

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 1166

Chapter 93, Laws of 2019

66th Legislature
2019 Regular Session

SEXUAL ASSAULT--SEXUAL ASSAULT KITS

EFFECTIVE DATE: July 28, 2019 - Except for sections 1, 2, and 8,
which become effective April 23, 2019.

Passed by the House March 6, 2019
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 11, 2019
Yeas 45 Nays 0

KAREN KEISER

President of the Senate

Approved April 23, 2019 3:40 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1166** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

April 24, 2019

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1166

Passed Legislature - 2019 Regular Session

State of Washington 66th Legislature 2019 Regular Session

By House Appropriations (originally sponsored by Representatives Orwall, Mosbrucker, Lovick, Griffey, Dolan, Doglio, Valdez, Wylie, Tarleton, Cody, Jinkins, Dent, Ortiz-Self, Van Werven, Stonier, Fitzgibbon, Fey, Walen, Bergquist, Leavitt, Macri, Kloba, and Stanford)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to supporting sexual assault survivors; amending
2 RCW 43.43.545, 43.101.272, and 70.125.090; amending 2018 c 299 s 921
3 (uncodified); reenacting and amending RCW 9A.04.080; adding a new
4 section to chapter 43.10 RCW; adding a new section to chapter 43.09
5 RCW; adding new sections to chapter 70.125 RCW; creating a new
6 section; providing expiration dates; and declaring an emergency.

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

8 **Sec. 1.** 2018 c 299 s 921 (uncodified) is amended to read as
9 follows:

10 (1)(a) The (~~joint legislative task force on~~) sexual assault
11 forensic examination best practices advisory group is established
12 within the office of the attorney general for the purpose of
13 reviewing best practice models for managing all aspects of sexual
14 assault (~~examinations~~) investigations and for reducing the number
15 of untested sexual assault (~~examination~~) kits in Washington state
16 (~~that were collected prior to the effective date of this section~~).

17 (i) The caucus leaders from the senate shall appoint one member
18 from each of the two largest caucuses of the senate.

19 (ii) The caucus leaders from the house of representatives shall
20 appoint one member from each of the two largest caucuses of the house
21 of representatives.

1 (iii) ~~The ((president of the senate and the speaker of the house~~
2 ~~of representatives))~~ attorney general, in consultation with the
3 legislative members of the advisory group, shall ~~((jointly))~~ appoint:

4 (A) One member representing each of the following:

5 (I) The Washington state patrol;

6 (II) The Washington association of sheriffs and police chiefs;

7 (III) The Washington association of prosecuting attorneys;

8 (IV) The Washington defender association or the Washington
9 association of criminal defense lawyers;

10 (V) The Washington association of cities;

11 (VI) The Washington association of county officials;

12 (VII) The Washington coalition of sexual assault programs;

13 (VIII) The office of crime victims advocacy;

14 (IX) The Washington state hospital association;

15 (X) ~~((The Washington state forensic investigations council;~~

16 ~~(XI) A public institution of higher education as defined in RCW~~
17 ~~28B.10.016;~~

18 ~~(XII) A private higher education institution as defined in RCW~~
19 ~~28B.07.020; and~~

20 ~~(XIII))~~ The office of the attorney general; and

21 (XI) A sexual assault nurse examiner; and

22 (B) Two members representing survivors of sexual assault.

23 (b) ~~((The task force shall choose two cochairs from among its~~
24 ~~legislative membership. The legislative membership shall convene the~~
25 ~~initial meeting of the task force.))~~ The appointed membership of the
26 joint legislative task force on sexual assault forensic examination
27 best practices transfers to the advisory group administered by the
28 office of the attorney general pursuant to this section. However, the
29 prior cochairs of the joint legislative task force on sexual assault
30 forensic examination best practices may recommend that the attorney
31 general replace appointees who were inactive or otherwise absent from
32 previous meetings.

33 (2) The duties of the ~~((task force))~~ advisory group include, but
34 are not limited to:

35 (a) Researching and determining the number of untested sexual
36 assault ~~((examination))~~ kits in Washington state;

37 (b) Researching the locations where the untested sexual assault
38 ~~((examination))~~ kits are stored;

1 (c) Researching, reviewing, and making recommendations regarding
2 legislative policy options for reducing the number of untested sexual
3 assault (~~(examination)~~) kits;

4 (d) Researching the best practice models both in state and from
5 other states for collaborative responses to victims of sexual assault
6 from the point the sexual assault (~~(examination)~~) kit is collected to
7 the conclusion of the investigation and prosecution of a case, and
8 providing recommendations regarding any existing gaps in Washington
9 and resources that may be necessary to address those gaps; (~~and~~)

10 (e) Researching, identifying, and making recommendations for
11 securing nonstate funding for testing the sexual assault
12 (~~(examination)~~) kits, and reporting on progress made toward securing
13 such funding;

14 (f) Prior to the end of the moratorium under section 8 of this
15 act, developing policies and submitting recommendations on the
16 storage, retention, and destruction of unreported sexual assault kits
17 as well as protocols for engaging with survivors associated with
18 unreported sexual assault kits;

19 (g) Monitoring implementation of state and federal legislative
20 changes;

21 (h) Collaborating with the legislature, state agencies, medical
22 facilities, and local governments to implement reforms pursuant to
23 federal grant requirements; and

24 (i) Making recommendations for institutional reforms necessary to
25 prevent sexual assault and improve the experiences of sexual assault
26 survivors in the criminal justice system.

27 (3) The office of the attorney general shall administer and
28 provide staff support (~~(for the task force must be provided by the~~
29 ~~senate committee services and the house of representatives office of~~
30 ~~program research)) to the advisory group.~~

31 (4) Legislative members of the (~~(task force)~~) advisory group must
32 be reimbursed for travel expenses in accordance with RCW 44.04.120.
33 Nonlegislative members, except those representing an employer or
34 organization, are entitled to be reimbursed for travel expenses in
35 accordance with RCW 43.03.050 and 43.03.060.

36 (5) (~~The expenses of the task force must be paid jointly by the~~
37 ~~senate and the house of representatives. Task force meetings and~~
38 ~~expenditures are subject to approval by the senate facilities and~~
39 ~~operations committee and the house of representatives executive rules~~
40 ~~committee, or their successor committees.~~

1 ~~(6) The first meeting of the task force must occur prior to~~
2 ~~October 1, 2015. The task force shall submit a preliminary report~~
3 ~~regarding its initial findings and recommendations to the appropriate~~
4 ~~committees of the legislature and the governor no later than December~~
5 ~~1, 2015.~~

6 ~~(7) The task force)~~ The advisory group must meet no less than
7 twice annually.

8 ~~((8))~~ (6) The ~~((task force))~~ advisory group shall report its
9 findings and recommendations to the appropriate committees of the
10 legislature and the governor ~~((by September 30, 2016, and))~~ by
11 December 1st of ~~((the following))~~ each year.

12 ~~((9))~~ (7) This section expires ~~((June 30, 2019))~~ December 31,
13 2021.

14 **Sec. 2.** RCW 9A.04.080 and 2017 c 266 s 9, 2017 c 231 s 2, and
15 2017 c 125 s 1 are each reenacted and amended to read as follows:

16 (1) Prosecutions for criminal offenses shall not be commenced
17 after the periods prescribed in this section.

18 (a) The following offenses may be prosecuted at any time after
19 their commission:

20 (i) Murder;

21 (ii) Homicide by abuse;

22 (iii) Arson if a death results;

23 (iv) Vehicular homicide;

24 (v) Vehicular assault if a death results;

25 (vi) Hit-and-run injury-accident if a death results (RCW
26 46.52.020(4)).

27 (b) Except as provided in (c) of this subsection, the following
28 offenses shall not be prosecuted more than ten years after their
29 commission:

30 (i) Any felony committed by a public officer if the commission is
31 in connection with the duties of his or her office or constitutes a
32 breach of his or her public duty or a violation of the oath of
33 office;

34 (ii) Arson if no death results;

35 (iii) (A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is
36 reported to a law enforcement agency within one year of its
37 commission.

1 (B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported
2 within one year, the rape may not be prosecuted more than three years
3 after its commission;

4 (iv) Indecent liberties under RCW 9A.44.100(1)(b); (~~(e)~~)

5 (v) Attempted murder; or

6 (vi) Trafficking under RCW 9A.40.100.

7 (c) Violations of the following statutes, when committed against
8 a victim under the age of eighteen, may be prosecuted up to the
9 victim's thirtieth birthday: RCW 9A.44.040 (rape in the first
10 degree), 9A.44.050 (rape in the second degree), 9A.44.073 (rape of a
11 child in the first degree), 9A.44.076 (rape of a child in the second
12 degree), 9A.44.079 (rape of a child in the third degree), 9A.44.083
13 (child molestation in the first degree), 9A.44.086 (child molestation
14 in the second degree), 9A.44.089 (child molestation in the third
15 degree), 9A.44.100(1)(b) (indecent liberties), 9A.64.020 (incest), or
16 9.68A.040 (sexual exploitation of a minor).

17 (d) A violation of any offense listed in this subsection (1)(d)
18 may be prosecuted up to ten years after its commission or, if
19 committed against a victim under the age of eighteen, up to the
20 victim's thirtieth birthday, whichever is later:

21 (i) RCW 9.68A.100 (commercial sexual abuse of a minor);

22 (ii) RCW 9.68A.101 (promoting commercial sexual abuse of a
23 minor); or

24 (iii) RCW 9.68A.102 (promoting travel for commercial sexual abuse
25 of a minor).

26 (e) The following offenses shall not be prosecuted more than six
27 years after their commission or their discovery, whichever occurs
28 later:

29 (i) Violations of RCW 9A.82.060 or 9A.82.080;

30 (ii) Any felony violation of chapter 9A.83 RCW;

31 (iii) Any felony violation of chapter 9.35 RCW;

32 (iv) Theft in the first or second degree under chapter 9A.56 RCW
33 when accomplished by color or aid of deception;

34 (v) Theft from a vulnerable adult under RCW 9A.56.400; or

35 (vi) Trafficking in stolen property in the first or second degree
36 under chapter 9A.82 RCW in which the stolen property is a motor
37 vehicle or major component part of a motor vehicle as defined in RCW
38 46.80.010.

1 (f) The following offenses shall not be prosecuted more than five
2 years after their commission: Any class C felony under chapter 74.09,
3 82.36, or 82.38 RCW.

4 (g) Bigamy shall not be prosecuted more than three years after
5 the time specified in RCW 9A.64.010.

6 (h) A violation of RCW 9A.56.030 must not be prosecuted more than
7 three years after the discovery of the offense when the victim is a
8 tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

9 (i) No other felony may be prosecuted more than three years after
10 its commission; except that in a prosecution under RCW 9A.44.115, if
11 the person who was viewed, photographed, or filmed did not realize at
12 the time that he or she was being viewed, photographed, or filmed,
13 the prosecution must be commenced within two years of the time the
14 person who was viewed or in the photograph or film first learns that
15 he or she was viewed, photographed, or filmed.

16 (j) No gross misdemeanor may be prosecuted more than two years
17 after its commission.

18 (k) No misdemeanor may be prosecuted more than one year after its
19 commission.

20 (2) The periods of limitation prescribed in subsection (1) of
21 this section do not run during any time when the person charged is
22 not usually and publicly resident within this state.

23 (3) In any prosecution for a sex offense as defined in RCW
24 9.94A.030, the periods of limitation prescribed in subsection (1) of
25 this section run from the date of commission or (~~one~~) two years
26 from the date on which the identity of the suspect is conclusively
27 established by deoxyribonucleic acid testing or by photograph as
28 defined in RCW 9.68A.011, whichever is later.

29 (4) If, before the end of a period of limitation prescribed in
30 subsection (1) of this section, an indictment has been found or a
31 complaint or an information has been filed, and the indictment,
32 complaint, or information is set aside, then the period of limitation
33 is extended by a period equal to the length of time from the finding
34 or filing to the setting aside.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.09
36 RCW to read as follows:

37 (1) After January 1, 2022, the auditor shall conduct a
38 comprehensive performance audit of the statewide sexual assault
39 tracking system under RCW 43.43.545 and the operations of the

1 Washington state patrol crime laboratory with respect to processing
2 sexual assault kits. In addition to other measures established by the
3 auditor, the performance audit shall assess:

4 (a) Whether the Washington state patrol is operating the
5 statewide sexual assault kit tracking system in accordance with RCW
6 43.43.545 and best practices; and

7 (b) Whether the Washington state patrol crime laboratory has
8 taken actions consistent with best practices, chapter 70.125 RCW, and
9 related state budgetary requirements to address testing backlogs and
10 otherwise improve efficiency and efficacy of sexual assault kit
11 testing.

12 (2) The auditor shall complete the audit and publish a report
13 with its findings no later than December 31, 2022.

14 (3) This section expires July 1, 2023.

15 **Sec. 4.** RCW 43.43.545 and 2016 c 173 s 2 are each amended to
16 read as follows:

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

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

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

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

30 (c) Allow medical facilities performing sexual assault forensic
31 examinations, law enforcement agencies, prosecutors, the Washington
32 state patrol bureau of forensic laboratory services, and other
33 entities (~~in the~~) having custody of sexual assault kits to update
34 and track the status and location of sexual assault kits;

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

38 (~~(d)~~) (e) Use electronic technology or technologies allowing
39 continuous access.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (8) For the purposes of this section, an "unreported sexual
27 assault kit" refers to a sexual assault kit collected from a victim
28 who has consented to the collection of the sexual assault kit but who
29 has not reported the alleged crime to law enforcement.

30 **Sec. 5.** RCW 43.101.272 and 2017 c 290 s 3 are each amended to
31 read as follows:

32 (1) Subject to the availability of amounts appropriated for this
33 specific purpose, the commission shall provide ongoing specialized,
34 intensive, and integrative training for persons responsible for
35 investigating sexual assault cases involving adult victims. The
36 training must be based on a victim-centered, trauma-informed approach
37 to responding to sexual assault. Among other subjects, the training
38 must include content on the neurobiology of trauma and trauma-
39 informed interviewing, counseling, and investigative techniques.

1 (2) The training must: Be based on research-based practices and
2 standards; offer participants an opportunity to practice interview
3 skills and receive feedback from instructors; minimize the trauma of
4 all persons who are interviewed during abuse investigations; provide
5 methods of reducing the number of investigative interviews necessary
6 whenever possible; assure, to the extent possible, that investigative
7 interviews are thorough, objective, and complete; recognize needs of
8 special populations; recognize the nature and consequences of
9 victimization; require investigative interviews to be conducted in a
10 manner most likely to permit the interviewed persons the maximum
11 emotional comfort under the circumstances; address record retention
12 and retrieval; ~~((and))~~ address documentation of investigative
13 interviews; and educate investigators on the best practices for
14 notifying victims of the results of forensic analysis of sexual
15 assault kits and other significant events in the investigative
16 process, including for active investigations and cold cases.

17 (3) In developing the training, the commission shall seek advice
18 from the Washington association of sheriffs and police chiefs, the
19 Washington coalition of sexual assault programs, and experts on
20 sexual assault and the neurobiology of trauma. The commission shall
21 consult with the Washington association of prosecuting attorneys in
22 an effort to design training containing consistent elements for all
23 professionals engaged in interviewing and interacting with sexual
24 assault victims in the criminal justice system.

25 (4) The commission shall develop the training and begin offering
26 it by July 1, 2018. Officers assigned to regularly investigate sexual
27 assault involving adult victims shall complete the training within
28 one year of being assigned or by July 1, 2020, whichever is later.

29 **Sec. 6.** RCW 70.125.090 and 2015 c 247 s 1 are each amended to
30 read as follows:

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

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

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

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

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

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

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

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

20 (d) Postconviction cases; and

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

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

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

37 (5) Nothing in this section may be construed to create a private
38 right of action or claim on the part of any individual, entity, or
39 agency against any law enforcement agency or any contractor of any
40 law enforcement agency.

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

4 (7)(a) Until June 30, (~~2018~~) 2023, the Washington state patrol
5 shall compile the following information related to the sexual assault
6 (~~examination~~) kits identified in this section and section 7 of this
7 act:

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

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

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

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

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.125
22 RCW to read as follows:

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

35 (2) The Washington state patrol crime laboratory may consult with
36 local law enforcement agencies to coordinate the efficient submission
37 of requests for forensic analysis under this section in conjunction
38 with the implementation of the statewide tracking system under RCW
39 43.43.545, provided that all requests are submitted and all required

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

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

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

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

25 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.125
26 RCW to read as follows:

27 (1) Beginning on the effective date of this section, untested
28 sexual assault kits may not be disposed of or otherwise destroyed,
29 and must be adequately preserved for the purpose of forensic analysis
30 and potential use in criminal investigations.

31 (2) Except as provided in subsection (4) of this section,
32 unreported sexual assault kits collected prior to the effective date
33 of this section must be stored by the entity responsible for the
34 collection or its designee.

35 (3) Except as provided in subsection (4) of this section,
36 unreported sexual assault kits collected on or after the effective
37 date of this section must be transferred to and stored by the
38 Washington state patrol crime laboratory or its designee.

1 (4) In lieu of the storage requirements under subsection (2) or
2 (3) of this section, a collecting entity may enter into an agreement
3 with a local law enforcement agency or other third party for the
4 storage of unreported sexual assault kits.

5 (5) For the purposes of this section:

6 (a) "Unreported sexual assault kit" means a sexual assault kit
7 collected from a victim who has consented to the collection of the
8 sexual assault kit but who has not reported the alleged crime to law
9 enforcement.

10 (b) "Untested sexual assault kit" means a sexual assault kit that
11 has not been submitted for forensic analysis to a forensic laboratory
12 with combined DNA index system-eligible DNA methodologies. "Untested
13 sexual assault kits" include unreported sexual assault kits as well
14 as any untested sexual assault kits associated with a criminal report
15 or investigation.

16 (6) This section expires June 30, 2020.

17 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.125
18 RCW to read as follows:

19 (1) In addition to all other rights provided in law, a sexual
20 assault survivor has the right to:

21 (a) Receive a medical forensic examination at no cost;

22 (b) Consult with a sexual assault survivor's advocate during any
23 medical evidentiary examination and during any interview by law
24 enforcement officers, prosecuting attorneys, or defense attorneys,
25 unless an advocate cannot be summoned in a timely manner, and
26 regardless of whether a survivor has waived the right in a previous
27 examination or interview;

28 (c) Be informed, upon the request of a survivor, of when the
29 forensic analysis of his or her sexual assault kit and other related
30 physical evidence will be or was completed, the results of the
31 forensic analysis, and whether the analysis yielded a DNA profile and
32 match, provided that the disclosure is made at an appropriate time so
33 as to not impede or compromise an ongoing investigation;

34 (d) Receive notice prior to the destruction or disposal of his or
35 her sexual assault kit;

36 (e) Receive a copy of the police report related to the
37 investigation without charge; and

38 (f) Review his or her statement before law enforcement refers a
39 case to the prosecuting attorney.

1 (2) A sexual assault survivor retains all the rights of this
2 section regardless of whether the survivor agrees to participate in
3 the criminal justice system and regardless of whether the survivor
4 agrees to receive a forensic examination to collect evidence.

5 (3) If a survivor is denied any right enumerated in subsection
6 (1) of this section, he or she may seek an order directing compliance
7 by the relevant party or parties by filing a petition in the superior
8 court in the county in which the sexual assault occurred and
9 providing notice of such petition to the relevant party or parties.
10 Compliance with the right is the sole remedy available to the
11 survivor. The court shall expedite consideration of a petition filed
12 under this subsection.

13 (4) Nothing contained in this section may be construed to provide
14 grounds for error in favor of a criminal defendant in a criminal
15 proceeding. Except in the circumstances as provided in subsection (3)
16 of this section, this section does not grant a new cause of action or
17 remedy against the state, its political subdivisions, law enforcement
18 agencies, or prosecuting attorneys. The failure of a person to make a
19 reasonable effort to protect or adhere to the rights enumerated in
20 this section may not result in civil liability against that person.
21 This section does not limit other civil remedies or defenses of the
22 sexual assault survivor or the offender.

23 (5) For the purposes of this section:

24 (a) "Law enforcement officer" means a general authority
25 Washington peace officer, as defined in RCW 10.93.020, or any person
26 employed by a private police agency at a public school as described
27 in RCW 28A.150.010 or an institution of higher education, as defined
28 in RCW 28B.10.016.

29 (b) "Sexual assault survivor" means any person who is a victim,
30 as defined in RCW 7.69.020, of sexual assault. However, if a victim
31 is incapacitated, deceased, or a minor, sexual assault survivor also
32 includes any lawful representative of the victim, including a parent,
33 guardian, spouse, or other designated representative, unless the
34 person is an alleged perpetrator or suspect.

35 (c) "Sexual assault survivor's advocate" means any person who is
36 defined in RCW 5.60.060 as a sexual assault advocate, or a crime
37 victim advocate.

38 NEW SECTION. **Sec. 10.** Section 1 of this act is added to chapter
39 43.10 RCW.

1 NEW SECTION. **Sec. 11.** Sections 1, 2, and 8 of this act are
2 necessary for the immediate preservation of the public peace, health,
3 or safety, or support of the state government and its existing public
4 institutions, and take effect immediately.

5 NEW SECTION. **Sec. 12.** If specific funding for the purposes of
6 this act, referencing this act by bill or chapter number, is not
7 provided by June 30, 2019, in the omnibus appropriations act, this
8 act is null and void.

Passed by the House March 6, 2019.

Passed by the Senate April 11, 2019.

Approved by the Governor April 23, 2019.

Filed in Office of Secretary of State April 24, 2019.

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