrol shall consult with the traffic safety commission and with bicycling groups providing bicycle safety education. The patrol shall conduct the program in conjunction with the safety education officer program and may use other law enforcement personnel and volunteers to implement the program for children in grades kindergarten through six. The patrol shall ensure that each safety educator presenting the bicycle awareness program has received specialized training in bicycle safety education and has been trained in effective defensive bicycle riding skills. [1991 c 214 § 1.]

Bicycle transportation management program: RCW 47.04.190.

RCW 43.43.395 Ignition interlock devices—Standards—Compliance.

(1) The state patrol shall by rule provide standards for the certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock devices, as defined under RCW 46.04.215, and equipment as outlined under this section, and may inspect the records and equipment of manufacturers and vendors during regular business hours for compliance with statutes and rules and may suspend or revoke certification for any noncompliance.

(2) (a) When a certified service provider or individual installer of ignition interlock devices is found to be out of compliance, the installation privileges of that certified service provider or individual installer may be suspended or revoked until the certified service provider or individual installer comes into compliance. During any suspension or revocation period, the certified service provider or individual installer is responsible for notifying affected customers of any changes in their service agreement.

(b) A certified service provider or individual installer whose certification is suspended or revoked for noncompliance has a right to an administrative hearing under chapter 34.05 RCW to contest the suspension or revocation, or both. For the administrative hearing, the procedure and rules of evidence are as specified in chapter 34.05 RCW, except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within twenty days after the receipt of the notice of suspension or revocation.

(3) (a) An ignition interlock device must employ:

(i) Fuel cell technology. For the purposes of this subsection, "fuel cell technology" consists of the following electrochemical method: An electrolyte designed to oxidize the alcohol and release electrons to be collected by an active electrode; a current flow is generated within the electrode proportional to the amount of alcohol oxidized on the fuel cell surface; and the electrical current is measured and reported as breath alcohol concentration. Fuel cell technology is highly specific for alcohols;

(ii) Technology capable of taking a photo identification of the user giving the breath sample and recording on the photo the time the breath sample was given; and

(iii) Technology capable of providing the global positioning coordinates at the time of each test sequence. Such coordinates must be displayed within the data log that is downloaded by the manufacturer and must be made available to the state patrol to be used for circumvention and tampering investigations.

(b) To be certified, an ignition interlock device must:

(i) Meet or exceed the minimum test standards according to rules adopted by the state patrol. Only a notarized statement from a laboratory that is accredited and certified under the current edition of ISO (the international organization of standardization) 17025 standard for testing and calibration laboratories and is capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards. The notarized statement must include the name and signature of the person in charge of the tests under the certification statement. The state patrol must adopt by rule the required language of the certification statement that must, at a minimum, outline that the testing meets or exceeds all specifications listed in the federal register adopted in rule by the state patrol; and

(ii) Be maintained in accordance with the rules and standards adopted by the state patrol. [2015 2nd sp.s. c 3 § 11; 2013 2nd sp.s. c 35 § 9; 2012 c 183 § 16; 2010 c 268 § 2.]

Finding—Intent—2015 2nd sp.s. c 3: See note following RCW 10.21.055.

Effective date—2012 c 183: See note following RCW 9.94A.475.

RCW 43.43.3952 Ignition interlock devices—Officer required to report violations—Liability. (1) Any officer conducting field inspections of ignition interlock devices under the ignition interlock program shall report violations by program participants to the court.

(2) The Washington state patrol may not be held liable for any damages resulting from any act or omission in conducting activities under the ignition interlock program, other than acts or omissions constituting gross negligence or willful or wanton misconduct. [2013 2nd sp.s. c 35 § 35.]

RCW 43.43.396 Ignition interlock devices—Fee schedule and fee collection—Report—Fee deposit. (1) As part of the state patrol's authority to provide standards for certification, installation, repair, maintenance, monitoring, inspection, and removal of ignition interlock devices, the state patrol shall by rule establish a fee schedule and collect fees from ignition interlock manufacturers, technicians, providers, and persons required under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. At a minimum, the fees must be set at a level necessary to support effective performance of the duties identified in this section. The state patrol must report back to the transportation committees of the legislature and the office of financial management by December 1st of each year on the

level of the fees that have been adopted and whether those fees are sufficient to cover the cost of performing the duties listed in this section.

(2) Fees collected under this section must be deposited into the highway safety account [fund] to be used solely to fund the Washington state patrol impaired driving section projects. [2012 c 183 § 15.]

Effective date—2012 c 183: See note following RCW 9.94A.475.

RCW 43.43.400 Aquatic invasive species inspection and training.

(1) Money in the aquatic invasive species management account created in RCW 77.135.200 may be used by the Washington state patrol for aquatic invasive species inspection training and to inspect for the presence of aquatic invasive species on aquatic conveyances that are required to stop at a Washington state patrol port of entry weigh station.

(2) Unless the context clearly requires otherwise, the definitions in both RCW 77.08.010 and 77.135.010 apply throughout this section. [2017 3rd sp.s. c 17 § 102; 2014 c 202 § 306; 2011 c 171 § 8; 2011 c 169 § 3; 2007 c 350 § 1; 2005 c 464 § 5.]

Findings—2014 c 202: See note following RCW 77.135.010.

Intent—Effective date—2011 c 171: See notes following RCW 4.24.210.

Findings—Intent—2005 c 464: See note following RCW 88.02.560.

RCW 43.43.480 Routine traffic enforcement information. (1) Beginning May 1, 2000, the Washington state patrol shall collect the following information:

- (a) The number of individuals stopped for routine traffic enforcement, whether or not a citation or warning was issued;
- (b) Identifying characteristics of the individual stopped, including the race or ethnicity, approximate age, and gender;
- (c) The nature of the alleged violation that led to the stop;
- (d) Whether a search was instituted as a result of the stop; and
- (e) Whether an arrest was made, or a written citation issued, as a result of either the stop or the search.

(2) The criminal justice training commission and the Washington state patrol shall compile the information required under subsection (1) of this section and make a report to the legislature no later than December 1, 2000. [2016 c 197 § 3; 2000 c 118 § 1.]

Effective date—2000 c 118: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 24, 2000]." [2000 c 118 § 4.]

RCW 43.43.490 Routine traffic enforcement information—Data collection—Training materials on racial profiling. (1) The Washington state patrol shall work with the criminal justice training commission and the Washington association of sheriffs and police

chiefs to develop (a) further criteria for collection and evaluation of the data collected under RCW 43.43.480, and (b) training materials for use by the state patrol and local law enforcement agencies on the issue of racial profiling.

(2) The Washington state patrol, criminal justice training commission, and Washington association of sheriffs and police chiefs shall encourage local law enforcement agencies to voluntarily collect the data set forth under RCW 43.43.480(1). [2000 c 118 § 2.]

Effective date—2000 c 118: See note following RCW 43.43.480.

RCW 43.43.500 Crime information center—Established—Purpose—Functions. There is established the Washington state crime information center to be located in the records division of the Washington state patrol and to function under the direction of the chief of the Washington state patrol. The center shall serve to coordinate crime information, by means of data processing, for all law enforcement agencies in the state. It shall make such use of the facilities of the law enforcement teletype system as is practical. It shall provide access to the national crime information center, to motor vehicle and driver license information, to the sex offender central registry, and to such other public records as may be accessed by data processing and which are pertinent to law enforcement. [1998 c 67 § 1; 1967 ex.s. c 27 § 1.]

Effective date—1998 c 67: "This act takes effect June 30, 1999." [1998 c 67 § 3.]

RCW 43.43.510 Crime information center—Files of general assistance to law enforcement agencies established—Runaway children—Information publicly available. (1) As soon as is practical and feasible there shall be established, by means of data processing, files listing stolen and wanted vehicles, outstanding warrants, identifying children whose parents, custodians, or legal guardians have reported as having run away from home or the custodial residence, identifiable stolen property, files maintaining the central registry of sex offenders required to register under chapter 9A.44 RCW, and such other files as may be of general assistance to law enforcement agencies.

(2)(a) At the request of a parent, legal custodian, or guardian who has reported a child as having run away from home or the custodial residence, the Washington state patrol shall make the information about the runaway child as is filed in subsection (1) of this section publicly available.

(b) The information that can be made publicly available under (a) of this subsection is limited to information that will facilitate the safe return of the child to his or her home or custodial residence and so long as making the information publicly available incurs no additional costs. [2013 c 4 § 4; 2010 c 229 § 4; 1998 c 67 § 2; 1995 c 312 § 45; 1967 ex.s. c 27 § 2.]

Findings—2010 c 229: See note following RCW 13.32A.082.

Effective date—1998 c 67: See note following RCW 43.43.500.

Short title—1995 c 312: See note following RCW 13.32A.010.

RCW 43.43.530 Crime information center—Cost of terminal facilities. The cost of additional terminal facilities necessary to gain access to the Washington state crime information center shall be borne by the respective agencies operating the terminal facilities. [1967 ex.s. c 27 § 4.]

RCW 43.43.540 Sex offenders and kidnapping offenders—Central registry—Reimbursement to counties. (1) The county sheriff shall forward registration information, photographs, and fingerprints obtained pursuant to RCW 9A.44.130, including the sex offender's risk level classification and any notice of change of address, to the Washington state patrol within five working days.

(2) Upon implementation of RCW 4.24.550(5)(a), the Washington state patrol shall maintain a central registry of sex offenders and kidnapping offenders required to register under RCW 9A.44.130 and shall adopt rules consistent with chapters 10.97, 10.98, and 43.43 RCW as are necessary to carry out the purposes of RCW 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 46.20.187, 70.48.470, and 72.09.330. The Washington state patrol shall reimburse the counties for the costs of processing the offender registration, including taking the offender's fingerprints and photograph. [2011 c 337 § 8; 2006 c 136 § 1; 2002 c 118 § 2; 1998 c 220 § 4; 1997 c 113 § 6; 1990 c 3 § 403.]

Reviser's note: The definitions in RCW 9A.44.128 apply to this section.

Conflict with federal requirements—2002 c 118: See note following RCW 4.24.550.

Severability—1998 c 220: See note following RCW 9A.44.130.

Findings—1997 c 113: See note following RCW 4.24.550.

Sex offense and kidnapping offense defined: RCW 9A.44.128.

RCW 43.43.545 Statewide sexual assault kit tracking system. (1) The Washington state patrol shall create and operate a statewide sexual assault kit tracking system. The Washington state patrol may contract with state or nonstate entities including, but not limited to, private software and technology providers, for the creation, operation, and maintenance of the system.

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

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

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

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

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

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

(f) Use electronic technology or technologies allowing continuous access.

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

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

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

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

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

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

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

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

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

(h) The total number of sexual assault kits, statewide and by jurisdiction, where forensic analysis has not been completed and six

months or more have passed since those sexual assault kits were added to the system; and

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

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

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

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

(8) For the purposes of this section:

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

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

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

[2020 c 26 § 6; 2019 c 93 § 4; 2016 c 173 § 2.]

Intent—2020 c 26: See note following RCW 63.21.090.

Finding—Intent—2016 c 173: "The legislature recognizes the deep pain and suffering experienced by victims of sexual assault. Sexual assault is an extreme violation of a person's body and sense of self and safety. Sexual violence is a pervasive social problem. National studies indicate that approximately one in four women will be sexually assaulted in their lifetimes. Survivors often turn to hospitals and local law enforcement for help, and many volunteer to have professionals collect a sexual assault kit to preserve physical evidence from their bodies. The process of collecting a sexual assault kit is extremely invasive and difficult.

The legislature finds that, when forensic analysis is completed, the biological evidence contained inside sexual assault kits can be an incredibly powerful tool for law enforcement to solve and prevent crime. Forensic analysis of all sexual assault kits sends a message to survivors that they matter. It sends a message to perpetrators that they will be held accountable for their crimes. The legislature is committed to bringing healing and justice to survivors of sexual assault.

The legislature recognizes the laudable and successful efforts of law enforcement in the utilization of forensic analysis of sexual assault kits in the investigation and prosecution of crimes in Washington state. In 2015, the legislature enhanced utilization of this tool by requiring the preservation and forensic analysis of sexual assault kits. The legislature intends to continue building on

its efforts through the establishment of the statewide sexual assault kit tracking system. The system will be designed to track all sexual assault kits in Washington state, regardless of when they were collected, in order to further empower survivors with information, assist law enforcement with investigations and crime prevention, and create transparency and foster public trust." [2016 c 173 § 1.]

RCW 43.43.546 Statewide sexual assault kit tracking system—Participation by bureau of forensic laboratory services. The Washington state patrol bureau of forensic laboratory services shall participate in the statewide sexual assault kit tracking system established in RCW 43.43.545 for the purpose of tracking the status of all sexual assault kits in the custody of the Washington state patrol and other entities contracting with the Washington state patrol. The Washington state patrol bureau of forensic laboratory services shall begin full participation in the system according to the implementation schedule established by the Washington state patrol. [2016 c 173 § 5.]

Finding—Intent—2016 c 173: See note following RCW 43.43.545.

RCW 43.43.550 Traffic safety education officers—Powers—Pay and reimbursement. (1) The chief of the Washington state patrol shall designate twenty-four or more officers as traffic safety education officers. The chief of the Washington state patrol shall make the designations in a manner designed to ensure that the programs under subsection (2) of this section are reasonably available in all areas of the state.

(2) The chief of the Washington state patrol may permit these traffic safety education officers to appear in their off-duty hours in uniform to give programs in schools or the community on the duties of the state patrol, traffic safety, or crime prevention.

(3) The traffic safety education officers may accept such pay and reimbursement of expenses as are approved by the state patrol from the sponsoring organization.

(4) The state patrol is encouraged to work with community organizations to set up these programs statewide. [1984 c 217 § 1.]

RCW 43.43.560 Automatic fingerprint information system—Report. (1) To support criminal justice services in the local communities throughout this state, the state patrol shall develop a plan for and implement an automatic fingerprint information system. In implementing the automatic fingerprint information system, the state patrol shall either purchase or lease the appropriate computer systems. If the state patrol leases a system, the lease agreement shall include purchase options. The state patrol shall procure the most efficient system available.

(2) The state patrol shall report on the automatic fingerprint information system to the legislature no later than January 1, 1987. The report shall include a time line for implementing each stage, a local agency financial participation analysis, a system analysis, a full cost/purchase analysis, a vendor bid evaluation, and a space location analysis that includes a site determination. The state patrol

shall coordinate the preparation of this report with the office of financial management. [1986 c 196 § 1.]

RCW 43.43.570 Automatic fingerprint identification system—Conditions for local establishment or operation—Rules. (1) No local law enforcement agency may establish or operate an automatic fingerprint identification system unless both the hardware and software of the local system use an interface compatible with the state system under RCW 43.43.560. The local law enforcement agency shall be able to transmit a tenprint record to the state system through any available protocol which meets accepted industry standards, and the state system must be able to accept tenprint records which comply with those requirements. When industry transmission protocols change, the Washington state patrol shall incorporate these new standards as funding and reasonable system engineering practices permit. The tenprint transmission from any local law enforcement agency must be in accordance with the current version of the state electronic fingerprint transmission specification.

(2) No later than January 1, 2007, the Washington state patrol's automatic fingerprint identification system shall be capable of instantly accepting electronic latent search records from any Washington state local law enforcement agency. *If specific funding for the purposes of this subsection is not provided by June 30, 2006, in the omnibus appropriations act, or if funding is not obtained from another source by June 30, 2006, this subsection is null and void.

(3) A local law enforcement agency operating an automatic fingerprint identification system shall transmit data on fingerprint entries to the Washington state patrol electronically. This requirement shall be in addition to those under RCW 10.98.050 and 43.43.740.

(4) Any personnel functions necessary to prepare fingerprints for searches under this section shall be the responsibility of the submitting agency.

(5) The Washington state patrol shall adopt rules to implement this section. [2005 c 373 § 2; 1987 c 450 § 1.]

***Reviser's note:** Specific funding was not provided in chapter 518, Laws of 2005 (omnibus appropriations act).

RCW 43.43.580 Firearms background check unit—Automated firearms background check system—Fee. (1) The Washington state patrol shall establish a firearms background check unit to serve as a centralized single point of contact for dealers to conduct background checks for firearms sales or transfers required under chapter 9.41 RCW and the federal Brady handgun violence prevention act (18 U.S.C. Sec. 921 et seq.). The Washington state patrol shall establish an automated firearms background check system to conduct background checks on applicants for the purchase or transfer of a firearm. The system must include the following characteristics:

(a) Allow a dealer to contact the Washington state patrol through a web portal or other electronic means and by telephone to request a background check of an applicant for the purchase or transfer of a firearm;

(b) Provide a dealer with a notification that a firearm purchase or transfer application has been received;

- (c) Assign a unique identifier to the background check inquiry;
 - (d) Provide an automated response to the dealer indicating whether the transfer may proceed or is denied, or that the check is indeterminate and will require further investigation;
 - (e) Include measures to ensure data integrity and the confidentiality and security of all records and data transmitted and received by the system; and
 - (f) Include a performance metrics tracking system to evaluate the performance of the background check system.
- (2) Upon receipt of a request from a dealer for a background check in connection with the sale or transfer of a firearm, the Washington state patrol shall:
- (a) Provide the dealer with a notification that a firearm transfer application has been received;
 - (b) Conduct a check of the national instant criminal background check system and the following additional records systems to determine whether the transferee is prohibited from possessing a firearm under state or federal law: (i) The Washington crime information center and Washington state identification system; (ii) the health care authority electronic database; (iii) the federal bureau of investigation national data exchange database and any available repository of statewide local law enforcement record management systems information; (iv) the administrative office of the courts case management system; and (v) other databases or resources as appropriate;
 - (c) Perform an equivalency analysis on criminal charges in foreign jurisdictions to determine if the applicant has been convicted as defined in RCW 9.41.040(3) and if the offense is equivalent to a Washington felony as defined in RCW 9.41.010;
 - (d) Notify the dealer without delay that the records indicate the individual is prohibited from possessing a firearm and the transfer is denied or that the individual is approved to complete the transfer. If the results of the background check are indeterminate, the Washington state patrol shall notify the dealer of the delay and conduct necessary research and investigation to resolve the inquiry; and
 - (e) Provide the dealer with a unique identifier for the inquiry.
- (3) The Washington state patrol may hold the delivery of a firearm to an applicant under the circumstances provided in *RCW 9.41.090 (4) and (5).
- (4) (a) The Washington state patrol shall require a dealer to charge each firearm purchaser or transferee a fee for performing background checks in connection with firearms transfers. The fee must be set at an amount necessary to cover the annual costs of operating and maintaining the firearm background check system but shall not exceed eighteen dollars. The Washington state patrol shall transmit the fees collected to the state treasurer for deposit in the state firearms background check system account created in RCW 43.43.590. It is the intent of the legislature that once the state firearm background check system is established, the fee established in this section will replace the fee required in *RCW 9.41.090(7).
- (b) The background check fee required under this subsection does not apply to any background check conducted in connection with a pawnbroker's receipt of a pawned firearm or the redemption of a pawned firearm.
- (5) The Washington state patrol shall establish a procedure for a person who has been denied a firearms transfer as the result of a background check to appeal the denial to the Washington state patrol

and to obtain information on the basis for the denial and procedures to review and correct any erroneous records that led to the denial.

(6) The Washington state patrol shall work with the administrative office of the courts to build a link between the firearm background check system and the administrative office of the courts case management system for the purpose of accessing court records to determine a person's eligibility to possess a firearm.

(7) Upon establishment of the firearm background check system under this section, the Washington state patrol shall notify each dealer in the state of the existence of the system, and the dealer must use the system to conduct background checks for firearm sales or transfers beginning on the date that is thirty days after issuance of the notification.

(8) The Washington state patrol shall consult with the Washington background check advisory board created in RCW 43.43.585 in carrying out its duties under this section.

(9) All records and information prepared, obtained, used, or retained by the Washington state patrol in connection with a request for a firearm background check are exempt from public inspection and copying under chapter 42.56 RCW.

(10) The Washington state patrol may adopt rules necessary to carry out the purposes of this section.

(11) For the purposes of this section, "dealer" has the same meaning as given in RCW 9.41.010. [2022 c 105 § 7; 2020 c 28 § 1.]

***Reviser's note:** RCW 9.41.090 was amended by 2023 c 161 § 1, deleting subsections (4), (5), and (7), effective January 1, 2024.

Effective date—2022 c 105: See note following RCW 7.80.120.

RCW 43.43.585 Washington background check advisory board. (1)

There is created the Washington background check advisory board. The board shall consist of the following members, appointed by the governor:

(a) The chief of the Washington state patrol or the chief's designee;

(b) The executive director of the Washington association of sheriffs and police chiefs or the executive director's designee;

(c) One sheriff;

(d) One police chief;

(e) One person engaged in the business of lawfully selling firearms at retail in this state who holds a federal firearms license under 18 U.S.C. Sec. 923(a); and

(f) One member of the general public.

(2) The primary purpose of the board is to ensure that the Washington state patrol firearms background check unit established in RCW 43.43.580 is administered efficiently and effectively, and in a manner that honors individual firearms rights while preventing prohibited persons from obtaining firearms.

(3) The board shall initially convene within ninety days of June 11, 2020, and shall meet not less than monthly until such time that the Washington state patrol deems the firearms background check unit is operational. After the Washington state patrol deems the firearms background check unit is operational, the board shall meet quarterly, unless the board has no business to conduct during that quarter.

(4) The board shall elect from among its membership a chairperson and other such officers from among its membership as it deems appropriate.

(5) Members of the board shall serve terms of four years each on a staggered schedule to be established by the first board. For purposes of initiating a staggered schedule of terms, some members of the first board may initially serve two years and some members may initially serve four years.

(6) The board shall:

(a) Provide input and feedback regarding the establishment and operation of the firearms background check unit established in RCW 43.43.580;

(b) Provide input on the development of the firearms background check unit budget prior to its formal submission to the office of financial management pursuant to RCW 43.88.030;

(c) Be consulted with prior to the proposal of any rule relating to the firearms background check unit and prior to the adoption of any rule relating to the firearms background check unit;

(d) Require reports from the chief of the Washington state patrol on matters pertaining to the firearms background check unit; and

(e) Report to the governor and appropriate committees of the legislature on or before December 31st of each year on the activities of the board and the firearms background check unit for the preceding fiscal year.

(7) Members of the board shall serve without compensation, but shall be reimbursed for travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(8) The Washington state patrol shall provide the staffing and budgetary resources necessary for the board to properly fulfill its duties.

(9) Members serving in their official capacity on the Washington background check advisory board, or either their employer or employers or other entity that selected the members to serve, are immune from a civil action based on an act performed in good faith. [2020 c 28 § 2.]

RCW 43.43.590 State firearms background check system account.

The state firearms background check system account is created in the custody of the state treasurer. All receipts under RCW 43.43.580 must be deposited into the account. Expenditures from the account may be used only for the creation, operation, and maintenance of the automated firearms background check system under RCW 43.43.580. Only the chief of the Washington state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2020 c 28 § 3.]

RCW 43.43.600 Drug control assistance unit—Created. There is hereby created in the Washington state patrol a drug control assistance unit. [1970 ex.s. c 63 § 1.]

RCW 43.43.610 Drug control assistance unit—Duties. The drug control assistance unit shall provide investigative assistance for the

purpose of enforcement of the provisions of chapter 69.40 RCW. [1983 c 3 § 107; 1980 c 69 § 1; 1970 ex.s. c 63 § 2.]

RCW 43.43.620 Drug control assistance unit—Additional duties—Information system on violations—Inter-unit communications network. The drug control assistance unit shall:

(1) Establish a record system to coordinate with all law enforcement agencies in the state a comprehensive system of information concerning violations of the narcotic and drug laws.

(2) Provide a communications network capable of interconnecting all offices and investigators of the unit. [1970 ex.s. c 63 § 3.]

RCW 43.43.630 Drug control assistance unit—Use of existing facilities and systems. In order to maximize the efficiency and effectiveness of state resources, the drug control assistance unit shall, where feasible, use existing facilities and systems. [1970 ex.s. c 63 § 4.]

RCW 43.43.640 Drug control assistance unit—Certain investigators exempt from state civil service act. Any investigators employed pursuant to RCW 43.43.610 shall be exempt from the state civil service act, chapter 41.06 RCW. [1980 c 69 § 3; 1970 ex.s. c 63 § 5.]

RCW 43.43.650 Drug control assistance unit—Employment of necessary personnel. The chief of the Washington state patrol may employ such criminalists, chemists, clerical and other personnel as are necessary for the conduct of the affairs of the drug control assistance unit. [1970 ex.s. c 63 § 6.]

RCW 43.43.655 Drug control assistance unit—Special narcotics enforcement unit. A special narcotics enforcement unit is established within the Washington state patrol drug control assistance unit. The unit shall be coordinated between the Washington state patrol, the attorney general, and the Washington association of sheriffs and police chiefs. The initial unit shall consist of attorneys, investigators, and the necessary accountants and support staff. It is the responsibility of the unit to: (1) Conduct criminal narcotic profiteering investigations and assist with prosecutions, (2) train local undercover narcotic agents, and (3) coordinate federal, state, and local interjurisdictional narcotic investigations. [1989 c 271 § 235.]

Severability—1989 c 271: See note following RCW 9.94A.510.

RCW 43.43.670 Bureau of forensic laboratory services—Powers—Priorities. (1) There is created in the Washington state patrol a bureau of forensic laboratory services system which is authorized to:

(a) Provide laboratory services for the purpose of analyzing and scientifically handling any physical evidence relating to any crime.

(b) Provide training assistance for local law enforcement personnel.

(c) Provide all necessary toxicology services requested by all coroners, medical examiners, and prosecuting attorneys.

(2) The bureau of forensic laboratory services shall assign priority to a request for services with due regard to whether the case involves criminal activity against persons. The Washington state forensic investigations council shall assist the bureau of forensic laboratory services in devising policies to promote the most efficient use of laboratory services consistent with this section. The forensic investigations council shall be actively involved in the preparation of the bureau of forensic laboratory services budget and shall approve the bureau of forensic laboratory services budget prior to its formal submission by the state patrol to the office of financial management pursuant to RCW 43.88.030. [1999 c 40 § 6; 1995 c 398 § 1; 1980 c 69 § 2.]

Effective date—1999 c 40: See note following RCW 43.103.010.

RCW 43.43.672 Bureau of forensic laboratory services—Drug evidence analysis. (Effective January 1, 2025.) Subject to the availability of funds appropriated for this specific purpose, the Washington state patrol bureau of forensic laboratory services shall aim to complete the necessary analysis for any evidence submitted for a suspected violation of RCW 69.50.4011(1) (b) or (c), 69.50.4013, 69.50.4014, or 69.41.030(2) (b) or (c) within 45 days of receipt of the request for analysis.

The Washington state patrol bureau of forensic laboratory services' failure to comply with this section shall not constitute grounds for dismissal of a criminal charge. [2023 sp.s. c 1 § 6.]

Effective date—2023 sp.s. c 1 § 6: "Section 6 of this act takes effect January 1, 2025." [2023 sp.s. c 1 § 40.]

RCW 43.43.680 Controlled substance, simulator solution analysis—Prima facie evidence. (1) In all prosecutions involving the analysis of a controlled substance or a sample of a controlled substance by the crime laboratory system of the state patrol, a certified copy of the analytical report signed by the supervisor of the state patrol's crime laboratory or the forensic scientist conducting the analysis is prima facie evidence of the results of the analytical findings.

(2) The defendant or a prosecutor may subpoena the forensic scientist who conducted the analysis of the substance to testify at the preliminary hearing and trial of the issue at no cost to the defendant, if the subpoena is issued at least ten days prior to the trial date.

(3) In all prosecutions involving the analysis of a certified simulator solution by the Washington state toxicology laboratory of the University of Washington, a certified copy of the analytical report signed by the state toxicologist or the toxicologist conducting the analysis is prima facie evidence of the results of the analytical findings, and of certification of the simulator solution used in the

BAC verifier datamaster or any other alcohol/breath-testing equipment subsequently adopted by rule.

(4) The defendant of a prosecution may subpoena the toxicologist who conducted the analysis of the simulator solution to testify at the preliminary hearing and trial of the issue at no cost to the defendant, if thirty days prior to issuing the subpoena the defendant gives the state toxicologist notice of the defendant's intention to require the toxicologist's appearance. [1994 c 271 § 501; 1992 c 129 § 1.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

RCW 43.43.690 Crime laboratory analysis fee—Court imposition—Collection. (1) When an adult offender has been adjudged guilty of violating any criminal statute of this state and a crime laboratory analysis was performed by a state crime laboratory, in addition to any other disposition, penalty, or fine imposed, the court shall levy a crime laboratory analysis fee of one hundred dollars for each offense for which the person was convicted. Upon a verified petition by the person assessed the fee, the court may suspend payment of all or part of the fee if it finds that the person does not have the ability to pay the fee.

(2) All crime laboratory analysis fees assessed under this section shall be collected by the clerk of the court and forwarded to the state general fund, to be used only for crime laboratories. The clerk may retain five dollars to defray the costs of collecting the fees. [2015 c 265 § 30; 1992 c 129 § 2.]

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

RCW 43.43.700 Identification and criminal history section. There is hereby established within the Washington state patrol a section on identification and criminal history hereafter referred to as the section.

In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government. [2006 c 294 § 1; 1998 c 141 § 2; 1989 c 334 § 6; 1987 c 486 § 9; 1985 c 201 § 7; 1984 c 17 § 17; 1972 ex.s. c 152 § 1.]

RCW 43.43.705 Identification data—Processing procedure—Definitions. Upon the receipt of identification data from criminal

justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies a transcript of the criminal history record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.785 the following words and phrases shall have the following meanings:

"Criminal history record information" includes, and shall be restricted to identifying data and information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(4). The applicant may appeal such determination by notifying the chief in writing within thirty days. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW and in accordance with procedures for adjudicative proceedings under chapter 34.05 RCW. [2006 c 294 § 2; 1999 c 151 § 1101; 1989 c 334 § 7; 1987 c 486 § 10; 1985 c 201 § 8; 1977 ex.s. c 314 § 14; 1972 ex.s. c 152 § 2.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 43.43.710 Availability of information. Information contained in the files and records of the section relative to the commission of any crime by any person shall be considered privileged and shall not be made public or disclosed for any personal purpose or in any civil court proceedings except upon a written order of the judge of a court wherein such civil proceedings are had. All information contained in the files of the section relative to criminal records and personal histories of persons arrested for the commission of a crime shall be available to all criminal justice agencies upon the filing of an application as provided in RCW 43.43.705.

Although no application for information has been made to the section as provided in RCW 43.43.705, the section may transmit such information in the chief's discretion, to such agencies as are authorized by RCW 43.43.705 to make application for it. [1995 c 369 § 13; 1987 c 486 § 11; 1986 c 266 § 87; 1985 c 201 § 9; 1979 ex.s. c 36 § 7. Prior: 1977 ex.s. c 314 § 15; 1977 ex.s. c 30 § 1; 1972 ex.s. c 152 § 3.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 43.43.715 Identification—Cooperation with other criminal justice agencies. The section shall, consistent with the procedures set forth in chapter 152, Laws of 1972 ex. sess., cooperate with all other criminal justice agencies within or without the state, in an exchange of information regarding convicted criminals and those suspected of or wanted for the commission of crimes to the end that proper identification may rapidly be made and the ends of justice served. [2006 c 294 § 3; 1989 c 334 § 8; 1985 c 201 § 10; 1972 ex.s. c 152 § 4.]

RCW 43.43.720 Local identification and records systems—Assistance. At the request of any criminal justice agency within this state, the section may assist such agency in the establishment of local identification and records systems. [1972 ex.s. c 152 § 5.]

RCW 43.43.725 Records as evidence. Any copy of a criminal history record, photograph, fingerprint, or other paper or document in the files of the section, certified by the chief or his or her designee to be a true and complete copy of the original or of information on file with the section, shall be admissible in evidence in any court of this state pursuant to the provisions of RCW 5.44.040. [2006 c 294 § 4; 1985 c 201 § 11; 1972 ex.s. c 152 § 6.]

RCW 43.43.730 Records—Inspection—Copying—Requests for purge or modification—Appeals. (1) Any individual shall have the right to inspect or request a copy of the criminal history record information on file with the section which refers to the individual. If the individual believes such information to be inaccurate or incomplete, he or she may request the section to purge, modify or supplement it and to advise such persons or agencies who have received his or her record and whom the individual designates to modify it accordingly. Should the section decline to so act, or should the individual believe the section's decision to be otherwise unsatisfactory, the individual may appeal such decision to the superior court in the county in which he or she is resident, or the county from which the disputed record emanated or Thurston county. The court shall in such case conduct a de novo hearing, and may order such relief as it finds to be just and equitable.

(2) The section may prescribe reasonable hours and a place for inspection, and may impose such additional restrictions, including fingerprinting, as are reasonably necessary both to assure the record's security and to verify the identities of those who seek to inspect them: PROVIDED, That the section may charge a reasonable fee for fingerprinting or for providing a copy of the criminal history record information pursuant to subsection (1) of this section. [2012 c 125 § 4; 2006 c 294 § 5; 1985 c 201 § 12; 1977 ex.s. c 314 § 16; 1972 ex.s. c 152 § 7.]

RCW 43.43.735 Photographing and fingerprinting—Powers and duties of law enforcement agencies—Other data. (1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. (a) When such juveniles are brought directly to a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the crime with which he or she is charged. [2009 c 549 § 5130; 2006 c 294 § 6; 1991 c 3 § 297. Prior: 1989 c 334 § 9; 1989 c 6 § 2; prior: 1987 c 486 § 12; 1987 c 450 § 2; 1985 c 201 § 13; 1972 ex.s. c 152 § 8.]

RCW 43.43.740 Photographing and fingerprinting—Transmittal of data. (1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state to furnish within seventy-two hours from the time of arrest to the section the required sets of fingerprints together with other identifying data as may be prescribed by the chief, of any person lawfully arrested, fingerprinted, and photographed pursuant to RCW 43.43.735.

(2) Law enforcement agencies may retain and file copies of the fingerprints, photographs, and other identifying data and information obtained pursuant to RCW 43.43.735. Said records shall remain in the possession of the law enforcement agency as part of the identification record and are not returnable to the subjects thereof. [2006 c 294 § 7; 1989 c 334 § 10. Prior: 1987 c 486 § 13; 1987 c 450 § 3; 1985 c 201 § 14; 1972 ex.s. c 152 § 9.]

RCW 43.43.742 Submission of fingerprints taken from persons for noncriminal purposes—Fees. The Washington state patrol shall adopt rules concerning submission of fingerprints taken by local agencies after July 26, 1987, from persons for license application or other noncriminal purposes. The Washington state patrol may charge fees for submission of fingerprints which will cover as nearly as practicable

the direct and indirect costs to the Washington state patrol of processing such submission. [1987 c 450 § 4.]

RCW 43.43.745 Convicted persons, fingerprinting required, records—Furloughs, information to section, notice to local agencies—Arrests, disposition information—Convicts, information to section, notice to local agencies—Registration of sex offenders. (1) It shall be the duty of the sheriff or director of public safety of every county, of the chief of police of each city or town, or of every chief officer of other law enforcement agencies operating within this state, to record the fingerprints of all persons held in or remanded to their custody when convicted of any crime as provided for in RCW 43.43.735 for which the penalty of imprisonment might be imposed and to disseminate and file such fingerprints in the same manner as those recorded upon arrest pursuant to RCW 43.43.735 and 43.43.740.

(2) Every time the secretary authorizes a furlough as provided for in RCW 72.66.012 the department of corrections shall notify, thirty days prior to the beginning of such furlough, the sheriff or director of public safety of the county to which the prisoner is being furloughed, the nearest Washington state patrol district facility in the county wherein the furloughed prisoner is to be residing, and other similar criminal justice agencies that the named prisoner has been granted a furlough, the place to which furloughed, and the dates and times during which the prisoner will be on furlough status. In the case of an emergency furlough the thirty-day time period shall not be required but notification shall be made as promptly as possible and before the prisoner is released on furlough.

(3) Disposition of the charge for which the arrest was made shall be reported to the section at whatever stage in the proceedings a final disposition occurs by the arresting law enforcement agency, county prosecutor, city attorney, or court having jurisdiction over the offense: PROVIDED, That the chief shall promulgate rules pursuant to chapter 34.05 RCW to carry out the provisions of this subsection.

(4) Whenever a person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, is released on an order of the state indeterminate sentence review board, or is discharged from custody on expiration of sentence, the department of corrections shall promptly notify the sheriff or director of public safety, the nearest Washington state patrol district facility, and other similar criminal justice agencies that the named person has been released or discharged, the place to which such person has been released or discharged, and the conditions of his or her release or discharge.

Local law enforcement agencies shall require persons convicted of sex offenses to register pursuant to RCW 9A.44.130. In addition, nothing in this section shall be construed to prevent any local law enforcement authority from recording the residency and other information concerning any convicted felon or other person convicted of a criminal offense when such information is obtained from a source other than from registration pursuant to RCW 9A.44.130 which source may include any officer or other agency or subdivision of the state.

(5) The existence of the notice requirement in subsection (2) of this section will not require any extension of the release date in the event the release plan changes after notification. [1994 c 129 § 7;

1993 c 24 § 1; 1990 c 3 § 409; 1985 c 346 § 6; 1973 c 20 § 1; 1972 ex.s. c 152 § 10.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Construction—Prior rules and regulations—1973 c 20: See note following RCW 72.66.010.

RCW 43.43.750 Use of force to obtain identification information—Liability. In exercising their duties and authority under RCW 43.43.735 and 43.43.740, the sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may, consistent with constitutional and legal requirements, use such reasonable force as is necessary to compel an unwilling person to submit to being photographed, or fingerprinted, or to submit to any other identification procedure, except interrogation, which will result in obtaining physical evidence serving to identify such person. No one having the custody of any person subject to the identification procedures provided for in chapter 152, Laws of 1972 ex. sess., and no one acting in his or her aid or under his or her direction, and no one concerned in such publication as is provided for in RCW 43.43.740, shall incur any liability, civil or criminal, for anything lawfully done in the exercise of the provisions of chapter 152, Laws of 1972 ex. sess. [2009 c 549 § 5131; 1972 ex.s. c 152 § 11.]

RCW 43.43.751 Biological samples for missing persons investigations. Biological samples taken for a missing person's investigation under RCW 68.50.320 shall be forwarded to the appropriate laboratory as soon as possible. The crime laboratory of the Washington state patrol will provide guidance to agencies regarding where samples should be sent. If substantial delays in testing occur or federal testing is no longer available, the legislature should be requested to provide funding to implement mitochondrial technology in the state of Washington. [2007 c 10 § 6; 2006 c 102 § 7.]

Intent—2007 c 10: See note following RCW 43.103.110.

Finding—Intent—2006 c 102: See note following RCW 36.28A.100.

RCW 43.43.752 DNA identification system—Plan—Report. (1) To support criminal justice services in the local communities throughout this state, the state patrol in consultation with the University of Washington school of medicine shall develop a plan for and establish a DNA identification system. In implementing the plan, the state patrol shall purchase the appropriate equipment and supplies. The state patrol shall procure the most efficient equipment available.

(2) The DNA identification system as established shall be compatible with that utilized by the federal bureau of investigation.

(3) The state patrol and the University of Washington school of medicine shall report on the DNA identification system to the legislature no later than November 1, 1989. The report shall include a timeline for implementing each stage, a local agency financial

participation analysis, a system analysis, a full cost/purchase analysis, a vendor bid evaluation, and a space location analysis that includes a site determination. The state patrol shall coordinate the preparation of this report with the office of financial management. [1989 c 350 § 2.]

Funding limitations—1989 c 350: "Any moneys received by the state from the federal bureau of justice assistance shall be used to conserve state funds if not inconsistent with the terms of the grant. To the extent that federal funds are available for the purposes of this act, state funds appropriated in this section shall lapse and revert to the general fund." [1989 c 350 § 8.]

RCW 43.43.753 Findings—DNA identification system—DNA database—DNA data bank. The legislature finds that recent developments in molecular biology and genetics have important applications for forensic science. It has been scientifically established that there is a unique pattern to the chemical structure of the deoxyribonucleic acid (DNA) contained in each cell of the human body. The process for identifying this pattern is called "DNA identification."

The legislature further finds that DNA databases are important tools in criminal investigations, in the exclusion of individuals who are the subject of investigations or prosecutions, and in detecting recidivist acts. It is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in both the identification and detection of individuals in criminal investigations and the identification and location of missing and unidentified persons. Therefore, it is in the best interest of the state to establish a DNA database and DNA data bank containing DNA samples submitted by persons convicted of felony offenses and other crimes as specified in RCW 43.43.754. DNA samples necessary for the identification of missing persons and unidentified human remains shall also be included in the DNA database.

The legislature further finds that the DNA identification system used by the federal bureau of investigation and the Washington state patrol has no ability to predict genetic disease or predisposal to illness. Nonetheless, the legislature intends that biological samples collected under RCW 43.43.754, and DNA identification data obtained from the samples, be used only for purposes related to criminal investigation, identification of human remains or missing persons, or improving the operation of the system authorized under RCW 43.43.752 through 43.43.758. [2008 c 97 § 1; 2002 c 289 § 1; 1989 c 350 § 1.]

Severability—2002 c 289: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 289 § 7.]

Effective date—2002 c 289: "This act takes effect July 1, 2002." [2002 c 289 § 9.]

RCW 43.43.7532 DNA identification system—DNA database account. The state DNA database account is created in the custody of the state treasurer. The account shall consist of funds appropriated by the

legislature for operation and maintenance of the DNA database and all receipts under RCW 43.43.7541. Expenditures from the account may be used only for creation, operation, and maintenance of the DNA database under RCW 43.43.754. Only the chief of the Washington state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2023 c 449 § 3; 2002 c 289 § 5.]

Effective date—2023 c 449: See note following RCW 13.40.058.

Severability—Effective date—2002 c 289: See notes following RCW 43.43.753.

RCW 43.43.754 DNA identification system—Biological samples—Collection, use, testing—Scope and application of section. (1) A biological sample must be collected for purposes of DNA identification analysis from:

(a) Every adult or juvenile individual convicted of a felony, or adjudicated of an offense which if committed by an adult would be a felony, or any of the following crimes (or equivalent juvenile offenses):

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

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

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

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

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

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

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

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

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

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

(xi) Violation of a sexual assault protection order granted under chapter 7.105 RCW or former chapter 7.90 RCW; and

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

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

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

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

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

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

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

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

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

(a) (i) (A) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who do not serve a term of confinement in a department of corrections facility or a department of children, youth, and families facility, and are serving a term of confinement in a city or county jail facility, the city or county jail facility shall be responsible for obtaining the biological samples prior to the person's release from confinement.

(B) Each city and county jail facility must adopt and implement a policy that collects biological samples from persons convicted of an offense listed in subsection (1)(a) of this section as soon as practicable during the person's term of confinement.

(ii) If the biological sample is not collected prior to the person's release from confinement, the responsible city or county jail facility shall notify the sentencing court within three business days of the person's release that it has released the person without collecting the person's biological sample, and provide the reason for releasing the person without collecting a biological sample. Within 10 days of receiving notice of the person's release, the sentencing court shall schedule a compliance hearing. The jail shall serve or cause to be served notice to the person of the compliance hearing and shall file proof of service with the sentencing court. A representative of the jail shall attend the compliance hearing and obtain the person's biological sample at the hearing. The court may, in its discretion, require the jail to pay attorneys' fees and court costs associated with scheduling and attending the compliance hearing.

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

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

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

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

the intake process, then the facility shall collect the biological sample as soon as is practicable prior to the person's release from confinement. For those persons incarcerated before June 12, 2008, who have not yet had a biological sample collected, priority shall be given to those persons who will be released the soonest.

(ii) If the biological sample is not collected prior to the person's release from confinement, the responsible department of corrections facility or department of children, youth, and families facility shall notify the sentencing court within three business days of the person's release that it has released the person without collecting the person's biological sample. Within 10 days of receiving notice of the person's release, the sentencing court shall schedule a compliance hearing. The responsible department of corrections facility or department of children, youth, and families facility shall serve or cause to be served notice to the person of the compliance hearing and shall file proof of service with the sentencing court. A representative of the responsible department of corrections facility or department of children, youth, and families facility shall attend the compliance hearing and obtain the person's biological sample at the hearing. The court may, in its discretion, require the responsible department of corrections facility or department of children, youth, and families facility to pay attorneys' fees and court costs associated with scheduling and attending the compliance hearing.

(d) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, who will not serve a term of confinement, the court shall: Order the person to be administratively booked at a city or county jail facility for the sole purpose of providing a biological sample; or if the local police department or sheriff's office has a protocol for collecting the biological sample in the courtroom, order the person to immediately provide the biological sample to the local police department or sheriff's office before leaving the presence of the court. The court must further inform the person that refusal to provide a biological sample is a gross misdemeanor under this section.

(e) For persons convicted of any offense listed in subsection (1)(a) of this section or adjudicated guilty of an equivalent juvenile offense, the court shall create and implement a biological sample collection protocol. The court shall order the biological samples at the time of sentencing. The court shall inform the person that refusal to provide a biological sample is a gross misdemeanor under this section. If the biological sample is not collected at the time of sentencing, then the biological sample shall be collected pursuant to (a) through (d) of this subsection (5), and the court shall schedule a compliance hearing within 10 days of the sentencing to ensure that the biological sample has been collected.

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

(7) The forensic laboratory services bureau of the Washington state patrol is responsible for testing performed on all biological samples that are collected under this section, to the extent allowed by funding available for this purpose. Known duplicate samples may be

excluded from testing unless testing is deemed necessary or advisable by the director.

(8) This section applies to:

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

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

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

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

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

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

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

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

(11) A person commits the crime of refusal to provide DNA if the person willfully refuses to comply with a legal request for a DNA sample as required under this section. The refusal to provide DNA is a gross misdemeanor. [2023 c 197 § 7; 2021 c 215 § 149; 2020 c 26 § 7; 2019 c 443 § 3; 2017 c 272 § 4; 2015 c 261 § 10; 2008 c 97 § 2; 2002 c 289 § 2; 1999 c 329 § 2; 1994 c 271 § 402; 1990 c 230 § 3; 1989 c 350 § 4.]

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Intent—2020 c 26: See note following RCW 63.21.090.

Short title—2019 c 443: "This act may be known and cited as Jennifer and Michella's law." [2019 c 443 § 1.]

Findings—2019 c 443: "The legislature finds that the state of Washington has for decades routinely required collection of DNA biological samples from certain convicted offenders and persons required to register as sex and kidnapping offenders. The resulting DNA data has proven to be an invaluable component of forensic evidence

analysis. Not only have DNA matches focused law enforcement efforts and resources on productive leads, assisted in the expeditious conviction of guilty persons, and provided identification of recidivist and cold case offenders, DNA analysis has also played a crucial role in absolving wrongly suspected and convicted persons and in providing resolution to those who have tragically suffered unimaginable harm.

In an effort to solve cold cases and unsolved crimes, to provide closure to victims and their family members, and to support efforts to exonerate the wrongly accused or convicted, the legislature finds that procedural improvements and measured expansions to the collection and analysis of lawfully obtained DNA biological samples are both appropriate and necessary." [2019 c 443 § 2.]

Severability—Effective date—2002 c 289: See notes following RCW 43.43.753.

Findings—1999 c 329: "The legislature finds it necessary to expand the current pool of convicted offenders who must have a blood sample drawn for purposes of DNA identification analysis. The legislature further finds that there is a high rate of recidivism among certain types of violent and sex offenders and that drawing blood is minimally intrusive. Creating an expanded DNA data bank bears a rational relationship to the public's interest in enabling law enforcement to better identify convicted violent and sex offenders who are involved in unsolved crimes, who escape to reoffend, and who reoffend after release." [1999 c 329 § 1.]

Severability—1999 c 329: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 329 § 3.]

Finding—1994 c 271: "The legislature finds that DNA identification analysis is an accurate and useful law enforcement tool for identifying and prosecuting sexual and violent offenders. The legislature further finds no compelling reason to exclude juvenile sexual and juvenile violent offenders from DNA identification analysis." [1994 c 271 § 401.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

Finding—Funding limitations—1989 c 350: See notes following RCW 43.43.752.

RCW 43.43.7541 DNA identification system—Collection of biological samples—Fees prior to July 1, 2023—Distribution—Waiver.

(1) The clerk of the court shall transmit 80 percent of any amounts collected for fees imposed prior to July 1, 2023, for the collection of an offender's DNA to the state treasurer for deposit in the state DNA database account created under RCW 43.43.7532, and shall transmit 20 percent of the fee collected to the agency responsible for collection of a biological sample from the offender as required under RCW 43.43.754.

(2) Upon motion by the offender, the court shall waive any fee for the collection of the offender's DNA imposed prior to July 1, 2023. [2023 c 449 § 4; 2018 c 269 § 18; 2015 c 265 § 31; 2011 c 125 § 1; 2008 c 97 § 3; 2002 c 289 § 4.]

Effective date—2023 c 449: See note following RCW 13.40.058.

Construction—2018 c 269: See note following RCW 10.82.090.

Finding—Intent—2015 c 265: See note following RCW 13.50.010.

Severability—Effective date—2002 c 289: See notes following RCW 43.43.753.

RCW 43.43.756 DNA identification system—Analysis, assistance, and testimony services. The Washington state patrol forensic laboratory services bureau may:

(1) Provide DNA analysis services to law enforcement agencies throughout the state;

(2) Provide assistance to law enforcement officials and prosecutors in the preparation and utilization of DNA evidence for presentation in court; and

(3) Provide expert testimony in court on DNA evidentiary issues. [2008 c 97 § 4; 1989 c 350 § 5.]

Finding—Funding limitations—1989 c 350: See notes following RCW 43.43.752.

RCW 43.43.758 DNA identification system—Local law enforcement systems—Limitations. (1) Except as provided in subsection (2) of this section, no local law enforcement agency may establish or operate a DNA identification system before July 1, 1990, and unless:

(a) The equipment of the local system is compatible with that of the state system under RCW 43.43.752;

(b) The local system is equipped to receive and answer inquiries from the Washington state patrol DNA identification system and transmit data to the Washington state patrol DNA identification system; and

(c) The procedure and rules for the collection, analysis, storage, expungement, and use of DNA identification data do not conflict with procedures and rules applicable to the state patrol DNA identification system.

(2) Nothing in this section shall prohibit a local law enforcement agency from performing DNA identification analysis in individual cases to assist law enforcement officials and prosecutors in the preparation and use of DNA evidence for presentation in court. [1990 c 230 § 2; 1989 c 350 § 6.]

Finding—Funding limitations—1989 c 350: See notes following RCW 43.43.752.

RCW 43.43.759 DNA identification system—Rule-making requirements. The Washington state patrol shall consult with the

forensic investigations council and adopt rules to implement RCW 43.43.752 through 43.43.758. The rules shall prohibit the use of DNA identification data for any research or other purpose that is not related to a criminal investigation, to the identification of human remains or missing persons, or to improving the operation of the system authorized by RCW 43.43.752 through 43.43.758. The rules must also identify appropriate sources and collection methods for biological samples needed for purposes of DNA identification analysis. [2002 c 289 § 3; 1990 c 230 § 1.]

Severability—Effective date—2002 c 289: See notes following RCW 43.43.753.

RCW 43.43.760 Personal identification—Requests—Purpose—Applicants—Fee. (1) Whenever a resident of this state appears before any law enforcement agency and requests an impression of his or her fingerprints to be made, such agency may comply with his or her request and make the required copies of the impressions on forms marked "Personal Identification". The required copies shall be forwarded to the section and marked "for personal identification only".

The section shall accept and file such fingerprints submitted voluntarily by such resident, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory, or other similar circumstances. Upon the request of such person, the section shall return his or her identification data.

(2) Whenever a person claiming to be a victim of identity theft appears before any law enforcement agency and requests an impression of his or her fingerprints to be made, such agency may comply with this request and make the required copies of the impressions on forms marked "Personal Identification." The required copies shall be forwarded to the section and marked "for personal identification only."

The section shall accept and file such fingerprints submitted by such resident, for the purpose of securing a more certain and easy identification in cases of identity theft. The section shall provide a statement showing that the victim's impression of fingerprints has been accepted and filed with the section.

The statement provided to the victim shall state clearly in twelve-point print:

"The person holding this statement has claimed to be a victim of identity theft. Pursuant to chapter 9.35 RCW, a business is required by law to provide this victim with copies of all relevant application and transaction information related to the transaction being alleged as a potential or actual identity theft. A business must provide this information once the victim makes a request in writing, shows this statement, any government issued photo identification card, and a copy of a police report."

Upon the request of such person, the section shall return his or her identification data.

(3) Whenever any person is an applicant for appointment to any position or is an applicant for employment or is an applicant for a license to be issued by any governmental agency, and the law or a regulation of such governmental agency requires that the applicant be

of good moral character or not have been convicted of a crime, or is an applicant for appointment to or employment with a criminal justice agency, or the department, or is an applicant for the services of an international matchmaking organization, the applicant may request any law enforcement agency to make an impression of his or her fingerprints to be submitted to the section. The law enforcement agency may comply with such request and make copies of the impressions on forms marked "applicant", and submit such copies to the section.

The section shall accept such fingerprints and shall cause its files to be examined and shall promptly send to the appointing authority, employer, licensing authority, or international matchmaking organization indicated on the form of application, a transcript of the record of previous crimes committed by the person described on the data submitted, or a transcript of the *dependency record information regarding the person described on the data submitted, or if there is no record of his or her commission of any crimes, or if there is no *dependency record information, a statement to that effect.

(4) The Washington state patrol shall charge fees for processing of noncriminal justice system requests for criminal history record information pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the patrol of processing such requests.

Any law enforcement agency may charge a fee not to exceed five dollars for the purpose of taking fingerprint impressions or searching its files of identification for noncriminal purposes. [2002 c 115 § 5; 2001 c 217 § 3; 1985 c 201 § 15; 1983 c 184 § 1; 1972 ex.s. c 152 § 13.]

***Reviser's note:** The definition for "dependency record information" was removed by 2006 c 294 § 2.

Effective date—2002 c 115: See RCW 19.220.900.

Captions not law—2001 c 217: See note following RCW 9.35.005.

Dissemination of information—Limitations—Disclaimer of liability: RCW 43.43.815.

RCW 43.43.762 Criminal street gang database—Information exempt from public disclosure. The Washington association of sheriffs and police chiefs shall work with the Washington state patrol to coordinate, designate, and recommend the use of a statewide database accessible by law enforcement agencies that utilizes existing resources, networks, or structures for assessing and addressing the problems associated with criminal street gangs.

(1) The gang database shall comply with federal regulations for state law enforcement databases shared with other law enforcement agencies, including auditing and access to data.

(2) The Washington state patrol, in consultation with the Washington state association of sheriffs and police chiefs, shall adopt uniform state criteria for entering gangs, gang members, and gang associates into the database. Data on individuals may be entered only based on reasonable suspicion of criminal activity or actual criminal activity and must be supported by documentation, where documentation is available.

(3) Information in the database shall be available to all local, state, and federal general authority law enforcement agencies, the Washington department of corrections, and the juvenile rehabilitation administration of the Washington department of social and health services solely for gang enforcement and for tracking gangs, gang members, and gang incidents. Information in the database shall not be available for public use.

(4) The database shall provide an internet-based multiagency, multilocation, information-sharing application that operates in a network fashion.

(5) The database shall be used solely as a law enforcement intelligence tool and shall not be used as evidence in any criminal, civil, or administrative proceeding. Law enforcement may use the information within the database to obtain information external to the database to formulate the probable cause necessary to make a stop or arrest. The mere existence of information relating to an individual within the database does not by itself justify a stop or arrest.

(6) Access to the database shall be determined by the chief executive officer of each participating agency. Information about specific individuals in the database shall be automatically expunged if: (a) No new or updated information has been entered into the database within the previous five years; (b) there are no pending criminal charges against such person in any court in this state or another state or in any federal court; (c) the person has not been convicted of a new crime in this state, another state, or federal court within the last five years; and (d) it has been five years since the person completed his or her term of total confinement.

(7) Each law enforcement and criminal justice agency using the database is required to:

(a) Identify a system administrator that is responsible for annually auditing the use of the system within his or her respective agency to ensure agency compliance with policies established for the use of the database;

(b) Ensure that all users of the database receive training on the use of the database before granting the users access to the database;

(c) Ensure that any information entered into the database relates to a criminal street gang associate or gang member who is twelve years old or older;

(d) Annually produce a gang threat assessment report including available data sources such as uniform crime reports, record management systems, and entries into the statewide gang database. Local public schools shall also be encouraged to provide data to the local gang threat assessment report.

(8) The database and all contents in the database are confidential and exempt from public disclosure under chapter 42.56 RCW.

(9) Any public employee or public agency as defined in RCW 4.24.470, or units of local government and its employees, as provided in RCW 36.28A.010, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving a person who has been included in the database, unless it is shown that an employee acted with gross negligence or bad faith. [2008 c 276 § 201.]

Severability—Part headings, subheadings not law—2008 c 276: See notes following RCW 36.28A.200.

RCW 43.43.765 Reports of transfer, release or changes as to committed or imprisoned persons—Records. The principal officers of the jails, correctional institutions, state mental institutions and all places of detention to which a person is committed under chapter 10.77 RCW, chapter 71.06 RCW, or chapter 71.09 RCW for treatment or under a sentence of imprisonment for any crime as provided for in RCW 43.43.735 shall within seventy-two hours, report to the section, any interinstitutional transfer, release or change of release status of any person held in custody pursuant to the rules promulgated by the chief.

The principal officers of all state mental institutions to which a person has been committed under chapter 10.77 RCW, chapter 71.06 RCW, or chapter 71.09 RCW shall keep a record of the photographs, description, fingerprints, and other identification data as may be obtainable from the appropriate criminal justice agency. [1990 c 3 § 131; 1983 c 3 § 108; 1972 ex.s. c 152 § 14.]

RCW 43.43.770 Unidentified deceased persons. It shall be the duty of the sheriff or director of public safety of every county, or the chief of police of every city or town, or the chief officer of other law enforcement agencies operating within this state, coroners or medical examiners, to record whenever possible the fingerprints and such other identification data as may be useful to establish identity, of all unidentified dead bodies found within their respective jurisdictions, and to furnish to the section all data so obtained. The section shall search its files and otherwise make a reasonable effort to determine the identity of the deceased and notify the contributing agency of the finding.

In all cases where there is found to exist a criminal record for the deceased, the section shall notify the federal bureau of investigation and each criminal justice agency, within or outside the state in whose jurisdiction the decedent has been arrested, of the date and place of death of decedent. [1972 ex.s. c 152 § 15.]

RCW 43.43.775 Interagency contracts. The legislative authority of any county, city or town may authorize its sheriff, director of public safety or chief of police to enter into any contract with another public agency which is necessary to carry out the provisions of chapter 152, laws of 1972 ex. sess. [1972 ex.s. c 152 § 16.]

RCW 43.43.780 Transfer of records, data, equipment to section. All fingerprint cards, photographs, file cabinets, equipment, and other records collected and filed by the bureau of criminal identification, and now in the department of social and health services shall be transferred to the Washington state patrol for use by the *section on identification created by chapter 152, Laws of 1972 ex. sess. [1972 ex.s. c 152 § 17.]

***Reviser's note:** The "section on identification" was renamed the "identification and criminal history section" by 2006 c 294 § 1.

RCW 43.43.785 Criminal justice services—Consolidation—Establishment of program. The legislature finds that there is a need

for the Washington state patrol to establish a program which will consolidate existing programs of criminal justice services within its jurisdiction so that such services may be more effectively utilized by the criminal justice agencies of this state. The chief shall establish such a program which shall include but not be limited to the identification section, all auxiliary systems including the Washington crime information center and the teletypewriter communications network, the drug control assistance unit, and any other services the chief deems necessary which are not directly related to traffic control. [1999 c 151 § 1102; 1972 ex.s. c 152 § 18.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 43.43.800 Criminal justice services programs—Duties of executive committee. The executive committee created in RCW 10.98.160 shall review the provisions of RCW 43.43.700 through 43.43.785 and the administration thereof and shall consult with and advise the chief of the state patrol on matters pertaining to the policies of criminal justice services program. [1999 c 151 § 1103; 1972 ex.s. c 152 § 21.]

Part headings not law—Effective date—1999 c 151: See notes following RCW 18.28.010.

RCW 43.43.810 Obtaining information by false pretenses—Unauthorized use of information—Falsifying records—Penalty. Any person who willfully requests, obtains or seeks to obtain criminal history record information under false pretenses, or who willfully communicates or seeks to communicate criminal history record information to any agency or person except in accordance with chapter 152, Laws of 1972 ex. sess., or any member, officer, employee or agent of the section, the council or any participating agency, who willfully falsifies criminal history record information, or any records relating thereto, shall for each such offense be guilty of a misdemeanor. [2006 c 294 § 8; 1977 ex.s. c 314 § 17; 1972 ex.s. c 152 § 23.]

RCW 43.43.815 Conviction record furnished to employer—Purposes—Notification to subject of record—Fees—Limitations—Injunctive relief, damages, attorneys' fees—Disclaimer of liability—Rules. (1) Notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the Washington state patrol shall furnish a conviction record, as defined in RCW 10.97.030, pertaining to any person of whom the Washington state patrol has a record upon the written or electronic request of any employer for the purpose of:

- (a) Securing a bond required for any employment;
- (b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or
- (c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

(2) When an employer has received a conviction record under subsection (1) of this section, the employer shall notify the subject of the record of such receipt within thirty days after receipt of the record, or upon completion of an investigation under subsection (1)(c) of this section. The employer shall make the record available for examination by its subject and shall notify the subject of such availability.

(3) The Washington state patrol shall charge fees for disseminating records pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the Washington state patrol of disseminating such records.

(4) Information disseminated pursuant to this section or RCW 43.43.760 shall be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated and shall be used only as necessary for those purposes enumerated in subsection (1) of this section.

(5) Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this section, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this section, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in the action is entitled to recover from the defendant the amount of the actual damages, if any, sustained by him or her if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of chapter 10.97 RCW.

(6) Neither the section, its employees, nor any other agency or employee of the state is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information pursuant to this section or RCW 43.43.760.

(7) The Washington state patrol may adopt rules and forms to implement this section and to provide for security and privacy of information disseminated pursuant hereto, giving first priority to the criminal justice requirements of chapter 43.43 RCW. Such rules may include requirements for users, audits of users, and other procedures to prevent use of criminal history record information inconsistent with this section.

(8) Nothing in this section shall authorize an employer to make an inquiry not otherwise authorized by law, or be construed to affect the policy of the state declared in RCW 9.96A.010, encouraging the employment of ex-offenders. [2009 c 549 § 5132; 1995 c 169 § 1; 1982 c 202 § 1.]

RCW 43.43.820 Stale records. Stale records shall be destroyed in a manner to be prescribed by the chief. [1972 ex.s. c 152 § 25.]

RCW 43.43.822 County sheriff to forward registration information—Felony firearm offense conviction database—Exempt from public disclosure. (1) The county sheriff shall forward registration information, photographs, and fingerprints obtained pursuant to RCW 9.41.333 to the Washington state patrol within five working days.

(2) Upon implementation of chapter 183, Laws of 2013, the Washington state patrol shall maintain a felony firearm offense conviction database of felony firearm offenders required to register under RCW 9.41.333 and shall adopt rules as are necessary to carry out the purposes of chapter 183, Laws of 2013.

(3) Upon expiration of the person's duty to register, as described in RCW 9.41.333(8), the Washington state patrol shall automatically remove the person's name and information from the database.

(4) The felony firearm offense conviction database of felony firearm offenders shall be used only for law enforcement purposes and is not subject to public disclosure under chapter 42.56 RCW. [2013 c 183 § 6.]

RCW 43.43.823 Incorporation of denied firearm transaction records—Removal of record, when required—Notice—Rules. (Contingent expiration date.) (1) Upon receipt of the information from the Washington association of sheriffs and police chiefs pursuant to RCW 36.28A.400, the Washington state patrol must incorporate the information into its electronic database accessible to law enforcement agencies and officers, including federally recognized Indian tribes, that have a connection to the Washington state patrol electronic database.

(2) Upon receipt of documentation that a person has appealed a background check denial, the Washington state patrol shall immediately remove the record of the person initially reported pursuant to RCW 36.28A.400 from its electronic database accessible to law enforcement agencies and officers. The Washington state patrol must keep a separate record of the person's information for a period of one year or until such time as the appeal has been resolved. Every twelve months, the Washington state patrol shall notify the person that the person must provide documentation that his or her appeal is still pending or the record of the person's background check denial will be put back in its electronic database accessible to law enforcement agencies and officers. At any time, upon receipt of documentation that a person's appeal has been granted, the Washington state patrol shall remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

(3) Upon receipt of satisfactory proof that a person who was reported to the Washington state patrol pursuant to RCW 36.28A.400 is no longer ineligible to possess a firearm under state or federal law, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

(4) Upon receipt of notification from the Washington association of sheriffs and police chiefs that a person originally denied the purchase or transfer of a firearm as the result of a background check or completed and submitted firearm purchase or transfer application that indicates the applicant is ineligible to possess a firearm under

state or federal law has subsequently been approved for the purchase or transfer, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers within five business days.

(5) The Washington state patrol shall generate and distribute a notice form to all firearm dealers, to be provided by the dealers to applicants denied the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm. The notice form must contain the following statements:

State law requires that I transmit the following information to the Washington association of sheriffs and police chiefs as a result of your firearm purchase or transfer denial within five days of the denial:

- (a) Identifying information of the applicant;
- (b) The date of the application and denial of the application;
- (c) Other information as prescribed by the Washington association of sheriffs and police chiefs.

If you believe this denial is in error, and you do not exercise your right to appeal, you may be subject to criminal investigation by the Washington state patrol and/or a local law enforcement agency.

The notice form shall also contain information directing the applicant to a website describing the process of appealing a national instant criminal background check system denial through the federal bureau of investigation and refer the applicant to local law enforcement for information on a denial based on a state background check. The notice form shall also contain a phone number for a contact at the Washington state patrol to direct the person to resources regarding an individual's right to appeal a background check denial.

(6) The Washington state patrol may adopt rules as are necessary to carry out the purposes of this section. [2018 c 22 § 11; 2017 c 261 § 3.]

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

RCW 43.43.823 Denied firearm transaction records—Removal of record, when required—Notice—Rules. (Contingent effective date.) (1)

The Washington state patrol shall report each instance where an application for the purchase or transfer of a firearm is denied as the result of a background check that indicates the applicant is ineligible to possess a firearm to the local law enforcement agency in the jurisdiction where the attempted purchase or transfer took place. The reported information must include the identifying information of the applicant, the date of the application and denial of the application, the basis for the denial of the application, and other information deemed appropriate by the Washington state patrol.

(2) The Washington state patrol must incorporate the information concerning any person whose application for the purchase or transfer of a firearm is denied as the result of a background check into its electronic database accessible to law enforcement agencies and

officers, including federally recognized Indian tribes, that have a connection to the Washington state patrol electronic database.

(3) Upon appeal of a background check denial, the Washington state patrol shall immediately remove the record of the person from its electronic database accessible to law enforcement agencies and officers and keep a separate record of the person's information until such time as the appeal has been resolved. If the appeal is denied, the Washington state patrol shall put the person's background check denial information back in its electronic database accessible to law enforcement agencies and officers.

(4) Upon receipt of satisfactory proof that a person is no longer ineligible to possess a firearm under state or federal law, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers.

(5) In any case where the purchase or transfer of a firearm is initially denied as the result of a background check that indicates the applicant is ineligible to possess a firearm, but the purchase or transfer is subsequently approved, the Washington state patrol must remove any record of the person's denied firearms purchase or transfer application from its electronic database accessible to law enforcement agencies and officers within five business days and report the subsequent approval to the local law enforcement agency that received notification of the original denial.

(6) The Washington state patrol shall generate and distribute a notice form to all firearm dealers, to be provided by the dealers to applicants denied the purchase or transfer of a firearm as a result of a background check that indicates the applicant is ineligible to possess a firearm. The notice form must contain the following statements:

State law requires that the Washington state patrol transmit the following information to the local law enforcement agency as a result of your firearm purchase or transfer denial within five days of the denial:

- (a) Identifying information of the applicant;
- (b) The date of the application and denial of the application;
- (c) The basis for the denial; and
- (d) Other information as determined by the Washington state patrol.

If you believe this denial is in error, and you do not exercise your right to appeal, you may be subject to criminal investigation by the Washington state patrol and/or a local law enforcement agency.

The notice form shall also contain information directing the applicant to a website describing the process of appealing a background check system denial and refer the applicant to the Washington state patrol for information on a denial based on a state background check. The notice form shall also contain a phone number for a contact at the Washington state patrol to direct the person to resources regarding an individual's right to appeal a background check denial.

(7) The Washington state patrol shall provide to the Washington association of sheriffs and police chiefs any information necessary for the administration of the grant program in RCW 36.28A.420, providing notice to a protected person pursuant to RCW 36.28A.410, or preparation of the report required under RCW 36.28A.405.

(8) The Washington state patrol may adopt rules as are necessary to carry out the purposes of this section. [2020 c 28 § 6; 2018 c 22 § 11; 2017 c 261 § 3.]

Contingent effective date—2020 c 28 §§ 5-9: See note following RCW 9.41.114.

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

RCW 43.43.825 Guilty plea or conviction for certain felony crimes—Notification of state patrol—Transmission of information to the department of health. (1) Upon a guilty plea or conviction of a person for any felony crime involving homicide under chapter 9A.32 RCW, assault under chapter 9A.36 RCW, kidnapping under chapter 9A.40 RCW, sex offenses under chapter 9A.44 RCW, financial crimes under chapter 9A.60 RCW, violations of the uniform controlled substances act under chapter 69.50 RCW, any drug offense defined under RCW 9.94A.030, or a crime of any type classified as a felony under Washington state law, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall transmit that information to the department of health. It is the duty of the department of health to identify whether the person holds a credential issued by a disciplining authority listed under RCW 18.130.040, and provide this information to the disciplining authority that issued the credential to the person who pled guilty or was convicted of a crime listed in subsection (1) of this section. [2008 c 134 § 28; 2006 c 99 § 8.]

Finding—Intent—Severability—2008 c 134: See notes following RCW 18.130.020.

RCW 43.43.830 Background checks—Access to children or vulnerable persons—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.43.830 through 43.43.845.

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives, provides services to, houses or otherwise cares for vulnerable adults, juveniles, or children, or which provides child day care, early learning, or early childhood education services.

(2) "Applicant" means:

(a) Any prospective employee who will or may have unsupervised access to children under sixteen years of age or developmentally disabled persons or vulnerable adults during the course of his or her employment or involvement with the business or organization;

(b) Any prospective volunteer who will have regularly scheduled unsupervised access to children under sixteen years of age, developmentally disabled persons, or vulnerable adults during the course of his or her employment or involvement with the business or organization under circumstances where such access will or may involve

groups of (i) five or fewer children under twelve years of age, (ii) three or fewer children between twelve and sixteen years of age, (iii) developmentally disabled persons, or (iv) vulnerable adults;

(c) Any prospective adoptive parent, as defined in RCW 26.33.020; or

(d) Any prospective custodian in a nonparental custody proceeding under *chapter 26.10 RCW.

(3) "Business or organization" means a person, business, or organization licensed in this state, any agency of the state, or other governmental entity, that educates, trains, treats, supervises, houses, or provides recreation to developmentally disabled persons, vulnerable adults, or children under sixteen years of age, or that provides child day care, early learning, or early learning childhood education services, including but not limited to public housing authorities, school districts, and educational service districts.

(4) "Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

(5) "Client" or "resident" means a child, person with developmental disabilities, or vulnerable adult applying for housing assistance from a business or organization.

(6) "Conviction record" means "conviction record" information as defined in RCW 10.97.030 and **10.97.050 relating to a crime committed by either an adult or a juvenile. It does not include a conviction for an offense that has been the subject of an expungement, pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. It does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(7) "Crime against children or other persons" means a conviction of any of the following offenses: Aggravated murder; first or second degree murder; first or second degree kidnapping; first, second, or third degree assault; fourth degree assault (if a violation of RCW 9A.36.041(3)); first, second, or third degree assault of a child; first, second, or third degree rape; first, second, or third degree rape of a child; first or second degree robbery; first degree arson; first degree burglary; first or second degree manslaughter; first or second degree extortion; indecent liberties; incest; vehicular homicide; first degree promoting prostitution; communication with a minor; unlawful imprisonment; simple assault; sexual exploitation of minors; first or second degree criminal mistreatment; endangerment with a controlled substance; child abuse or neglect as defined in RCW 26.44.020; first or second degree custodial interference; first or second degree custodial sexual misconduct; hate crime; first, second, or third degree child molestation; first or second degree sexual

misconduct with a minor; commercial sexual abuse of a minor; child abandonment; promoting pornography; selling or distributing erotic material to a minor; custodial assault; violation of child abuse restraining order; child buying or selling; prostitution; felony indecent exposure; criminal abandonment; or any of these crimes as they may be renamed in the future.

(8) "Crimes relating to drugs" means a conviction of a crime to manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.

(9) "Crimes relating to financial exploitation" means a conviction for first, second, or third degree extortion; first, second, or third degree theft; first or second degree robbery; forgery; or any of these crimes as they may be renamed in the future.

(10) "Financial exploitation" means "financial exploitation" as defined in RCW 74.34.020.

(11) "Health care facility" means a nursing home licensed under chapter 18.51 RCW, an assisted living facility licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(12) "Peer counselor" means a nonprofessional person who has equal standing with another person, providing advice on a topic about which the nonprofessional person is more experienced or knowledgeable, and who is a counselor for a peer counseling program that contracts with or is otherwise approved by the department, another state or local agency, or the court.

(13) "Unsupervised" means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

(b) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization.

With regard to peer counselors, "unsupervised" does not include incidental contact with children under age sixteen at the location at which the peer counseling is taking place. "Incidental contact" means minor or casual contact with a child in an area accessible to and within visual or auditory range of others. It could include passing a child while walking down a hallway but would not include being alone with a child for any period of time in a closed room or office.

(14) "Vulnerable adult" means "vulnerable adult" as defined in chapter 74.34 RCW, except that for the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. [2019 c 271 § 10; 2017 c 272 § 5; 2012 c 44 § 1. Prior: 2011 c 253 § 5; 2007 c 387 § 9; 2005 c 421 § 1; 2003 c 105 § 5; 2002 c 229 § 3; 1999 c 45 § 5; 1998 c 10 § 1; 1996 c 178 § 12; 1995 c 250 § 1; 1994 c 108 § 1; 1992 c 145 § 16; prior: 1990 c 146 § 8; 1990 c 3 § 1101; prior: 1989 c 334 § 1; 1989 c 90 § 1; 1987 c 486 § 1.]

Reviser's note: *(1) Chapter 26.10 RCW, with the exception of RCW 26.10.115, was repealed by 2020 c 312 § 905. RCW 26.10.115 was repealed by 2021 c 215 § 170, effective July 1, 2022.

** (2) RCW 10.97.050 was amended by 2012 c 125 § 2, eliminating the limitation on what may be included in a conviction record.

Effective date—2002 c 229: See note following RCW 9A.42.100.

Effective date—1996 c 178: See note following RCW 18.35.110.

At-risk children volunteer program: RCW 43.150.080.

State hospitals: RCW 72.23.035.

RCW 43.43.832 Background checks—Disclosure of information—Sharing of state criminal background information by health care facilities.

(1) The Washington state patrol identification and criminal history section shall disclose conviction records as follows:

(a) An applicant's conviction record, upon the request of a business or organization as defined in RCW 43.43.830, a developmentally disabled person, or a vulnerable adult as defined in RCW 43.43.830 or his or her guardian;

(b) The conviction record of an applicant for certification, upon the request of the Washington professional educator standards board;

(c) Any conviction record to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse, upon the request of a law enforcement agency, the office of the attorney general, prosecuting authority, or the department of social and health services; and

(d) A prospective client's or resident's conviction record, upon the request of a business or organization that qualifies for exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter or transitional housing for children, persons with developmental disabilities, or vulnerable adults.

(2) The secretary of the department of social and health services and the secretary of children, youth, and families must establish rules and set standards to require specific action when considering the information received pursuant to subsection (1) of this section, and when considering additional information including but not limited to civil adjudication proceedings as defined in RCW 43.43.830 and any out-of-state equivalent, in the following circumstances:

(a) When considering persons for state employment in positions directly responsible for the supervision, care, or treatment of children, vulnerable adults, or individuals with mental illness or developmental disabilities provided that: For persons residing in a home that will be utilized to provide foster care for dependent youth, a criminal background check will be required for all persons aged sixteen and older and the department of children, youth, and families may require a criminal background check for persons who are younger than sixteen in situations where it may be warranted to ensure the safety of youth in foster care;

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(c) When licensing agencies or facilities with individuals in positions directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults,

including but not limited to agencies or facilities licensed under chapter 74.15 or 18.51 RCW;

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment, including peer counseling, of children, developmentally disabled persons, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

(e) When individual providers as defined in RCW 74.39A.240 or providers paid by home care agencies provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW.

(3) The secretary of the department of children, youth, and families shall investigate the conviction records, pending charges, and other information including civil adjudication proceeding records of current employees and of any person actively being considered for any position with the department who will or may have unsupervised access to children, or for state positions otherwise required by federal law to meet employment standards. "Considered for any position" includes decisions about (a) initial hiring, layoffs, reallocations, transfers, promotions, or demotions, or (b) other decisions that result in an individual being in a position that will or may have unsupervised access to children as an employee, an intern, or a volunteer.

(4) The secretary of the department of children, youth, and families shall adopt rules and investigate conviction records, pending charges, and other information including civil adjudication proceeding records, in the following circumstances:

(a) When licensing or certifying agencies with individuals in positions that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood education services, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(b) When authorizing individuals who will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services in licensed or certified agencies, including but not limited to licensees, agency staff, interns, volunteers, contracted providers, and persons living on the premises who are sixteen years of age or older;

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

(d) When establishing the eligibility criteria for individual providers to receive state paid subsidies to provide child day care or early learning services that will or may involve unsupervised access to children; and

(e) When responding to a request from an individual for a certificate of parental improvement under chapter 74.13 RCW.

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check

through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The office of financial management shall adopt rules to accomplish the purposes of this subsection as it applies to state employees. The department of social and health services shall adopt rules to accomplish the purpose of this subsection as it applies to long-term care workers subject to RCW 74.39A.056.

(6) (a) For purposes of facilitating timely access to criminal background information and to reasonably minimize the number of requests made under this section, recognizing that certain health care providers change employment frequently, health care facilities may, upon request from another health care facility, share copies of completed Washington state criminal background inquiry information.

(b) Completed state criminal background inquiry information may be shared by a willing health care facility only if the following conditions are satisfied: The licensed health care facility sharing the state criminal background inquiry information is reasonably known to be the person's most recent employer, no more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application, and the state criminal background information is no more than two years old.

(c) If state criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(d) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of their most recent criminal background inquiry, shall be prohibited from relying on the applicant's previous employer's state criminal background inquiry information. A new state criminal background inquiry shall be requested pursuant to RCW 43.43.830 through 43.43.842.

(e) Health care facilities that share state criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this subsection.

(f) Health care facilities shall transmit and receive the state criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(7) The department of social and health services may not consider any final founded finding of physical abuse or negligent treatment or maltreatment of a child made pursuant to chapter 26.44 RCW that is accompanied by a certificate of parental improvement or dependency as a result of a finding of abuse or neglect pursuant to chapter 13.34 RCW that is accompanied by a certificate of parental improvement when evaluating an applicant or employee's character, competency, and suitability pursuant to any background check authorized or required by this chapter, RCW 43.20A.710 or 74.39A.056, or any of the rules adopted thereunder. [2023 c 223 § 2; 2021 c 203 § 1; 2020 c 270 § 7; 2019 c 146 § 6. Prior: 2017 3rd sp.s. c 20 § 5; 2017 3rd sp.s. c 6 § 224; prior: 2012 c 44 § 2; 2012 c 10 § 41; 2011 c 253 § 6; 2007 c 387

§ 10; 2006 c 263 § 826; 2005 c 421 § 2; 2000 c 87 § 1; 1997 c 392 § 524; 1995 c 250 § 2; 1993 c 281 § 51; 1990 c 3 § 1102; prior: 1989 c 334 § 2; 1989 c 90 § 2; 1987 c 486 § 2.]

Effective date—2021 c 203: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2021]." [2021 c 203 § 18.]

Retroactive application—2021 c 203: "This act is remedial and curative in nature and all of its sections apply retroactively to February 29, 2020, to include the period of the state of emergency created by the COVID-19 outbreak. In any instance where this act grants rule-making authority to the department of social and health services or the department of health, the agencies may adopt the rules as emergency rules and may make the rules retroactively effective." [2021 c 203 § 19.]

Effective date—2020 c 270: See note following RCW 74.13.720.

Construction—Competitive procurement process and contract provisions—Conflict with federal requirements and Indian Child Welfare Act of 1978—2017 3rd sp.s. c 20: See notes following RCW 74.13.270.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Application—2012 c 10: See note following RCW 18.20.010.

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective date—1993 c 281: See note following RCW 41.06.022.

RCW 43.43.8321 Background checks—Dissemination of conviction record information. When the Washington state patrol disseminates conviction record information in response to a request under RCW 43.43.832, it shall clearly state that: (1) The conviction record data does not include information on civil adjudications, administrative findings, or disciplinary board final decisions and that all such information must be obtained from the courts and licensing agencies; (2) the conviction record includes any criminal history record information which pertains to an incident that occurred within the last twelve months for which a person is currently being processed by the criminal justice system, including the entire period of

correctional supervision extending through final discharge from parole, when applicable, may be disseminated without restriction; and (3) an arrest is not a conviction or a finding of guilt. [2012 c 125 § 5; 2005 c 421 § 10.]

RCW 43.43.833 Background checks—State immunity. If information is released under this chapter by the state of Washington, the state and its employees: (1) Make no representation that the subject of the inquiry has no criminal record or adverse civil or administrative decisions; (2) make no determination that the subject of the inquiry is suitable for involvement with a business or organization; and (3) are not liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information. [1997 c 392 § 529.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

RCW 43.43.834 Background checks by business, organization, or insurance company—Limitations—Civil liability. (1) A business or organization shall not make an inquiry to the Washington state patrol under RCW 43.43.832 or an equivalent inquiry to a federal law enforcement agency unless the business or organization has notified the applicant who may be offered a position as an employee or volunteer, that an inquiry may be made.

(2) A business or organization shall require each applicant to disclose to the business or organization whether the applicant:

(a) Has been convicted of a crime;

(b) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(c) Has both a conviction under (a) of this subsection and findings made against him or her under (b) of this subsection.

(3) The business or organization shall pay such reasonable fee for the records check as the state patrol may require under RCW 43.43.838.

(4) The business or organization shall notify the applicant of the state patrol's response within ten days after receipt by the business or organization. The employer shall provide a copy of the response to the applicant and shall notify the applicant of such availability.

(5) The business or organization shall use this record only in making the initial employment or engagement decision. Further dissemination or use of the record is prohibited, except as provided in RCW 28A.320.155. A business or organization violating this subsection is subject to a civil action for damages.

(6) An insurance company shall not require a business or organization to request background information on any employee before issuing a policy of insurance.

(7) The business and organization shall be immune from civil liability for failure to request background information on an applicant unless the failure to do so constitutes gross negligence. [2005 c 421 § 3; 1999 c 21 § 2; 1998 c 10 § 3; 1990 c 3 § 1103. Prior: 1989 c 334 § 3; 1989 c 90 § 3; 1987 c 486 § 3.]

RCW 43.43.836 Disclosure to individual of own record—Fee. An individual may contact the state patrol to ascertain whether an individual has a conviction record. The state patrol shall disclose such information, subject to the fee established under RCW 43.43.838. [2005 c 421 § 4; 1987 c 486 § 4.]

RCW 43.43.837 Fingerprint-based background checks—Requirements for applicants and service providers—Fees—Rules to establish financial responsibility. (1) In order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access to vulnerable adults, children, or juveniles, the secretary of the department of social and health services shall require the applicant or service provider to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation when the applicant or service provider:

(a) Has resided in the state less than three consecutive years before application and:

(i) Is a contractor providing services funded by other home and community long-term care programs, established pursuant to chapters 71A.12, 74.09, 74.39, and 74.39A RCW, administered by the department of social and health services;

(ii) Is an individual who is authorized by the department of social and health services to provide services to people with developmental disabilities under RCW 74.15.030; or

(iii) Is applying for employment or is already employed by an area agency on aging or federally recognized Indian tribe, or is an employee of a contractor of an area agency on aging or federally recognized Indian tribe, that will, or may, have unsupervised access to vulnerable adults, children, or juveniles when engaging in the activities described in RCW 74.09.520(5);

(b) Is applying for employment or is already employed at any secure facility operated by the department of social and health services under chapter 71.09 RCW;

(c) Is applying to be an adult family home licensee, entity representative, or resident manager under chapter 70.128 RCW;

(d) Is applying to be an assisted living facility licensee or administrator under chapter 18.20 RCW;

(e) Is applying to be an enhanced services facility licensee or administrator under chapter 70.97 RCW;

(f) Is applying to be a certified community residential services and supports provider or administrator under chapter 71A.12 RCW;

(g) Has been categorized as a high-risk provider as defined in subsection (8)(f) of this section; or

(h) Is applying for employment or is already employed at any residential habilitation center or other state-operated program for individuals with developmental disabilities under chapter 71A.20 RCW.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 7, 2012, are subject to fingerprint-based background checks under RCW 74.39A.056.

(3) In order to determine the character, competence, and suitability of an applicant or service provider to have unsupervised access to children or juveniles, the secretary of the department of children, youth, and families shall require the applicant or service provider to submit fingerprints for the purpose of investigating

conviction records through both the Washington state patrol and the federal bureau of investigation when the applicant or service provider:

(a) Is applying for a license under RCW 74.15.030 or is an adult living in a home where a child is placed;

(b) Is applying for employment or already employed at a group care facility, regardless of whether the applicant is working directly with children;

(c) Is newly applying for an agency license, is newly licensed, is an employee of an agency that is newly licensed, or will newly have unsupervised access to children in child care, pursuant to RCW 43.216.270; or

(d) Has resided in the state less than three consecutive years before application; and:

(i) Is applying for employment, promotion, reallocation, or transfer to a position the department of children, youth, and families has identified as one that will, or may, require the applicant to have unsupervised access to children or juveniles because of the nature of the work;

(ii) Is a business or individual contracted to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(iii) Is an individual 16 years of age or older who: (A) Is not under the placement and care authority of the department of children, youth, and families; and (B) resides in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department of children, youth, and families to provide services to children under RCW 74.15.030.

(4) The secretary of the department of children, youth, and families shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law. Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department of children, youth, and families for foster care and child care applicants and service providers.

(5) Applicants and service providers of the department of social and health services, except for long-term care workers subject to RCW 74.39A.056, who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(6) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the applicable department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department of social and health services or the department of children, youth, and families; and

(f) Services in, or to residents of, a secure facility under RCW 71.09.115.

(7) The department of social and health services and the department of children, youth, and families shall develop rules identifying the financial responsibility of service providers, applicants, and the respective department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(8) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department of social and health services, department of children, youth, and families, or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual specified in subsection (1)(a) through (g) or (3)(a) through (d) of this section who will or may have unsupervised access to vulnerable adults, children, or juveniles because of the nature of the work or services he or she provides. "Applicant" includes any individual who will or may have unsupervised access to vulnerable adults, children, or juveniles and is:

(i) Applying for a license or certification from the department of social and health services or the department of children, youth, and families;

(ii) Seeking a contract with the department of social and health services, the department of children, youth, and families, or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer; or

(iv) An individual that a department of social and health services or department of children, youth, and families client or guardian of a department of social and health services or department of children, youth, and families client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department of social and health services or the department of children, youth, and families for services rendered.

(b) "Area agency on aging" means an agency that is designated by the state to address the needs and concerns of older persons at the regional and local levels and is responsible for a particular geographic area that is a tribal reservation, a single county, or a multicounty planning area. Area agencies on aging have governance based on the corresponding county, city, tribal government, or council of governments.

(c) "Authorized" means the department of social and health services or the department of children, youth, and families grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department of social and health services or department of children, youth, and families program; or

(iv) Work or serve in a department of social and health services or department of children, youth, and families employment position.

(d) "Community residential services and supports provider" means a person or entity certified by the department of social and health services to deliver one or more of the services described in RCW 71A.12.040 to a person with a developmental disability, as defined in RCW 71A.10.020, who is eligible to receive services from the department of social and health services.

(e) "Entity representative" means the individual designated by an entity provider or entity applicant who:

(i) Is the representative of the entity for the purposes of fulfilling the training and qualification requirements of the state that only an individual can fulfill and an entity cannot;

(ii) Is responsible for overseeing the operation of the home; and

(iii) Does not hold the license on behalf of the entity.

(f) "High-risk provider" means a service provider that has been designated by the state medicaid agency as posing an increased financial risk of fraud, waste, or abuse to the medicaid program. A "high-risk provider" additionally includes any person who has a five percent or more direct or indirect ownership interest in such a provider.

(g) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department of social and health services or the department of children, youth, and families to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department of social and health services or department of children, youth, and families client or guardian of a department of social and health services or department of children, youth, and families client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department of social and health services or the department of children, youth, and families for services rendered. [2023 c 437 § 1; 2023 c 223 § 3; 2022 c 297 § 954; 2021 c 203 § 2; 2019 c 470 § 12; 2017 3rd sp.s. c 6 § 225; 2012 c 164 § 506; 2011 1st sp.s. c 31 § 17; 2011 c 253 § 2; 2009 c 580 § 6; 2007 c 387 § 1.]

Reviser's note: This section was amended by 2023 c 223 § 3 and by 2023 c 437 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2022 c 297: See note following RCW 43.79.565.

Effective date—Retroactive application—2021 c 203: See notes following RCW 43.43.832.

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

~~Finding—Intent—Rules—Effective date—2012 c 164~~: See notes following RCW 18.88B.010.

RCW 43.43.838 Record checks—Transcript of conviction record—Fees—Immunity—Rules. (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

- (a) The subject of the inquiry;
- (b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;
- (c) The department of social and health services;
- (d) Any law enforcement agency, prosecuting authority, or the office of the attorney general;
- (e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults; or
- (f) The department of children, youth, and families for the purpose of meeting responsibilities in chapters 43.216 and 74.15 RCW. However, access to conviction records pursuant to this subsection (1)(f) does not limit or restrict the ability of [the] department of children, youth, and families to obtain additional information regarding conviction records and pending charges as provided in RCW 74.15.030(2)(b).

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records. No fee shall be charged to a nonprofit organization for the records check. Record checks requested by school districts and educational service districts using only name and date of birth will be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [2017 3rd sp.s. c 6 § 226; 2009 c 170 § 1; 2007 c 17 § 5; 2005 c 421 § 5; 1995 c 29 § 1; 1992 c 159 § 7; 1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

Effective date—2017 3rd sp.s. c 6 §§ 102, 104-115, 201-227, 301-337, 401-419, 501-513, 801-803, and 805-822: See note following RCW 43.216.025.

Conflict with federal requirements—2017 3rd sp.s. c 6: See RCW 43.216.908.

Findings—1992 c 159: See note following RCW 28A.400.303.

RCW 43.43.839 Fingerprint identification account. The fingerprint identification account is created in the custody of the state treasurer. All receipts from incremental charges of fingerprint checks requested for noncriminal justice purposes and electronic background requests shall be deposited in the account. Receipts for fingerprint checks by the federal bureau of investigation may also be deposited in the account. Expenditures from the account may be used only for the cost of record checks. Only the chief of the state patrol or the chief's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. The account shall be subject to appropriation. During the 2017-2019 and 2019-2021 fiscal biennia, funds in the account may be used for expenditures related to the upgrade of the state patrol's criminal history system. During the 2017-2019 and 2019-2021 fiscal biennia, the account may be used for building the sexual assault kit tracking system. It is the intent of the legislature that this policy will be continued in subsequent fiscal biennia. [2019 c 415 § 964; 2017 3rd sp.s. c 1 § 969; 2016 sp.s. c 36 § 928; 2015 3rd sp.s. c 4 § 955; 2014 c 221 § 916; 2010 1st sp.s. c 37 § 922; 1995 c 169 § 2; 1992 c 159 § 8.]

Effective date—2019 c 415: See note following RCW 28B.20.476.

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective date—2016 sp.s. c 36: See note following RCW 18.20.430.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective date—2014 c 221: See note following RCW 28A.710.260.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Findings—1992 c 159: See note following RCW 28A.400.303.

RCW 43.43.840 Notification to licensing agency of employment termination for certain crimes against persons. When a business or an organization terminates, fires, dismisses, fails to renew the contract, or permits the resignation of an employee because of crimes against children or other persons or because of crimes relating to the financial exploitation of a vulnerable adult, and if that employee is

employed in a position requiring a certificate or license issued by a licensing agency such as the Washington professional educator standards board, the business or organization shall notify the licensing agency of such termination of employment. [2006 c 263 § 827; 2005 c 421 § 6; 1997 c 386 § 40. Prior: 1989 c 334 § 5; 1989 c 90 § 5; 1987 c 486 § 6.]

Findings—Purpose—part headings not law—2006 c 263: See notes following RCW 28A.150.230.

RCW 43.43.842 Vulnerable adults—Additional licensing requirements for agencies, facilities, and individuals providing services (as amended by 2023 c 425). (1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter 18.52C RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not be the respondent in an active vulnerable adult protection order under chapter 7.105 RCW, nor have been: (i) Convicted of a crime against children or other persons as defined in RCW 43.43.830, except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, except as provided in this section; or (iii) found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830.

(b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW 43.43.834(2). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW 43.43.830, committed by the person.

(2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:

(a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(f) The department of social and health services reviewed the employee's otherwise disqualifying criminal history through the department of social and health services' background assessment review team process conducted in 2002, and determined that such employee could remain in a position covered by this section; or

(g) The otherwise disqualifying conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure.

The offenses set forth in (a) through (g) of this subsection do not automatically disqualify an applicant from employment by a licensee. Nothing in this section may be construed to require the employment of any person against a licensee's judgment.

(3) The rules adopted pursuant to subsection (2) of this section may not allow a licensee to automatically deny an applicant with a conviction for an offense set forth in subsection (2) of this section for a position as a substance use disorder professional or substance use disorder professional trainee certified under chapter 18.205 RCW if:

(a) At least one year has passed between the applicant's most recent conviction for an offense set forth in subsection (2) of this section and the date of application for employment;

(b) The offense was committed as a result of the applicant's substance use or untreated mental health symptoms; and

(c) The applicant is at least one year in recovery from a substance use disorder, whether through abstinence or stability on medication-assisted therapy, or in recovery from a mental health disorder.

(4) The rules adopted pursuant to subsection (2) of this section may not allow a licensee to automatically deny an applicant with a conviction for an offense set forth in subsection (2) of this section for a position as an agency affiliated counselor (~~registered~~) credentialed under chapter 18.19 RCW practicing as a peer counselor in an agency or facility if:

(a) At least one year has passed between the applicant's most recent conviction for an offense set forth in subsection (2) of this section and the date of application for employment;

(b) The offense was committed as a result of the person's substance use or untreated mental health symptoms; and

(c) The applicant is at least one year in recovery from a substance use disorder, whether through abstinence or stability on medication-assisted therapy, or in recovery from mental health challenges.

(5) In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under this chapter of the staff of each agency or facility under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for licensure or relicensure. Criminal justice agencies shall provide the secretaries such information as they may have and that the secretaries

may require for such purpose. [2023 c 425 § 23; 2021 c 215 § 150. Prior: 2019 c 446 § 44; 2019 c 444 § 22; 2014 c 88 § 1; 2007 c 387 § 4; 1998 c 10 § 4; 1997 c 392 § 518; 1992 c 104 § 1; 1989 c 334 § 11.]

Effective date—2023 c 425 §§ 1-7, 13-20, and 22-26: See note following RCW 18.83.170.

RCW 43.43.842 Vulnerable adults—Additional licensing requirements for agencies, facilities, and individuals providing services (as amended by 2023 c 469). (1)(a) The secretary of social and health services and the secretary of health shall adopt additional requirements for the licensure or relicensure of agencies, facilities, and licensed individuals who provide care and treatment to vulnerable adults, including nursing pools registered under chapter 18.52C RCW. These additional requirements shall ensure that any person associated with a licensed agency or facility having unsupervised access with a vulnerable adult shall not be the respondent in an active vulnerable adult protection order under chapter 7.105 RCW, nor have been: (i) Convicted of a crime against children or other persons as defined in RCW 43.43.830, except as provided in this section; (ii) convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, except as provided in this section; or (iii) found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830.

(b) A person associated with a licensed agency or facility who has unsupervised access with a vulnerable adult shall make the disclosures specified in RCW 43.43.834(2). The person shall make the disclosures in writing, sign, and swear to the contents under penalty of perjury. The person shall, in the disclosures, specify all crimes against children or other persons, all crimes relating to financial exploitation, and all crimes relating to drugs as defined in RCW 43.43.830, committed by the person.

(2) The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense and:

(a) The offense was simple assault, assault in the fourth degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(b) The offense was prostitution, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(c) The offense was theft in the third degree, or the same offense as it may be renamed, and three or more years have passed between the most recent conviction and the date of application for employment;

(d) The offense was theft in the second degree, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(e) The offense was forgery, or the same offense as it may be renamed, and five or more years have passed between the most recent conviction and the date of application for employment;

(f) The department of social and health services reviewed the employee's otherwise disqualifying criminal history through the department of social and health services' background assessment review team process conducted in 2002, and determined that such employee could remain in a position covered by this section; or

(g) The otherwise disqualifying conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure.

The offenses set forth in (a) through (g) of this subsection do not automatically disqualify an applicant from employment by a licensee. Nothing in this section may be construed to require the employment of any person against a licensee's judgment.

(3) The rules adopted pursuant to subsection (2) of this section may not allow a licensee to automatically deny an applicant with a conviction for an offense set forth in subsection (2) of this section for a position as a substance use disorder professional or substance use disorder professional trainee certified under chapter 18.205 RCW, as an agency affiliated counselor registered under chapter 18.19 RCW practicing as a peer counselor in an agency or facility, or as a peer specialist or peer specialist trainee certified under chapter 18.420 RCW, if:

(a) At least one year has passed between the applicant's most recent conviction for an offense set forth in subsection (2) of this section and the date of application for employment;

(b) The offense was committed as a result of the applicant's substance use or untreated mental health symptoms; and

(c) The applicant is at least one year in recovery from a substance use disorder, whether through abstinence or stability on medication-assisted therapy, or in recovery from a mental health disorder.

~~(4) ((The rules adopted pursuant to subsection (2) of this section may not allow a licensee to automatically deny an applicant with a conviction for an offense set forth in subsection (2) of this section for a position as an agency affiliated counselor registered under chapter 18.19 RCW practicing as a peer counselor in an agency or facility if:~~

~~(a) At least one year has passed between the applicant's most recent conviction for an offense set forth in subsection (2) of this section and the date of application for employment;~~

~~(b) The offense was committed as a result of the person's substance use or untreated mental health symptoms; and~~

~~(c) The applicant is at least one year in recovery from a substance use disorder, whether through abstinence or stability on medication-assisted therapy, or in recovery from mental health challenges.~~

~~(5))~~ In consultation with law enforcement personnel, the secretary of social and health services and the secretary of health shall investigate, or cause to be investigated, the conviction record and the protection proceeding record information under this chapter of the staff of each agency or facility under their respective jurisdictions seeking licensure or relicensure. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use the information solely for the purpose of determining eligibility for licensure or relicensure. Criminal justice agencies shall provide the secretaries such information as they may have and

that the secretaries may require for such purpose. [2023 c 469 § 20; 2021 c 215 § 150. Prior: 2019 c 446 § 44; 2019 c 444 § 22; 2014 c 88 § 1; 2007 c 387 § 4; 1998 c 10 § 4; 1997 c 392 § 518; 1992 c 104 § 1; 1989 c 334 § 11.]

Reviser's note: RCW 43.43.842 was amended twice during the 2023 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—2022 c 268; 2021 c 215: See note following RCW 7.105.900.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

RCW 43.43.845 Notification of conviction or guilty plea of certain felony crimes—Transmittal of information to superintendent of public instruction. (1) Upon a guilty plea or conviction of a person of any felony crime specified under RCW 28A.400.322, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives the notice required under subsection (1) of this section, the state patrol shall transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction, on at least a quarterly basis, to identify whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district, and provide this information to the Washington professional educator standards board and the school district employing the person. [2009 c 396 § 8; 2006 c 263 § 828. Prior: 2005 c 421 § 7; 2005 c 237 § 1; 1990 c 33 § 577; 1989 c 320 § 6.]

Findings—Purpose—Part headings not law—2006 c 263: See notes following RCW 28A.150.230.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 320: See note following RCW 28A.410.090.

RCW 43.43.850 Organized crime intelligence unit—Created. There is hereby created in the Washington state patrol an organized crime intelligence unit which shall be under the direction of the chief of the Washington state patrol. [1973 1st ex.s. c 202 § 1.]

RCW 43.43.852 "Organized crime" defined. For the purposes of *RCW 43.43.850 through 43.43.864 "organized crime" means those activities which are conducted and carried on by members of an organized, disciplined association, engaged in supplying illegal goods and services and/or engaged in criminal activities in contravention of

the laws of this state or of the United States. [1973 1st ex.s. c 202 § 2.]

***Reviser's note:** RCW 43.43.858 through 43.43.864 were repealed by 2009 c 560 § 24.

RCW 43.43.854 Powers and duties of organized crime intelligence unit. The organized crime intelligence unit shall collect, evaluate, collate, and analyze data and specific investigative information concerning the existence, structure, activities and operations of organized crime and the participants involved therein; coordinate such intelligence data into a centralized system of intelligence information; furnish and exchange pertinent intelligence data with law enforcement agencies and prosecutors with such security and confidentiality as the chief of the Washington state patrol may determine; develop intelligence data concerning the infiltration of organized crime into legitimate businesses within the state of Washington and furnish pertinent intelligence information thereon to law enforcement agencies and prosecutors in affected jurisdictions; and may assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution of organized crime activities upon request. [1973 1st ex.s. c 202 § 3.]

RCW 43.43.856 Divulging investigative information prohibited—Confidentiality—Security of records and files. (1) (a) On and after April 26, 1973, it shall be unlawful for any person to divulge specific investigative information pertaining to activities related to organized crime which he or she has obtained by reason of public employment with the state of Washington or its political subdivisions unless such person is authorized or required to do so by operation of state or federal law.

(b) Any person violating (a) of this subsection is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) Except as provided in RCW 43.43.854, or pursuant to the rules of the supreme court of Washington, all of the information and data collected and processed by the organized crime intelligence unit shall be confidential and not subject to examination or publication pursuant to chapter 42.56 RCW.

(3) The chief of the Washington state patrol shall prescribe such standards and procedures relating to the security of the records and files of the organized crime intelligence unit, as he or she deems to be in the public interest with the advice of the governor and the board. [2005 c 274 § 298; 2003 c 53 § 230; 1973 1st ex.s. c 202 § 4.]

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 43.43.870 Missing children clearinghouse and hotline, duties of state patrol. See chapter 13.60 RCW.

RCW 43.43.874 Missing and murdered indigenous women, other indigenous persons—Liaison positions. (1) Two liaison positions for missing and murdered indigenous women and other missing and murdered

indigenous persons are established in the Washington state patrol. One liaison must reside in western Washington, and one liaison must reside in eastern Washington. The liaisons shall work to build relationships to increase trust between governmental organizations and native communities. The liaisons shall facilitate communications among:

- (a) Indian tribes and tribal organizations and communities;
- (b) Urban Indian organizations and communities;
- (c) Tribal liaisons in other state agencies;
- (d) Law enforcement agencies at the federal, state, local, and tribal level; and
- (e) Nongovernmental entities that provide services to Native American women.

(2) The salary for the liaison positions is fixed by the Washington state patrol.

(3) To be eligible for hire as a liaison, an applicant must have significant experience living in tribal or urban indigenous communities. [2019 c 127 § 2.]

Findings—Intent—2019 c 127: "The legislature finds that Native American women experience violence at much higher rates than other populations. A recent federal study reported that Native American women are murdered at rates greater than ten times the national average. Many of these crimes, however, are often unsolved or even unreported because there are also very high rates of disappearance for Native American women.

The legislature further finds that although violence against Native American women has been a neglected issue in society, there is a growing awareness of this crisis, as well as a recognition that the criminal justice system needs to better serve and protect Native American women. The legislature intends to find ways to connect state, tribal, and federal resources to create partnerships to find ways to solve this crisis facing Native American women in our state, while being mindful to include voices from both tribal and urban communities." [2019 c 127 § 1.]

RCW 43.43.876 Missing and murdered indigenous women, other indigenous persons—Protocol—Training. (1) The Washington state patrol must develop a best practices protocol for law enforcement response to missing persons reports for indigenous women and other indigenous persons. The protocol must include steps that law enforcement should take upon receiving a missing persons report for an indigenous woman or other indigenous person.

(2) The governor's office of Indian affairs must provide the Washington state patrol with government-to-government training, and must work with the Washington state patrol to schedule and facilitate the training. [2019 c 127 § 3.]

Findings—Intent—2019 c 127: See note following RCW 43.43.874.

RCW 43.43.880 Agreements with contiguous states—Jointly occupied ports of entry—Collection of fees and taxes. The Washington state patrol may negotiate and enter into bilateral agreements with designated representatives of contiguous states. Agreements may provide for the manning and operation of jointly occupied ports of

entry, for the collection of highway user fees, registration fees, and taxes that may be required by statute or rule. Agreements may further provide for the collection of these fees and taxes by either party state at jointly occupied ports of entry before authorization is given for vehicles to legally operate within that state or jurisdiction, and for the enforcement of safety, size, and weight statutes or rules of the respective states. [1988 c 21 § 1.]

RCW 43.43.885 Scrap metal no-buy list database program. (1) Beginning on July 1, 2014, to the extent funds are appropriated, the Washington association of sheriffs and police chiefs shall implement and operate an ongoing electronic statewide no-buy list database program.

(2) The database must be made available on a secured network or website.

(3) The no-buy list database program shall allow for any scrap metal business to enter a customer's name and date of birth into the database. The database must determine if the customer pursuing the transaction with the scrap metal business has been convicted in Washington of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years.

(4) If the customer has been convicted of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years despite whether the person was acting in his or her own behalf or as the agent of another then, at a minimum, the no-buy list database program must immediately send an alert to the scrap metal business stating: (a) That the customer is listed on a current no-buy list, (b) the four-year expiration period for the customer's most recent crime listed, and (c) a notification that entering into a transaction with the customer is prohibited under RCW 9A.56.410.

(5) The database shall also include individuals who have attempted to purchase or sell unlawfully obtained metals at licensed scrap metal recyclers and individuals who attempt to conduct a transaction while under the influence of controlled substances.

(6) Local jurisdictions applying for grants under RCW 36.28A.240 must provide updates to the no-buy list database annually and 120 days after a grant is distributed. [2022 c 221 § 9; 2013 c 322 § 31.]

Findings—Intent—Effective date—2022 c 221: See notes following RCW 19.290.020.

RCW 43.43.887 Scrap metal no-buy list database program—Washington association of sheriffs and police chiefs not liable for civil damages. The Washington association of sheriffs and police chiefs shall not be held liable for civil damages resulting from any act or omission in carrying out the requirements of RCW 43.43.885 other than an act or omission constituting gross negligence or willful or wanton misconduct. [2013 c 322 § 33.]

RCW 43.43.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife,

widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 107.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

RCW 43.43.930 State fire protection services—Intent. The legislature finds that fire protection services at the state level are provided by different, independent state agencies. This has resulted in a lack of a comprehensive state-level focus for state fire protection services, funding, and policy. The legislature further finds that the paramount duty of the state in fire protection services is to enhance the capacity of all local jurisdictions to assure that their personnel with fire suppression, prevention, inspection, origin and cause, and arson investigation responsibilities are adequately trained to discharge their responsibilities. It is the intent of the legislature to consolidate fire protection services into a single state agency. It is also the intent of the legislature that the fire protection services program created herein will assist local fire protection agencies in program development without encroaching upon their historic autonomy. It is the further intent of the legislature that the fire protection services program be implemented incrementally to assure a smooth transition, to build local, regional, and state capacity, and to avoid undue burdens on jurisdictions with limited resources. [2010 1st sp.s. c 7 § 44; 1995 c 369 § 14; 1993 c 280 § 68; 1986 c 266 § 54. Formerly RCW 43.63A.300.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Application—1995 c 369: "This act does not apply to forest fire service personnel and programs." [1995 c 369 § 70.]

Effective date—1995 c 369: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 369 § 72.]

Effective date—1993 c 280: See RCW 43.330.902.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 43.44 RCW.

RCW 43.43.934 Director of fire protection—Duties. The director of fire protection shall:

(1) (a) (i) With the state board for community and technical colleges, provide academic, vocational, and field training programs for the fire service; and (ii) with the state colleges and universities, provide instructional programs requiring advanced training, especially in command and management skills;

(b) Cooperate with the common schools, technical and community colleges, institutions of higher education, and any department or division of the state, or of any county or municipal corporation in establishing and maintaining instruction in fire service training and education in accordance with any act of congress and legislation enacted by the legislature in pursuance thereof and in establishing, building, and operating training and education facilities.

Industrial fire departments and private fire investigators may participate in training and education programs under this chapter for a reasonable fee established by rule;

(c) Develop and adopt a master plan for constructing, equipping, maintaining, and operating necessary fire service training and education facilities subject to the provisions of *chapter 43.19 RCW;

(d) Develop and adopt a master plan for the purchase, lease, or other acquisition of real estate necessary for fire service training and education facilities in a manner provided by law; and

(e) (i) Develop and adopt a plan for the Washington state patrol fire training academy to deliver basic firefighter training and testing to all city fire departments, fire protection districts, regional fire protection service authorities, and other public fire agencies in the state. The plan required by this subsection (1) (e) must specify that the delivery of training and testing services will be provided:

(A) To recipients in the following order of priority:

(I) Volunteer departments;

(II) Combination departments; and

(III) Fire agencies that employ only career firefighters and fire officers; and

(B) By personnel of the fire training academy, either at the academy's facilities in North Bend, Washington, or regionally at local fire agencies.

(ii) (A) In lieu of receiving training and testing services from the fire training academy, city fire departments, fire protection districts, regional fire protection service authorities, and other public fire agencies in the state may seek reimbursement for their firefighter I training expenses. The amount of reimbursement will be calculated on a per capita basis. The per capita amount is equal to the three-year statewide firefighter per capita average for the regional direct delivery of training by the fire training academy. The three-year statewide firefighter per capita average is calculated by dividing the number of firefighters trained using the regional direct delivery program during the three-year period into the total cost of providing regional direct delivery during the same three-year period. The regional direct delivery costs used for the basis of these calculations does not include the costs of the fire training academy personnel used to coordinate the direct delivery programs, the state's indirect costs, or any other indirect costs.

(B) Prior to the implementation of the reimbursement provisions in (e) (ii) (A) of this subsection, the amount of reimbursement for city

fire departments, fire protection districts, regional fire protection service authorities, and other public fire agencies must be not less than three dollars for every one hour of firefighter I training, and may not exceed two hundred hours.

(iii) Subject to approval by the director of fire protection, and in accordance with the plan required by this subsection (1)(e), the fire training academy facilities and programs must be made available at no cost to fire service youth programs. The goal of making these facilities and programs available is to increase enrollment of volunteer firefighters, and to improve gender, cultural, and ethnic diversity within the fire service.

(iv) For purposes of this subsection (1)(e), the following definitions apply:

(A) "Basic firefighter training and testing" means training and testing for firefighters that is up to and includes the requirements of firefighter I, as identified by the national fire protection association standard 1001;

(B) "Combination department" means a fire department with emergency service personnel comprising less than eighty-five percent of either volunteer or career membership;

(C) "Delivery of training" includes all resources, personnel, and equipment necessary to deliver training at the fire academy in North Bend, Washington, or regionally at local fire agencies; and

(D) "Volunteer department" means a fire department with volunteer emergency service personnel comprising eighty-five percent or greater of its department membership.

(2)(a) Promote mutual aid and disaster planning for fire services in this state;

(b) Assure the dissemination of information concerning the amount of fire damage including that damage caused by arson, and its causes and prevention; and

(c) Implement any legislation enacted by the legislature to meet the requirements of any acts of congress that apply to this section.

(3) In carrying out its statutory duties, the office of the state fire marshal shall give particular consideration to the appropriate roles to be played by the state and by local jurisdictions with fire protection responsibilities. Any determinations on the division of responsibility shall be made in consultation with local fire officials and their representatives.

To the extent possible, the office of the state fire marshal shall encourage development of regional units along compatible geographic, population, economic, and fire risk dimensions. Such regional units may serve to: (a) Reinforce coordination among state and local activities in fire service training, reporting, inspections, and investigations; (b) identify areas of special need, particularly in smaller jurisdictions with inadequate resources; (c) assist the state in its oversight responsibilities; (d) identify funding needs and options at both the state and local levels; and (e) provide models for building local capacity in fire protection programs. [2015 c 43 § 1; 2012 c 229 § 818; 2010 1st sp.s. c 7 § 45; 2003 c 316 § 1. Prior: 1999 c 117 § 1; 1999 c 24 § 3; 1998 c 245 § 65; prior: 1995 c 369 § 16; 1995 c 243 § 11; 1993 c 280 § 69; 1986 c 266 § 56. Formerly RCW 43.63A.320.]

***Reviser's note:** Requirements for procurement of goods and services are provided in chapter 39.26 RCW.

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—1999 c 24: See note following RCW 38.52.505.

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Effective date—1995 c 243 § 11: "Section 11 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 243 § 13.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Effective date—1993 c 280: See RCW 43.330.902.

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 43.43.938 Director of fire protection—Appointment—Duties.

(1) Wherever the term state fire marshal appears in the Revised Code of Washington or the Washington Administrative Code it shall mean the director of fire protection.

(2) The chief of the Washington state patrol shall appoint an officer who shall be known as the director of fire protection.

(3) The director of fire protection may designate one or more deputies and may delegate to those deputies his or her duties and authorities as deemed appropriate.

(4) The director of fire protection shall prepare a biennial budget pertaining to fire protection services. Such biennial budget shall be submitted as part of the Washington state patrol's budget request.

(5) The director of fire protection, shall implement and administer, within constraints established by budgeted resources, all duties of the chief of the Washington state patrol that are to be carried out through the director of fire protection, and all of the duties of the director of fire protection. Such administration shall include negotiation of agreements with the state board for community and technical colleges and the state colleges and universities as provided in RCW 43.43.934. Programs covered by such agreements shall include, but not be limited to, planning curricula, developing and delivering instructional programs and materials, and using existing instructional personnel and facilities. Where appropriate, such contracts shall also include planning and conducting instructional programs at the state fire service training center. [2012 c 229 § 819; 2010 1st sp.s. c 7 § 46; 1995 c 369 § 18; 1993 c 280 § 71; 1986 c 266 § 58. Formerly RCW 43.63A.340.]

Effective date—2012 c 229 §§ 101, 117, 401, 402, 501 through 594, 601 through 609, 701 through 708, 801 through 821, 902, and 904: See note following RCW 28B.77.005.

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Effective date—1993 c 280: See RCW 43.330.902.

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 43.43.939 Director of fire protection—Adoption of minimum standard requirements for before-school and after-school programs. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty to adopt licensing minimum standard requirements for before-school and after-school programs in existing buildings approved by the state fire marshal. [2013 c 227 § 2.]

RCW 43.43.940 Fire service training program—Grants and bequests. The Washington state patrol may accept any and all donations, grants, bequests, and devises, conditional or otherwise, or money, property, service, or other things of value which may be received from the United States or any agency thereof, any governmental agency, any institution, person, firm, or corporation, public and private, to be held, used, or applied for the purposes of the fire service training program established in RCW 43.43.934. [1995 c 369 § 19; 1986 c 266 § 59. Formerly RCW 43.63A.350.]

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 43.43.942 Fire service training—Fees and fee schedules. The Washington state patrol may: (1) Impose and collect fees for fire service training; and (2) establish and set fee schedules for fire service training. [1995 c 369 § 20; 1986 c 266 § 60. Formerly RCW 43.63A.360.]

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 43.43.944 Fire service training account. (1) The fire service training account is hereby established in the state treasury. The primary purpose of the account is firefighter training for both volunteer and career firefighters. The fund shall consist of:

(a) All fees received by the Washington state patrol for fire service training;

(b) All grants and bequests accepted by the Washington state patrol under RCW 43.43.940;

(c) Twenty percent of all moneys received by the state on fire insurance premiums;

(d) Revenue from penalties established under RCW 19.27.740; and

(e) General fund—state moneys appropriated into the account by the legislature.

(2) Moneys in the account may be appropriated for: (a) Fire service training; (b) school fire prevention activities within the Washington state patrol; and (c) the maintenance, operations, and capital projects of the state fire training academy. However, expenditures for purposes of (b) and (c) of this subsection may only be made to the extent that these expenditures do not adversely affect expenditures for the purpose of (a) of this subsection. The state patrol may use amounts appropriated from the fire service training account under this section to contract with the Washington state firefighters apprenticeship trust for the operation of the firefighter joint apprenticeship training program. The contract may call for payments on a monthly basis.

(3) Any general fund—state moneys appropriated into the account shall be allocated solely to the firefighter joint apprenticeship training program. The Washington state patrol may contract with outside entities for the administration and delivery of the firefighter joint apprenticeship training program. [2020 c 88 § 6; 2012 c 173 § 1; 2011 1st sp.s. c 48 § 7026; 2010 1st sp.s. c 37 § 923; 2007 c 520 § 6034; 2007 c 290 § 1; 2005 c 518 § 929; 2003 1st sp.s. c 25 § 919; 1999 c 117 § 2; 1995 c 369 § 21; 1986 c 266 § 61. Formerly RCW 43.63A.370.]

Effective date—2020 c 88: See note following RCW 19.27.700.

Effective date—2011 1st sp.s. c 48: See note following RCW 39.35B.050.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Part headings not law—Severability—Effective dates—2007 c 520: See notes following RCW 43.19.125.

Effective date—2005 c 518: See note following RCW 28A.600.110.

Severability—Effective date—2003 1st sp.s. c 25: See notes following RCW 19.28.351.

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 43.43.946 Fire services trust fund. The fire services trust fund is created in the state treasury. All receipts designated by the legislature shall be deposited in the fund. Appropriations from the

fund may be made exclusively for the purposes specified in *RCW 43.63A.377. [1991 c 135 § 2. Formerly RCW 43.63A.375.]

***Reviser's note:** RCW 43.63A.377 was recodified as RCW 43.43.948 pursuant to 1995 c 369 § 69, effective July 1, 1995.

Intent—1991 c 135: "It is necessary for the health, safety, and welfare of the people of the state of Washington that fire code enforcement, public education on fire prevention, fire training for fire and emergency response personnel, and administration of these activities be funded in a dependable manner. It is therefore the intent of the legislature to establish a fund for these purposes." [1991 c 135 § 1.]

Effective date—1991 c 135: "This act is necessary for the preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 135 § 8.]

Severability—1991 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 135 § 9.]

RCW 43.43.948 Fire services trust fund—Expenditures. Money from the fire services trust fund may be expended for the following purposes:

- (1) Training of fire service personnel, including both classroom and hands-on training at the state fire training center or other locations approved by the chief of the Washington state patrol through the director of fire protection services;
- (2) Maintenance and operation at the state's fire training center near North Bend. If in the future the state builds or leases other facilities as other fire training centers, a portion of these moneys may be used for the maintenance and operation at these centers;
- (3) Lease or purchase of equipment for use in the provisions of training to fire service personnel;
- (4) Grants or subsidies to local jurisdictions to allow them to perform their functions under this section;
- (5) Costs of administering these programs under this section;
- (6) Licensing and enforcement of state laws governing the sales of fireworks; and
- (7) Development with the legal fireworks industry and funding of a statewide public education program for fireworks safety. [1995 c 369 § 22; 1991 c 135 § 3. Formerly RCW 43.63A.377.]

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

RCW 43.43.950 Fire service training center bond retirement account of 1977. The state fire service training center bond retirement account of 1977 is hereby reestablished as an account

within the treasury for the purpose of the payment of the principal of and interest on the bonds authorized to be issued pursuant to chapter 349, Laws of 1977 ex. sess., or chapter 470, Laws of 1985 or, if the legislature so determines, for any bonds and notes hereafter authorized and issued for the commission for vocational education or the statutory successor to its powers and duties involving the state fire training center.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on such bonds. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund such amounts and at such times as are required by the bond proceedings. [1991 sp.s. c 13 § 79. Formerly RCW 43.63A.380.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

RCW 43.43.952 Arson investigation information system—Findings—Intent. (1) The legislature finds that provisions for information systems relating to statistics and reporting for fire prevention, suppression, and damage control do not adequately address the needs of ongoing investigations of fire incidents where the cause is suspected or determined to be the result of negligence or otherwise suggestive of some criminal activity, particularly that of arson. It is the intent of the legislature to establish an information and reporting system designed specifically to assist state and local officers in conducting such investigations and, where substantiated, to undertake prosecution of individuals suspected of such activities.

(2) (a) In addition to the information provided by local officials about the cause, origin, and extent of loss in fires under *chapter 48.48 RCW, there is hereby created the state arson investigation information system in the Washington state patrol.

(b) The chief of the Washington state patrol shall develop the arson investigation information system in consultation with representatives of the various state and local officials charged with investigating fires resulting from suspicious or criminal activities under *chapter 48.48 RCW and of the insurance industry.

(c) The arson investigation information system shall be designed to include at least the following attributes: (i) The information gathered and reported shall meet the diverse needs of state and local investigating agencies; (ii) the forms and reports are drafted in understandable terms of common usage; and (iii) the results shall be adaptable to the varying levels of available resources, maintained in a manner to foster data sharing and mutual aid activities, and made available to other law enforcement agencies responsible for criminal investigations.

(d) All insurers required to report claim information under the provisions of chapter 48.50 RCW shall cooperate fully with any requests from the chief of the Washington state patrol in developing and maintaining the arson investigation information system. The confidentiality provisions of that chapter shall be fully enforced. [1995 c 369 § 64.]

***Reviser's note:** Chapter 48.48 RCW was recodified as chapter 43.44 RCW pursuant to 2006 c 25 § 13.

Application—Effective date—1995 c 369: See notes following RCW 43.43.930.

STATE FIRE SERVICE MOBILIZATION

RCW 43.43.960 State fire service mobilization—Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout this subchapter.

(1) "All risk resources" means those resources regularly provided by fire departments, fire districts, and regional fire protection service authorities required to respond to natural or man-made incidents, including but not limited to:

- (a) Wild land fires;
- (b) Landslides;
- (c) Earthquakes;
- (d) Floods; and
- (e) Contagious diseases.

(2) "Chief" means the chief of the Washington state patrol.

(3) "Fire chief" includes the chief officer of a statutorily authorized fire agency, or the fire chief's authorized representative. Also included are the department of natural resources fire control chief, and the department of natural resources regional managers.

(4) "Jurisdiction" means state, county, city, fire district, regional fire protection service authority, or port district units, or other units covered by this chapter.

(5) "Mobilization" means that all risk resources regularly provided by fire departments, fire districts, and regional fire protection service authorities beyond those available through existing agreements will be requested and, when available, sent in response to an emergency or disaster situation that has exceeded the capabilities of available local resources. During a large scale emergency, mobilization includes the redistribution of regional or statewide risk resources to either direct emergency incident assignments or to assignment in communities where resources are needed. All risk resources may not be mobilized to assist law enforcement with police activities during a civil protest or demonstration, or other exercise by the people of their constitutionally protected First Amendment rights, or other protected concerted activity, however, fire departments, fire districts, and regional fire protection service authorities are not restricted from providing medical care or aid and firefighting when mobilized for any purpose.

When mobilization is declared and authorized as provided in this chapter, all risk resources regularly provided by fire departments, fire districts, and regional fire protection service authorities including those of the host fire protection authorities, i.e. incident jurisdiction, shall be deemed as mobilized under this chapter, including those that responded earlier under existing mutual aid or other agreement. All nonhost fire protection authorities providing resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter from the time of the mobilization declaration.

This chapter shall not reduce or suspend the authority or responsibility of the department of natural resources under chapter 76.04 RCW.

(6) "Mutual aid" means emergency interagency assistance provided without compensation under an agreement between jurisdictions under chapter 39.34 RCW.

(7) "State fire marshal" means the director of fire protection in the Washington state patrol. [2019 c 259 § 1. Prior: 2015 c 181 § 2; 2003 c 405 § 1; 1997 c 49 § 8; prior: 1995 c 391 § 5; 1995 c 369 § 10; 1992 c 117 § 9. Formerly RCW 38.54.010.]

Effective date—2019 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019." [2019 c 259 § 3.]

Intent—2015 c 181: See note following RCW 43.43.965.

Effective date—1995 c 391: See note following RCW 38.52.005.

Effective date—1995 c 369: See note following RCW 43.43.930.

Findings—1992 c 117: See note following RCW 35.21.775.

RCW 43.43.961 State fire service mobilization—Legislative declaration and intent. Because of the possibility of the occurrence of disastrous fires or other disasters of unprecedented size and destructiveness, the need to insure that the state is adequately prepared to respond to such a fire or disaster, the need to establish a mechanism and a procedure to provide for reimbursement to state agencies and local agencies that respond to help others in time of need or to a host fire district that experiences expenses beyond the resources of the fire district, and generally to protect the public peace, health, safety, lives, and property of the people of Washington, it is hereby declared necessary to:

(1) Provide the policy and organizational structure for large scale mobilization of all risk resources in the state through creation of the Washington state fire services mobilization plan;

(2) Confer upon the chief the powers provided herein;

(3) Provide a means for reimbursement to state agencies and local fire jurisdictions that incur expenses when mobilized by the chief under the Washington state fire services mobilization plan; and

(4) Provide for reimbursement of the host fire department or fire protection district when it has: (a) Exhausted all of its resources; and (b) invoked its local mutual aid network and exhausted those resources. Upon implementation of state fire mobilization, the host district resources shall become state fire mobilization resources consistent with the fire mobilization plan.

It is the intent of the legislature that mutual aid and other interlocal agreements providing for enhanced emergency response be encouraged as essential to the public peace, safety, health, and welfare, and for the protection of the lives and property of the people of the state of Washington. If possible, mutual aid agreements should be without stated limitations as to resources available, time, or area. Nothing in this chapter shall be construed or interpreted to

limit the eligibility of any nonhost fire protection authority for reimbursement of expenses incurred in providing all risk resources for mobilization provided that the mobilization must meet the requirements identified in the Washington state fire service mobilization plan. [2015 c 181 § 3; 2003 c 405 § 2; 1997 c 49 § 9; 1995 c 391 § 6; 1992 c 117 § 10. Formerly RCW 38.54.020.]

Intent—2015 c 181: See note following RCW 43.43.965.

Effective date—1995 c 391: See note following RCW 38.52.005.

Findings—1992 c 117: See note following RCW 35.21.775.

RCW 43.43.962 State fire service mobilization—State fire services mobilization plan—State fire resources coordinator. The director of fire protection shall review and make recommendations to the chief on the refinement and maintenance of the Washington state fire services mobilization plan, which shall include the procedures to be used during fire and other emergencies for coordinating local, regional, and state fire jurisdiction resources. In carrying out this duty, the director of fire protection shall consult with and solicit recommendations from representatives of state and local fire and emergency management organizations, regional fire defense boards, and the department of natural resources. The Washington state fire services mobilization plan shall be consistent with, and made part of, the Washington state comprehensive emergency management plan. The chief shall review the fire services mobilization plan as submitted by the director of fire protection, recommend changes that may be necessary, and approve the fire services mobilization plan for inclusion within the state comprehensive emergency management plan.

It is the responsibility of the chief to mobilize jurisdictions under the Washington state fire services mobilization plan. The state fire marshal shall serve as the state fire resources coordinator when the Washington state fire services mobilization plan is mobilized. [2010 1st sp.s. c 7 § 47; 2003 c 405 § 3; 1997 c 49 § 10; 1995 c 269 § 1101; 1992 c 117 § 11. Formerly RCW 38.54.030.]

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Effective date—Part headings not law—Severability—1995 c 269: See notes following RCW 18.16.050.

Findings—1992 c 117: See note following RCW 35.21.775.

RCW 43.43.963 State fire service mobilization—Regional fire defense boards—Regional fire service plans—Regions established. (1) Regions within the state are initially established as follows but may be adjusted as necessary by the state fire marshal:

- (a) Northwest region - Whatcom, Skagit, Snohomish, San Juan, and Island counties;
- (b) Northeast region - Okanogan, Ferry, Stevens, Pend Oreille, Spokane, and Lincoln counties;
- (c) Olympic region - Clallam and Jefferson counties;

(d) South Puget Sound region - Kitsap, Mason, King, and Pierce counties;

(e) Southeast region - Chelan, Douglas, Kittitas, Grant, Adams, Whitman, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties;

(f) Central region - Grays Harbor, Thurston, Pacific, and Lewis counties; and

(g) Southwest region - Wahkiakum, Cowlitz, Clark, and Skamania counties.

(2)(a) There is created a regional fire defense board within each region created in subsection (1) of this section.

(b) The regional fire defense boards shall consist of two members from each county in the region. One member from each county shall be appointed by the county fire chiefs' association or, in the event there is no such county association, by the county's legislative authority. Each county's office of emergency management or, in the event there is no such office, the county's legislative authority shall select the second representative to the regional board. The department of natural resources fire control chief shall appoint a representative from each department of natural resources region to serve as a member of the appropriate regional fire defense board.

(c) Members of each regional board will select a chairperson and secretary as officers. Members serving on the regional boards do so in a voluntary capacity and are not eligible for reimbursement for meeting-related expenses from the state.

(3)(a) Regional defense boards shall develop regional fire service plans that include provisions for organized fire agencies to respond across municipal, county, or regional boundaries.

(b) Each regional plan shall be consistent with the incident command system, the Washington state fire services mobilization plan, the requirements of this section, and regional response plans already adopted and in use in the state. The regional boards shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional fire service plan.

(c) Each regional fire service plan must include a mechanism by which a local fire mobilization radio frequency, consistent with RCW 76.04.015, is identified and made available during the initial response to any forest fire that crosses jurisdictional lines so that all responders have access to communications during the response. Different initial response frequencies may be identified and used as appropriate in different geographic response areas. If the fire radio communication needs escalate beyond the capability of the identified local radio frequency, the use of other available designated interoperability radio frequencies may be used.

(d) Each regional fire service plan shall be approved by the director of fire protection. [2010 1st sp.s. c 7 § 48; 2010 c 38 § 2; 1997 c 49 § 11; 1992 c 117 § 12. Formerly RCW 38.54.040.]

Reviser's note: This section was amended by 2010 c 38 § 2 and by 2010 1st sp.s. c 7 § 48, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2010 1st sp.s. c 26; 2010 1st sp.s. c 7: See note following RCW 43.03.027.

Findings—1992 c 117: See note following RCW 35.21.775.

RCW 43.43.964 State fire service mobilization—Development of reimbursement procedures. The Washington state patrol in consultation with the office of financial management and the Washington military department shall develop procedures to facilitate reimbursement to state agencies and jurisdictions from appropriate federal and state funds when state agencies and jurisdictions are mobilized by the chief under the Washington state fire services mobilization plan. The Washington state patrol shall ensure that these procedures provide reimbursement to the host district in as timely a manner as possible. [2003 c 405 § 4; 1997 c 49 § 12; 1995 c 391 § 7; 1992 c 117 § 13. Formerly RCW 38.54.050.]

Effective date—1995 c 391: See note following RCW 38.52.005.

Findings—1992 c 117: See note following RCW 35.21.775.

RCW 43.43.965 State fire service mobilization—Plan use for purposes other than fire suppression—Annual report. The chief of the Washington state patrol must report on an annual basis the following information for each emergency or disaster in which the Washington state fire service mobilization plan was used for purposes other than fire suppression, and reimbursement was made under RCW 43.43.961:

- (1) The type and nature of the disaster or emergency;
- (2) The reasons why the host jurisdiction and mutual aid resources were exhausted;
- (3) The additional risk resources provided under the mobilization plan;
- (4) The cost incurred by the state patrol;
- (5) The amount of reimbursement made under RCW 43.43.961 to the host jurisdiction and to each nonhost jurisdiction providing all risk resources; and
- (6) An assessment and any recommendations of actions that can be taken by the host jurisdiction and its mutual aid network to prevent future use of the fire mobilization plan for similar disasters or emergencies. [2015 c 181 § 4.]

Intent—2015 c 181: "The legislature recognizes the vital role that our state's fire service personnel play in responding not just to fires but to disasters of varying types and kinds. The legislature further recognizes that the fire service mobilization plan may be a more effective tool for use in all emergencies and disasters to which fire departments, fire districts, and regional fire protection service authorities typically respond. It is the intent of the legislature that state fire service mobilization be allowed in all incidents to which fire departments, fire districts, and regional fire protection service authorities typically respond, so long as the mobilization meets the requirements identified in the Washington state fire service mobilization plan. It is the intent of the legislature to review the use of the fire mobilization plan for emergencies and disasters other than fire suppression to determine if this policy should continue or be modified." [2015 c 181 § 1.]

RCW 43.43.970 Law enforcement mobilization—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Agency" means any general purpose law enforcement agency as defined in RCW 10.93.020.
- (2) "Board" means the state law enforcement mobilization policy board.
- (3) "Chief" means the chief of the Washington state patrol.
- (4) "Chief law enforcement officer" means the chief of police or sheriff responsible for law enforcement services in the jurisdiction in which the emergency is occurring.
- (5) "General authority Washington peace officer" means a general authority Washington peace officer as defined in RCW 10.93.020.
- (6) "Host agency" means the law enforcement agency that requests statewide mobilization under RCW 43.43.970 through 43.43.975.
- (7) "Mobilization" means a redistribution of regional and statewide law enforcement resources in response to an emergency or disaster situation.
- (8) "Mutual aid" means emergency interagency assistance provided without compensation pursuant to an agreement under chapter 39.34 RCW.
- (9) "Resource coordination" means the effort to locate and arrange for the delivery of resources needed by chief law enforcement officers.
- (10) "State law enforcement resource coordinator" means a designated individual or agency selected by the chief to perform the responsibilities of that position. [2003 c 405 § 6.]

Legislative declaration and intent—2003 c 405: "(1) Because of the possibility of a disaster of unprecedented size and destruction, including acts of domestic terrorism and civil unrest, that requires law enforcement response for the protection of persons or property and preservation of the peace, the need exists to ensure that the state is adequately prepared to respond to such an incident. There is a need to (a) establish a mechanism and a procedure to provide for reimbursement to law enforcement agencies that respond to help others in time of need, and to host law enforcement agencies that experience expenses beyond the resources of the agencies; and (b) generally to protect the public safety, peace, health, lives, and property of the people of Washington.

- (2) It is hereby declared necessary to:
 - (a) Provide the policy and organizational structure for large-scale mobilization of law enforcement resources in the state, using the incident command system, through creation of the Washington state law enforcement mobilization plan;
 - (b) Confer upon the chief of the Washington state patrol the powers provided in this chapter;
 - (c) Provide a means for reimbursement to law enforcement jurisdictions that incur expenses when mobilized by the chief under the Washington state law enforcement mobilization plan; and
 - (d) Provide for reimbursement of the host law enforcement agency when it has:
 - (i) Exhausted all of its resources; and
 - (ii) Invoked its local mutual aid network and exhausted those resources." [2003 c 405 § 5.]

RCW 43.43.971 Law enforcement mobilization—State law enforcement mobilization policy board—State law enforcement mobilization plan.

(1) The state law enforcement mobilization policy board shall be established by the chief and shall have representatives from each of the regions established in RCW 43.43.974. In carrying out its duty, the board shall consult with and solicit recommendations from representatives of the state and local law enforcement and emergency management organizations, and regional law enforcement mobilization committees.

(2) The board shall establish and make recommendations to the chief on the refinement and maintenance of the Washington state law enforcement mobilization plan, including the procedures to be used during an emergency or disaster response requiring coordination of local, regional, and state law enforcement resources.

(3) The chief shall review the Washington state law enforcement mobilization plan, as submitted by the board, recommend changes as necessary, and may approve the plan. The plan shall be consistent with the Washington state comprehensive emergency management plan. The chief may recommend the plan for inclusion within the state comprehensive emergency management plan established under chapter 38.52 RCW. [2003 c 405 § 7.]

RCW 43.43.972 Law enforcement mobilization—Local law enforcement request for mobilization—State law enforcement resource coordinator—Mobilization response—Declaration of end of mobilization.

(1) Local law enforcement may request mobilization only in response to an emergency or disaster exceeding the capabilities of available local resources and those available through existing mutual aid agreements. Upon finding that the local jurisdiction has exhausted all available resources, it is the responsibility of the chief to determine whether mobilization is the appropriate response to the emergency or disaster and, if so, to mobilize jurisdictions under the Washington state law enforcement mobilization plan.

(2) Upon mobilization, the chief shall appoint a state law enforcement resource coordinator, and an alternate, who shall serve jointly with the chief law enforcement officer from the host agency to command the mobilization effort consistent with incident command system procedures.

(3) Upon mobilization, all law enforcement resources including those of the host agency and those that responded earlier under an existing mutual aid or other agreement shall be mobilized. Mobilization may include the redistribution of regional or statewide law enforcement resources to either direct emergency incident assignments or to assignments in communities where law enforcement resources are needed.

(4) For the duration of the mobilization:

(a) Host agency resources shall become state law enforcement mobilization resources, under the command of the state law enforcement resource coordinator and the chief law enforcement officer from the host agency, consistent with the state law enforcement mobilization plan and incident command system procedures; and

(b) All law enforcement authorities providing resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter.

(5) The chief, in consultation with the regional law enforcement resource coordinator, shall determine when mobilization is no longer required and shall then declare the end to the mobilization. [2003 c 405 § 8.]

RCW 43.43.973 State law enforcement mobilization—State law enforcement coordinator—Duties.

(1) The state law enforcement resource coordinator, or alternate, shall serve in that capacity for the duration of the mobilization.

(2) The duties of the coordinator are to:

(a) Coordinate the mobilization of law enforcement and other support resources within a region;

(b) Be primarily responsible for the coordination of resources in conjunction with the regional law enforcement mobilization committees, in the case of incidents involving more than one region or when resources from more than one region must be mobilized; and

(c) Advise and consult with the chief regarding what resources are required in response to the emergency or disaster and in regard to when the mobilization should end. [2003 c 405 § 9.]

RCW 43.43.974 State law enforcement mobilization—Regions established—Regional law enforcement mobilization committees—Regional law enforcement mobilization plans.

(1) Regions within the state are initially established as follows and may be adjusted as necessary by the state law enforcement policy board, but should remain consistent with the Washington state fire defense regions:

(a) Central region - Grays Harbor, Thurston, Pacific, and Lewis counties;

(b) Lower Columbia region - Kittitas, Yakima, and Klickitat counties;

(c) Mid-Columbia region - Chelan, Douglas, and Grant counties;

(d) Northeast region - Okanogan, Ferry, Stevens, Pend Oreille, Spokane, Adams, and Lincoln counties;

(e) Northwest region - Whatcom, Skagit, Snohomish, San Juan, and Island counties;

(f) Olympic region - Clallam and Jefferson counties;

(g) South Puget Sound region - Kitsap, Mason, King, and Pierce counties;

(h) Southeast region - Benton, Franklin, Walla Walla, Columbia, Whitman, Garfield, and Asotin counties;

(i) Southwest region - Wahkiakum, Cowlitz, Clark, and Skamania counties.

(2) Within each of the regions there is created a regional law enforcement mobilization committee. The committees shall consist of the sheriff of each county in the region, the district commander of the Washington state patrol from the region, a number of police chiefs within the region equivalent to the number of counties within the region plus one, and the director of the counties' emergency management office. The police chief members of each regional committee must include the chiefs of police of each city of ninety-five thousand or more population, and the number of members of the committee shall be increased if necessary to accommodate such chiefs. Members of each regional mobilization committee shall select a chair, who shall have authority to implement the regional plan, and a secretary as officers.

Members serving on the regional mobilization committees shall not be eligible for reimbursement for meeting-related expenses from the state.

(3) The regional mobilization committees shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional law enforcement mobilization plan.

(4) Regional mobilization committees shall develop regional law enforcement mobilization plans that include provisions for organized law enforcement agencies to respond across municipal, county, or regional boundaries. Each regional mobilization plan shall be consistent with the incident command system, the Washington state law enforcement mobilization plan, and regional response plans adopted prior to July 27, 2003.

(5) Each regional plan adopted under subsection (4) of this section shall be approved by the state law enforcement mobilization policy board before implementation. [2003 c 405 § 10.]

RCW 43.43.975 State law enforcement mobilization—Development of reimbursement procedures—Eligibility of nonhost law enforcement authority for reimbursement. The state patrol in consultation with the Washington association of sheriffs and police chiefs and the office of financial management shall develop procedures to facilitate reimbursement to jurisdictions from funds appropriated specifically for this purpose when jurisdictions are mobilized under the Washington state law enforcement mobilization plan.

Nothing in this chapter shall be construed or interpreted to limit the eligibility of any nonhost law enforcement authority for reimbursement of expenses incurred in providing law enforcement resources for mobilization. [2003 c 405 § 11.]