

Title 5

EVIDENCE

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Chapter 5.24 RCW

UNIFORM JUDICIAL NOTICE OF FOREIGN LAWS ACT

Sections

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5.24.010 Judicial notice of Constitution and laws.

Every court of this state shall take judicial notice of the Con-

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stitution, common law, civil law, and statutes of every state, territory and other jurisdiction of the United States. [1941 c 82 § 1; Rem. Supp. 1941 § 1278.]

5.24.020 Manner of obtaining information. The court may inform itself of such laws in such manner as it may deem proper, and the court may call upon counsel to aid it in obtaining such information. [1941 c 82 § 2; Rem. Supp. 1941 § 1279.]

5.24.030 Determination by court—Review. The determination of such laws shall be made by the court and not by the jury and shall be reviewable. [1941 c 82 § 3; Rem. Supp. 1941 § 1280.]

5.24.040 Necessity of pleading foreign laws. This chapter shall not be construed to relieve any party of the duty of hereafter pleading such laws where required under the law and practice of this state. [1981 c 331 § 14; 1941 c 82 § 4; Rem. Supp. 1941 § 1281.]

Court Congestion Reduction Act of 1981—Purpose—Severability—1981 c 331: See notes following RCW 2.32.070.

5.24.050 Jurisdictions excepted. The law of any jurisdiction other than a state, territory or other jurisdiction of the United States shall be an issue for the court, but shall not be subject to the foregoing provisions concerning judicial notice. [1941 c 82 § 5; Rem. Supp. 1941 § 1282.]

5.24.060 Construction of chapter. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1941 c 82 § 6; Rem. Supp. 1941 § 1283.]

5.24.070 Short title. This chapter may be cited as the "Uniform Judicial Notice of Foreign Laws Act." [1941 c 82 § 7; Rem. Supp. 1941 § 1284.]

Chapter 5.28 RCW

OATHS AND AFFIRMATIONS

Sections

- 5.28.010 Who may administer.
- 5.28.020 How administered.
- 5.28.030 Form may be varied.
- 5.28.040 Form may be adapted to religious belief.
- 5.28.050 Form of affirmation.
- 5.28.060 Affirmation equivalent to oath.

Rules of court: Cf. ER 603; CR 43(d).

Oaths and mode of administering: State Constitution Art. 1 § 6.

5.28.010 Who may administer. Every court, judge, clerk of a court, state-certified court reporter, or notary public, is authorized to take testimony in any action, suit or proceeding, and such other persons in particular cases as autho-

alized by law. Every such court or officer is authorized to collect fees established under RCW 36.18.020 and 36.18.012 through 36.18.018 and to administer oaths and affirmations generally and to every such other person in such particular case as authorized. [2010 c 98 § 1; 1995 c 292 § 1; 1987 c 202 § 124; 2 H. C. § 1693; 1869 p 378 § 1; RRS § 1264.]

Intent—1987 c 202: See note following RCW 2.04.190.

Oath of witness in superior court to be administered by judge: Rules of court: Cf. CR 43(d).

Powers of courts, judicial officers to administer oaths: RCW 2.28.010, 2.28.060.

5.28.020 How administered. An oath may be administered as follows: The person who swears holds up his or her hand, while the person administering the oath thus addresses him or her: "You do solemnly swear that the evidence you shall give in the issue (or matter) now pending between and shall be the truth, the whole truth, and nothing but the truth, so help you God." If the oath be administered to any other than a witness giving testimony, the form may be changed to: "You do solemnly swear you will true answers make to such questions as you may be asked," etc. [2011 c 336 § 132; 2 H. C. § 1694; 1869 p 378 § 2; RRS § 1265.]

5.28.030 Form may be varied. Whenever the court or officer before which a person is offered as a witness is satisfied that he or she has a peculiar mode of swearing connected with or in addition to the usual form of administration, which, in witness' opinion, is more solemn or obligatory, the court or officer may, in its discretion, adopt that mode. [2011 c 336 § 133; 2 H. C. § 1695; 1869 p 379 § 3; RRS § 1266.]

5.28.040 Form may be adapted to religious belief. When a person is sworn who believes in any other than the Christian religion, he or she may be sworn according to the peculiar ceremonies of his or her religion, if there be any such. [2011 c 336 § 134; 2 H. C. § 1696; 1869 p 379 § 4; RRS § 1267.]

5.28.050 Form of affirmation. Any person who has conscientious scruples against taking an oath, may make his or her solemn affirmation, by assenting, when addressed, in the following manner: "You do solemnly affirm that," etc., as in RCW 5.28.020. [2011 c 336 § 135; 2 H. C. § 1697; 1869 p 379 § 5; RRS § 1268.]

5.28.060 Affirmation equivalent to oath. Whenever an oath is required, an affirmation, as prescribed in RCW 5.28.050 is to be deemed equivalent thereto, and a false affirmation is to be deemed perjury, equally with a false oath. [2 H. C. § 1698; 1869 p 379 § 6; RRS § 1269.]

Perjury: Chapter 9A.72 RCW.

Chapter 5.40 RCW

PROOF—GENERAL PROVISIONS

Sections

5.40.010	Pleadings do not constitute proof.
5.40.020	Written finding of presumed death as prima facie evidence.
5.40.030	Proof of missing in action, capture by enemy, etc.
5.40.040	Proof of authenticity of signature to report or of certification.

5.40.050 Breach of duty—Evidence of negligence—Negligence per se.
5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug.

Public documents, records and publications: Title 40 RCW.

Stolen property as evidence: RCW 9.54.130.

Tampering with physical evidence: RCW 9A.72.150.

5.40.010 Pleadings do not constitute proof. Pleadings sworn to by either party in any case shall not, on the trial, be deemed proof of the facts alleged therein, nor require other or greater proof on the part of the adverse party. [Code 1881 § 741; 1877 p 151 § 746; 1854 p 219 § 484; RRS § 283.]

5.40.020 Written finding of presumed death as prima facie evidence. A written finding of presumed death, made by the secretary of war, the secretary of the navy, or other officer or employee of the United States authorized to make such finding, pursuant to the federal missing persons act (56 Stat. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; U.S.C. App. Supp. 1001-17), as now or hereafter amended, or a duly certified copy of such finding, shall be received in any court, office, or other place in this state as prima facie evidence of the death of the person therein found to be dead, and the date, circumstances, and place of his or her disappearance. [2011 c 336 § 136; 1945 c 101 § 1; Rem. Supp. 1945 § 1257-1.]

Additional notes found at www.leg.wa.gov

5.40.030 Proof of missing in action, capture by enemy, etc. An official written report or record, or duly certified copy thereof, that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by any officer or employee of the United States authorized by the act referred to in RCW 5.40.020 or by any other law of the United States to make same, shall be received in any court, office or other place in this state as prima facie evidence that such person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, as the case may be. [1945 c 101 § 2; Rem. Supp. 1945 § 1257-2.]

5.40.040 Proof of authenticity of signature to report or of certification. For the purposes of RCW 5.40.020 and 5.40.030 any finding, report or record, or duly certified copy thereof, purporting to have been signed by such an officer or employee of the United States as is described in said sections, shall prima facie be deemed to have been signed and issued by such an officer or employee pursuant to law, and the person signing same shall prima facie be deemed to have acted within the scope of his or her authority. If a copy purports to have been certified by a person authorized by law to certify the same, such certified copy shall be prima facie evidence of his or her authority so to certify. [2011 c 336 § 137; 1945 c 101 § 3; Rem. Supp. 1945 § 1257-3.]

5.40.050 Breach of duty—Evidence of negligence—Negligence per se. A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to:

(1) Electrical fire safety, (2) the use of smoke alarms, (3) sterilization of needles and instruments used by persons engaged in the practice of body art, body piercing, tattooing, or electrology, or other precaution against the spread of disease, as required under RCW 70.54.350, or (4) driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se. [2009 c 412 § 20; 2001 c 194 § 5; 1986 c 305 § 901.]

Definition of body art, body piercing, and tattooing: RCW 18.300.010.

Additional notes found at www.leg.wa.gov

5.40.060 Defense to personal injury or wrongful death action—Intoxicating liquor or any drug. (1) Except as provided in subsection (2) of this section, it is a complete defense to an action for damages for personal injury or wrongful death that the person injured or killed was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and that such condition was a proximate cause of the injury or death and the trier of fact finds such person to have been more than fifty percent at fault. The standard for determining whether a person was under the influence of intoxicating liquor or drugs shall be the same standard established for criminal convictions under RCW 46.61.502, and evidence that a person was under the influence of intoxicating liquor or drugs under the standard established by RCW 46.61.502 shall be conclusive proof that such person was under the influence of intoxicating liquor or drugs.

(2) In an action for damages for personal injury or wrongful death that is brought against the driver of a motor vehicle who was under the influence of intoxicating liquor or any drug at the time of the occurrence causing the injury or death and whose condition was a proximate cause of the injury or death, subsection (1) of this section does not create a defense against the action notwithstanding that the person injured or killed was also under the influence so long as such person's condition was not a proximate cause of the occurrence causing the injury or death. [1994 c 275 § 30; 1987 c 212 § 1001; 1986 c 305 § 902.]

Additional notes found at www.leg.wa.gov

Chapter 5.44 RCW

PROOF—PUBLIC DOCUMENTS

Sections

5.44.010	Court records and proceedings—When admissible.
5.44.020	Foreign judgments for debt—Faith to be accorded.
5.44.030	Defenses available in suit on foreign judgment.
5.44.040	Certified copies of public records as evidence.
5.44.050	Foreign statutes as evidence.
5.44.060	Certified copies of recorded instruments as evidence.
5.44.070	Certified copies of instruments, or transcripts of county commissioners' proceedings.
5.44.080	City or town ordinances as evidence.
5.44.090	Copy of instrument restoring civil rights as evidence.
5.44.130	Seal, how affixed.
5.44.140	Proceedings for determination of family relationships—Presumption.
5.44.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.

Rules of court: Cf. ER 803; ER 901; ER 902; ER 1005; CR 44.

5.44.010 Court records and proceedings—When admissible. The records and proceedings of any court of the (2021 Ed.)

United States, or any state or territory, or any federally recognized Indian tribe, are admissible in evidence in all cases in this state when duly certified by the attestation of the clerk, prothonotary or other officer having charge of the records of such court, with the seal of such court annexed. [2019 c 39 § 1; 1997 c 358 § 7; Code 1881 § 430; 1877 p 94 § 432; 1869 p 115 § 426; 1854 p 195 § 334; RRS § 1254.]

Rules of court: Cf. CR 44(a)(1).

5.44.020 Foreign judgments for debt—Faith to be accorded. Judgment for debt rendered in any other state or any territory against any person or persons residents of this state at the time of the rendition of such judgment, shall not be of any higher character as evidence of indebtedness than the original claim or demand upon which such judgment is rendered, unless such judgment shall be rendered upon personal service of summons, notice or other due process against the defendant therein. [1891 c 31 § 1; Code 1881 § 739; 1877 p 150 § 744; 1869 p 171 § 681; 1866 p 88 § 1; RRS § 1255.]

Rules of court: Cf. CR 44(a)(2).

Uniform enforcement of foreign judgments act: Chapter 6.36 RCW.

5.44.030 Defenses available in suit on foreign judgment. The same defense to suits on judgments rendered without such personal service may be made by the judgment debtor, which might have been set up in the original proceeding. [Code 1881 § 740; 1877 p 150 § 745; 1869 p 171 § 682; 1866 p 88 § 2; RRS § 1256.]

5.44.040 Certified copies of public records as evidence. Copies of all records and documents on record or on file in the offices of the various departments of the United States and of this state or any other state or territory of the United States or any federally recognized Indian tribe, when duly certified by the respective officers having by law the custody thereof, under their respective seals where such officers have official seals, must be admitted in evidence in the courts of this state. [2019 c 39 § 2; 1991 c 59 § 1; 1891 c 19 § 16; Code 1881 § 432; 1854 p 195 § 336; RRS § 1257.]

Rules of court: Cf. ER 803; CR 44(a)(1).

5.44.050 Foreign statutes as evidence. Printed copies of the statute laws of any state, territory, foreign government, or federally recognized Indian tribe[,] if purporting to have been published under the authority of the respective governments, or if commonly admitted and read as evidence in their courts, must be admitted in all courts in this state, and on all other occasions as presumptive evidence of such laws. [2019 c 39 § 3; Code 1881 § 435; 1877 p 95 § 437; 1869 p 116 § 431; 1854 p 196 § 339; RRS § 1259.]

Uniform judicial notice of foreign laws act: Chapter 5.24 RCW.

5.44.060 Certified copies of recorded instruments as evidence. Whenever any deed, conveyance, bond, mortgage or other writing, shall have been recorded or filed in pursuance of law, copies of record of such deed, conveyance, bond or other writing, duly certified by the officer having the lawful custody thereof, with the seal of the office annexed, if there be such seal, if there be no such seal, then with the official certificate of such officer, shall be received in evidence to all intents and purposes as the originals themselves. [Code

1881 § 431; 1877 p 95 § 433; 1869 p 115 § 427; 1854 p 195 § 335; RRS § 1260.]

Deeds as evidence: RCW 84.64.180, 84.64.190.

Instruments to be recorded or filed: RCW 65.04.030.

Record of will as evidence: RCW 11.20.060.

5.44.070 Certified copies of instruments, or transcripts of county commissioners' proceedings. Copies of all deeds or other instruments of writing, maps, documents and papers which by law are to be filed or recorded in the office of said county auditor, and all transcripts or exemplifications of the records of the proceedings of the board of county commissioners certified by said auditor under official seal, shall be admitted as prima facie evidence in all the courts of this state. [Code 1881 § 2737; 1869 p 315 § 27; RRS § 10612.]

Certified copy of plat as evidence: RCW 58.10.020.

Legislative authority proceedings to be published: RCW 36.22.020.

5.44.080 City or town ordinances as evidence. All ordinances passed by the legislative body of any city or town shall be recorded in a book to be kept for that purpose by the city or town clerk, and when so recorded the record thereof so made shall be received in any court of the state as prima facie evidence of the due passage of such ordinance as recorded. When the ordinances of any city or town are printed by authority of such municipal corporation, the printed copies thereof shall be received as prima facie evidence that such ordinances as printed and published were duly passed. [1955 c 6 § 1; Code 1881 § 2062; RRS § 1260 1/2.]

5.44.090 Copy of instrument restoring civil rights as evidence. The secretary of state and the clerk of the superior court, shall, upon demand and the payment of the fee required by law, issue a certified copy of any such instrument restoring civil rights filed in their respective offices, and every such certified copy shall be received in evidence as proof of the fact therein stated, in any court and by all election officers. [1931 c 19 § 4; 1929 c 26 § 5; RRS § 10253.]

Restoration of civil rights: Chapter 9.96 RCW.

5.44.130 Seal, how affixed. A seal of court or public office, when required to any writ, process, or proceeding to authenticate a copy of any record or document, may be affixed by making an inked, printed, or embossed impression directly on the document and shall be considered valid. [2006 c 198 § 1; Code 1881 § 434; 1877 p 95 § 436; 1869 p 116 § 430; 1854 p 196 § 338; RRS § 1258.]

Private seals abolished: RCW 64.04.090.

Seals of courts and municipalities: State Constitution Art. 27 § 9.

Superior court seal: RCW 2.08.050.

Supreme court seal: **Rules of court:** SAR 1.

Telegraphic message, description of seal: RCW 5.52.060.

5.44.140 Proceedings for determination of family relationships—Presumption. In any proceeding regarding the determination of a family relationship, including but not limited to the parent and child relationship and the marriage relationship, a determination of family relationships regarding any person or persons who immigrated to the United

States from a foreign country which was made or accepted by the United States citizenship and immigration services at the time of that person or persons' entry into the United States creates a rebuttable presumption that the determination is valid and that the family relationship under foreign law is as made or accepted at the time of entry. Except as provided in RCW 26.26A.115(2), the presumption may be overcome by a preponderance of evidence showing that a living person other than the person named by the United States citizenship and immigration services is in the relationship in question. [2019 c 46 § 5002; 2002 c 302 § 701; 1990 c 175 § 1.]

5.44.900 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 § 12.]

Chapter 5.45 RCW

UNIFORM BUSINESS RECORDS AS EVIDENCE ACT

Sections

5.45.010	"Business" defined.
5.45.020	Business records as evidence.
5.45.900	Construction—1947 c 53.
5.45.910	Short title.

Rules of court: ER 803.

5.45.010 "Business" defined. The term "business" shall include every kind of business, profession, occupation, calling or operation of institutions, whether carried on for profit or not. [1947 c 53 § 1; Rem. Supp. 1947 § 1263-1. Formerly RCW 5.44.100.]

5.45.020 Business records as evidence. A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission. [1947 c 53 § 2; Rem. Supp. 1947 § 1263-2. Formerly RCW 5.44.110.]

5.45.900 Construction—1947 c 53. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1947 c 53 § 3; Rem. Supp. 1947 § 1263-3. Formerly RCW 5.44.120.]

5.45.910 Short title. This chapter may be cited as The Uniform Business Records as Evidence Act. [1947 c 53 § 4; Rem. Supp. 1947 § 1263-4.]

Chapter 5.46 RCW

UNIFORM PHOTOGRAPHIC COPIES OF BUSINESS AND PUBLIC RECORDS AS EVIDENCE ACT

Sections

5.46.010	Copies of business and public records as evidence.
5.46.900	Construction—1953 c 273.
5.46.910	Short title.
5.46.920	Repeal of inconsistent provisions.

5.46.010 Copies of business and public records as evidence. If any business, institution, member of a profession or calling or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination thereof, of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, optical imaging, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless the same is an asset or is representative of title to an asset held in a custodial or fiduciary capacity or unless its preservation is required by law. Such reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. [1994 c 19 § 1; 1959 c 125 § 1; 1953 c 273 § 1. Formerly RCW 5.44.125.]

Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

5.46.900 Construction—1953 c 273. This chapter shall be so interpreted and construed as to effectuate its general purpose of making uniform the law of those states which enact it. [1953 c 273 § 2.]

5.46.910 Short title. This chapter may be cited as the "Uniform Photographic Copies of Business and Public Records as Evidence Act." [1953 c 273 § 3.]

5.46.920 Repeal of inconsistent provisions. All acts or parts of acts which are inconsistent with the provisions of this act are repealed. [1953 c 273 § 4.]

Chapter 5.48 RCW

PROOF—REPLACEMENT OF LOST RECORDS

Sections

5.48.010	Substitution of copy authorized.
5.48.020	Methods to replace lost court records.
5.48.030	Action to replace—Procedure.
5.48.040	Hearing on application—Evidence.
5.48.050	Time for appeal extended.

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5.48.051	Costs to be taxed.
5.48.060	Replacement of lost or destroyed probate records.
5.48.070	Costs—Payment of.

Records and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.

5.48.010 Substitution of copy authorized. Whenever a pleading, process, return, verdict, bill of exceptions, order, entry, stipulation or other act, file or proceeding in any action or proceeding pending in any court of this state shall have been lost or destroyed by fire or otherwise, or is withheld by any person, such court may, upon the application of any party to such action or proceeding, order a copy or substantial copy thereof to be substituted. [1890 p 337 § 1; RRS § 1270.]

5.48.020 Methods to replace lost court records. Whenever the record required by law of the proceedings, judgment or decree in any action or other proceeding of any court in this state in which a final judgment has been rendered, or any part thereof, is lost or destroyed by fire or otherwise, such court may, upon the application of any party interested therein, grant an order authorizing such record or parts thereof to be supplied or replaced—

(1) by a certified copy of such original record, or part thereof, when the same can be obtained;

(2) by a duly certified copy of the record in the supreme court or court of appeals of such original record of any action or proceeding that may have been removed to the supreme court or court of appeals and remains recorded or filed in said courts;

(3) by the original pleadings, entries, papers and files in such action or proceeding when the same can be obtained;

(4) by an agreement in writing signed by all the parties to such action or proceeding, their representatives or attorneys, that a substituted copy of such original record is substantially correct. [1971 c 81 § 25; 1890 p 338 § 2; RRS § 1271.]

5.48.030 Action to replace—Procedure. Whenever the record required by law, or any part thereof, of the proceedings or judgment or decree in any action or other proceeding of any court in this state in which the final judgment has been rendered, is lost or destroyed by fire or otherwise, and such loss cannot be supplied or replaced as provided in RCW 5.48.020, any person or party interested therein may make a written application to the court to which said record belongs, setting forth the substance of the record so lost or destroyed, which application shall be verified in the manner provided for the verification of pleadings in a civil action, and thereupon summons shall issue and actual service, or service by publication, shall be made upon all persons interested in or affected by said original judgment or final entry in the manner provided by law for the commencement of civil actions, provided the parties may waive the issuing or service of summons and enter their appearance to such application; and upon the hearing of such application without further pleadings, if the court finds that such record has been lost or destroyed and that it is enabled by the evidence produced to find the substance or effect thereof material to the preservation of the rights of the parties thereto, it shall make an order allowing a record, which record shall recite the substance and effect of said lost or destroyed record, or part thereof, and the same shall thereupon be recorded in said court, and shall have

the same effect as the original record would have if the same had not been lost or destroyed, so far as it concerns the rights of the parties so making the application, or persons or parties so served with summons, or entering their appearance, or persons claiming under them by a title acquired subsequently to the filing of the application. [1890 p 338 § 3; RRS § 1272.]

5.48.040 Hearing on application—Evidence. Upon the hearing of the application provided in RCW 5.48.030, the court may admit in evidence oral testimony and any complete or partial abstract of such record, docket entries or indices, and any other written evidence of the contents or effect of such records and published reports concerning such actions or proceedings, when the court is of opinion that such abstracts, writings and publications were fairly and honestly made before the loss of such records occurred. [1890 p 339 § 4; RRS § 1273.]

5.48.050 Time for appeal extended. Whenever a lost or destroyed judgment or order is one to which either party has a right to a proceeding in error or of appeal, the time intervening between the filing of the application mentioned in RCW 5.48.030 and the final order of the court thereon shall be excluded in computing the time within which such proceeding or appeal may be taken as provided by law. [1890 p 339 § 5; RRS § 1274.]

Rules of court: *Cf. RAP 5.2, 18.22.*

5.48.051 Costs to be taxed. The costs to be taxed, upon an application to restore a lost or destroyed record, shall be the same as are provided for like service in civil actions, and may be adjudged against either or any party to such proceeding or application, or may, in the discretion of the court, be apportioned between such parties. [1890 p 339 § 6; RRS § 1275. Formerly RCW 5.48.070, part.]

5.48.060 Replacement of lost or destroyed probate records. In case of the loss or destruction by fire or otherwise of the records, or any part thereof, of any probate court or superior court having probate jurisdiction, the judge of any such court may proceed, upon its own motion, or upon application in writing of any party in interest, to restore the records, papers, and proceedings of either of said courts relating to the estates of deceased persons, including recorded wills, wills probated, or filed for probate in such courts, all marriage records and all other records and proceedings, and for the purpose of restoring said records, wills, papers, or proceedings, or any part thereof, may cause citations or other process to be issued to any and all parties to be designated by him or her, and may compel the attendance in court of any and all witnesses whose testimony may be necessary to the establishment of any such record or part thereof, and the production of any and all written or documentary evidence which may be by him or her deemed necessary in determining the true import and effect of the original records, will, paper, or other document belonging to the files of said courts; and may make such orders and decrees establishing such original record, will, paper, document or proceeding, or the substance thereof, as to him or her shall seem just and proper. [2011 c 336 § 138; 1957 c 9 § 5; 1890 p 340 § 7; RRS § 1276.]

Reviser's note: Jurisdiction in probate matters now vested in superior courts, see state Constitution Art. 4 § 6 (Amendment 28) and Art. 27 § 10.

5.48.070 Costs—Payment of. The costs incurred in the probate and superior courts in proceedings under RCW 5.48.051 and 5.48.060 shall be paid by the party or parties interested in such proceedings, or in whose behalf such proceedings are instituted. [1890 p 340 § 8; RRS § 1277. FORMER PART OF SECTION: 1890 p 339 § 6; RRS § 1275, now codified as RCW 5.48.051.]

Reviser's note: See note following RCW 5.48.060.

Chapter 5.50 RCW

UNIFORM UNSWORN DECLARATIONS ACT

(Formerly: Uniform unsworn foreign declarations act)

Sections

5.50.010	Definitions.
5.50.020	Applicability.
5.50.030	Validity of unsworn declaration—Exceptions.
5.50.040	Medium required for presentation of unsworn declaration.
5.50.050	Form.
5.50.060	Relation to electronic signatures in global and national commerce act.
5.50.900	Short title.
5.50.901	Uniformity of application and construction.

5.50.010 Definitions.

In this chapter:

(1) "Law" includes a statute, judicial decision or order, rule of court, executive order, and administrative rule, regulation, or order.

(2) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(3) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol;

(b) To attach to or logically associate with the record an electronic symbol, sound, or process;

(c) To affix or place the declarant's signature as defined in RCW 9A.04.110 on the record;

(d) To affix or logically associate the declarant's signature in the manner described in general rule 30 to the record if he or she is a licensed attorney; or

(e) To affix or logically associate the declarant's full name, department or agency, and badge or personnel number to any record that is electronically submitted to a court, a prosecutor, or a magistrate from an electronic device that is owned, issued, or maintained by a criminal justice agency if the declarant is a law enforcement officer.

(4) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(5) "Unsworn declaration" means a declaration in a signed record not given under oath but given under penalty of perjury. The term includes an unsworn statement, verification, and certificate. [2020 c 57 § 22; 2019 c 232 § 1; 2011 c 22 § 2.]

5.50.020 Applicability. This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located within or outside the boundaries of the United States, whether or not the location is

subject to the jurisdiction of the United States. [2019 c 232 § 2; 2011 c 22 § 3.]

5.50.030 Validity of unsworn declaration—Exceptions. (1) Except as otherwise provided in subsection (2) of this section, if a law of this state requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.

(2) This chapter does not apply to:

- (a) A deposition;
- (b) An oath of office;
- (c) An oath required to be given before a specified official other than a notary public; or
- (d) A declaration to be recorded pursuant to Title 64 or 65 RCW. [2020 c 57 § 23; 2011 c 22 § 4.]

5.50.040 Medium required for presentation of unsworn declaration. If a law of this state requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium. [2011 c 22 § 5.]

5.50.050 Form. An unsworn declaration under this chapter must be in substantially the following form:

I declare under penalty of perjury under the law of Washington that the foregoing is true and correct.

Signed on the day of, ,
(date) (month) (year)

at
(city or other location, and state or country)

.
(printed name)

.
(signature) [2019 c 232 § 3; 2011 c 22 § 6.]

5.50.060 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2011 c 22 § 8.]

5.50.900 Short title. This chapter may be cited as the uniform unsworn declarations act. [2019 c 232 § 4; 2011 c 22 § 1.]

5.50.901 Uniformity of application and construction. In applying and construing this uniform act and chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2019 c 232 § 5; 2011 c 22 § 7.]

(2021 Ed.)

**Chapter 5.51 RCW
UNIFORM INTERSTATE DEPOSITIONS AND
DISCOVERY ACT**

Sections

5.51.010	Definitions.
5.51.020	Issuance of subpoena.
5.51.030	Service of subpoena.
5.51.040	Subpoenas—Deposition, production, and inspection.
5.51.050	Protective order—Application to court.
5.51.900	Short title.
5.51.901	Uniformity of application and construction.
5.51.902	Application to pending actions.

5.51.010 Definitions. In this chapter:

- (1) "Foreign jurisdiction" means a state other than Washington state.
- (2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
- (3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:
 - (a) Attend and give testimony at a deposition;
 - (b) Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
 - (c) Permit inspection of premises under the control of the person. [2012 c 95 § 2.]

5.51.020 Issuance of subpoena. (1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of Washington state.

(2) When a party submits a foreign subpoena to a clerk of court in this state, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena under subsection (2) of this section must:

- (a) Incorporate the terms used in the foreign subpoena; and
- (b) Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel. [2012 c 95 § 3.]

5.51.030 Service of subpoena. A subpoena issued by a clerk of court under RCW 5.51.020 must be served in compliance with superior court civil rule (CR) 45. [2012 c 95 § 4.]

5.51.040 Subpoenas—Deposition, production, and inspection. Superior court civil rules (CR) 26 through 37

apply to subpoenas issued under RCW 5.51.020. [2012 c 95 § 5.]

5.51.050 Protective order—Application to court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under RCW 5.51.020 must comply with the rules or statutes of Washington state and be submitted to the court in the county in which discovery is to be conducted. [2012 c 95 § 6.]

5.51.900 Short title. This act [chapter] may be known and cited as the uniform interstate depositions and discovery act. [2012 c 95 § 1.]

5.51.901 Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact this chapter. [2012 c 95 § 7.]

5.51.902 Application to pending actions. This chapter applies to requests for discovery in cases pending on June 7, 2012. [2012 c 95 § 8.]

Chapter 5.52 RCW

TELEGRAPHIC COMMUNICATIONS

Sections

5.52.010	Deemed communications in writing.
5.52.020	Notice by telegraph deemed actual notice.
5.52.030	Instrument transmitted by telegraph—Effect.
5.52.040	Bills and notes drawn by telegraph—Effect.
5.52.050	Electronic copies as evidence.
5.52.060	Seal and revenue stamp, how described.
5.52.070	"Telegraphic copy" or "telegraphic duplicate" defined.

Rules of court: Cf. CR 9(h).

Arrest by telegraph—Validity of telegraphic copy: RCW 10.31.060.

Divulging telegraph message: RCW 9.73.010.

False message as forgery: RCW 9A.60.020.

Interference with communication or its facilities: RCW 9A.48.070, 9A.48.080.

Tampering with telegraph message: RCW 9A.48.070, 9A.48.080.

Telecommunications companies: Chapter 80.36 RCW; state Constitution Art. 12 § 19.

5.52.010 Deemed communications in writing. Contracts made by telegraph shall be deemed to be contracts in writing; and all communications sent by telegraph and signed by the person or persons sending the same, or by his, her, or their authority, shall be held and deemed to be communications in writing. [2011 c 336 § 139; Code 1881 § 2352; 1865 p 74 § 11; RRS § 11345.]

5.52.020 Notice by telegraph deemed actual notice. Whenever any notice, information, or intelligence, written or otherwise, is required to be given, the same may be given by telegraph: PROVIDED, That the dispatch containing the same be delivered to the person entitled thereto, or to his or her agent or attorney. Notice by telegraph shall be deemed actual notice. [2011 c 336 § 140; Code 1881 § 2353; 1865 p 74 § 12; RRS § 11346.]

5.52.030 Instrument transmitted by telegraph—Effect. Any power of attorney, or other instrument in writing, duly proved or acknowledged, and certified so as to be entitled to record may, together with the certificate of its proof or acknowledgment, be sent by telegraph, and telegraphic copy, or duplicate thereof, shall, prima facie, have the same force and effect, in all respects, and may be admitted to record and recorded in the same manner and with like effect as the original. [Code 1881 § 2354; 1865 p 74 § 13; RRS § 11347.]

5.52.040 Bills and notes drawn by telegraph—Effect. Checks, due bills, promissory notes, bills of exchange and all orders or agreements for the payment or delivery of money, or other thing of value, may be made or drawn by telegraph, and when so made or drawn, shall have the same force and effect to charge the maker, drawer, indorser or acceptor thereof, and shall create the same rights and equities in favor of the payee, drawer [drawee], indorser [indorsee], acceptor, holder or bearer thereof, and shall be entitled to the same days of grace as if duly made or drawn and delivered in writing; but it shall not be lawful for any person other than the person or drawer thereof, to cause any such instrument to be sent by telegraph, so as to charge any person thereby, except as in RCW 5.52.050 otherwise provided. Whenever the genuineness or execution of any such instrument received by telegraph shall be denied on oath, by or on behalf of the person sought to be charged thereby, it shall be incumbent upon the party claiming under or alleging the same, to prove the existence and execution of the original writing from which the telegraph copy or duplicate was transmitted. The original message shall in all cases be preserved in the telegraph office from which the same is sent. [Code 1881 § 2355; 1865 p 74 § 14; RRS § 11348.]

5.52.050 Electronic copies as evidence. Except as otherwise provided in this chapter, any instrument in writing, duly certified, under his or her hand and official seal, by a notary public, commissioner of deeds, or clerk of a court of record, to be genuine, within the personal knowledge of such officer, may, together with such certificate, be sent by telegraph or other electronic transmission and the telegraphic or other electronic transmission copy thereof shall, prima facie, only have the same force, effect and validity, in all respects whatsoever as the original, and the burden of proof shall rest with the party denying the genuineness, or due execution of the original. [2006 c 198 § 2; Code 1881 § 2356; 1865 p 75 § 15; RRS § 11349.]

5.52.060 Seal and revenue stamp, how described. Whenever any document to be sent by telegraph bears a seal, either private or official, it shall not be necessary for the operator in sending the same, to telegraph a description of the seal, or any words or device thereon, but the same may be expressed in the telegraphic copy by the letters "L.S.," or by the word "seal," and whenever any document bears a revenue stamp, it shall be sufficient to express the same in the telegraphic copy, by the word "stamp," without any other or further description thereof. [Code 1881 § 2359; 1865 p 76 § 18; RRS § 11350.]

Seal, how affixed: RCW 5.44.130.

5.52.070 "Telegraphic copy" or "telegraphic duplicate" defined. The term "telegraphic copy," or "telegraphic duplicate," whenever used in this chapter, shall be construed to mean any copy of a message, made or prepared for delivery at the office to which said message may have been sent by telegraph. [Code 1881 § 2362; 1865 p 77 § 21; RRS § 11351.]

Chapter 5.56 RCW

WITNESSES—COMPELLING ATTENDANCE

Sections

5.56.010	When witnesses must attend—Fees and allowances.
5.56.050	Person in court required to testify.
5.56.060	Result of failure to attend.
5.56.061	Failure to attend considered contempt of court.
5.56.070	Attachment of witness.
5.56.080	To whom attachment directed—Execution.
5.56.090	Testimony of prisoner, how obtained.
5.56.100	Affidavit to procure order.

Tampering with witness: RCW 9A.72.120.

5.56.010 When witnesses must attend—Fees and allowances. Any person may be compelled to attend as a witness before any court of record, judge, commissioner, or referee, in any civil action or proceeding in this state. No such person shall be compelled to attend as a witness in any civil action or proceeding unless the fees be paid or tendered him or her which are allowed by law for one day's attendance as a witness and for traveling to and returning from the place where he or she is required to attend, together with any allowance for meals and lodging theretofore fixed as specified herein: PROVIDED, That such fees be demanded by any witness residing within the same county where such court of record, judge, commissioner, or referee is located, or within twenty miles of the place where such court is located, at the time of service of the subpoena: PROVIDED FURTHER, That a party desiring the attendance of a witness residing outside of the county in which such action or proceeding is pending, or more than twenty miles of the place where such court is located, shall apply ex parte to such court, or to the judge, commissioner, referee, or clerk thereof, who, if such application be granted and a subpoena issued, shall fix without notice an allowance for meals and lodging, if any to be allowed, together with necessary travel expenses, and the amounts so fixed shall be endorsed upon the subpoena and tendered to such witness at the time of the service of the subpoena: PROVIDED FURTHER, That the court shall fix and allow at or after trial such additional amounts for meals, lodging, and travel as it may deem reasonable for the attendance of such witness. [2011 c 336 § 141; 1963 c 19 § 1; 1891 c 19 § 2; Code 1881 § 393; 1877 p 87 § 395; 1869 p 104 § 388; 1863 p 156 § 69; 1854 p 187 § 295; RRS § 1215.]

Rules of court: *Cf. CR 4(f).*

District court, attachment, damages for nonappearance: RCW 12.16.030, 12.16.050.

Power to compel attendance of persons to testify: RCW 2.28.010, 2.28.020, 2.28.060, 2.28.070.

Salaries public officers shall not receive additional compensation as witness on behalf of employer, and in certain other cases: RCW 42.16.020.

Witness fees and mileage: Chapter 2.40 RCW.

(2021 Ed.)

5.56.050 Person in court required to testify. A person present in court or before a judicial officer, may be required to testify in the same manner as if he or she were in attendance upon a subpoena issued by such court or officer. [2011 c 336 § 142; Code 1881 § 397; 1877 p 88 § 399; 1869 p 106 § 392; 1854 p 188 § 299; RRS § 1219.]

5.56.060 Result of failure to attend. If any person duly served with a subpoena and obliged to attend as a witness, shall fail to do so, without any reasonable excuse, he or she shall be liable to the aggrieved party for all damages occasioned by such failure, to be recovered in a civil action. [2011 c 336 § 143; Code 1881 § 398; 1877 p 88 § 400; 1869 p 106 § 393; 1854 p 188 § 300; RRS § 1220, part. FORMER PART OF SECTION: Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part, now codified as RCW 5.56.061.]

Contempts: Chapter 7.21 RCW.

District court, damages for nonappearance: RCW 12.16.050.

5.56.061 Failure to attend considered contempt of court. A failure to attend as required by the subpoena, shall also be considered a contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 8; Code 1881 § 399; 1877 p 88 § 401; 1869 p 106 § 394; 1854 p 188 § 301; RRS § 1220, part. Formerly RCW 5.56.060, part.]

Rules of court: *Cf. CR 45(f).*

Criminal contempt: RCW 9.92.040.

Power of courts and judicial officers to punish for contempt: RCW 2.28.020, 2.28.070.

5.56.070 Attachment of witness. The court, judge, or other officer, in such case, may issue an attachment to bring such witness before them to answer for contempt, and also testify as witness in the cause in which he or she was subpoenaed. [1987 c 202 § 125; Code 1881 § 400; 1877 p 88 § 402; 1869 p 106 § 395; 1854 p 188 § 302; RRS § 1221.]

Rules of court: *Cf. CR 45(f).*

Intent—1987 c 202: See note following RCW 2.04.190.

District court, attachment for nonappearance: RCW 12.16.030.

5.56.080 To whom attachment directed—Execution. Such attachment may be directed to the sheriff or any deputy of any county in which the witness may be found, and shall be executed in the same manner as a warrant; and the fees of the officer for issuing and serving the same shall be paid by the person against whom the same was issued, unless he or she shows reasonable cause, to the satisfaction of the judge, for his or her omission to attend; in which case the party requiring such attachment shall pay all such costs. [1987 c 202 § 126; 1891 c 19 § 3; RRS § 1222.]

Rules of court: *Cf. CR 45(f).*

Reviser's note: Preliminary language of 1891 c 19 § 3 reads as follows: "The following section is enacted to follow section 400 of the said Code of 1881 [RCW 5.56.070], as that section shall be numbered in the code of procedure of this state:".

Intent—1987 c 202: See note following RCW 2.04.190.

5.56.090 Testimony of prisoner, how obtained. If the witness be a prisoner confined in a jail or prison within this state, an order for his or her examination in prison, upon

deposition, or for his or her temporary removal and production before a court or officer, for the purpose of being orally examined, may be issued. [2011 c 336 § 144; Code 1881 § 401; 1877 p 88 § 403; 1869 p 106 § 396; 1854 p 189 § 303; RRS § 1223.]

5.56.100 Affidavit to procure order. Such order can only be made upon affidavit, showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality. [Code 1881 § 402; 1877 p 88 § 404; 1869 p 106 § 397; 1854 p 189 § 304; RRS § 1224.]

Chapter 5.60 RCW

WITNESSES—COMPETENCY

Sections

- 5.60.020 Who may testify.
- 5.60.030 Not excluded on grounds of interest—Exception—Transaction with person since deceased.
- 5.60.050 Who are incompetent.
- 5.60.060 Who is disqualified—Privileged communications.
- 5.60.070 Mediation.
- 5.60.072 Mediation by agency—Privilege and confidentiality.

Attorney as witness: Rules of court: CR 43(g); CPR 5 (DR 5-102).

Witnesses, competency: Rules of court: ER 601.

5.60.020 Who may testify. Every person of sound mind and discretion, except as hereinafter provided, may be a witness in any action, or proceeding. [1986 c 195 § 1; Code 1881 § 388; 1877 p 85 § 390; 1869 p 103 § 383; 1854 p 186 § 289; RRS § 1210.]

5.60.030 Not excluded on grounds of interest—Exception—Transaction with person since deceased. No person offered as a witness shall be excluded from giving evidence by reason of his or her interest in the event of the action, as a party thereto or otherwise, but such interest may be shown to affect his or her credibility: PROVIDED, HOWEVER, That in an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, or as the guardian or limited guardian of the estate or person of any incompetent or disabled person, or of any minor under the age of fourteen years, then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased, incompetent or disabled person, or by any such minor under the age of fourteen years: PROVIDED FURTHER, That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action. [1977 ex.s. c 80 § 3; 1927 c 84 § 1; Code 1881 § 389; 1877 p 85 § 391; 1873 p 106 § 382; 1869 p 183 § 384; 1867 p 88 § 1; 1854 p 186 § 290; RRS § 1211.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

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5.60.050 Who are incompetent. The following persons shall not be competent to testify:

(1) Those who are of unsound mind, or intoxicated at the time of their production for examination, and

(2) Those who appear incapable of receiving just impressions of the facts, respecting which they are examined, or of relating them truly. [1986 c 195 § 2; Code 1881 § 391; 1877 p 86 § 393; 1869 p 103 § 386; 1863 p 154 § 33; 1854 p 186 § 293; RRS § 1213.]

5.60.060 Who is disqualified—Privileged communications. (1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 71.05 or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 71.05 or 71.09 RCW may not be compelled to testify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 71.05.217 (6) and (7), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient

privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the peer support group client making the communication, be compelled to testify about any communication made to the counselor by the peer support group client while receiving counseling. The counselor must be designated as such by the agency employing the peer support group client prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding first responder, department of corrections staff person, or jail staff person; a witness; or a party to the incident which prompted the delivery of peer support group counseling services to the peer support group client.

(b) For purposes of this section:

(i) "First responder" means:

(A) A law enforcement officer;

(B) A limited authority law enforcement officer;

(C) A firefighter;

(D) An emergency services dispatcher or recordkeeper;

(E) Emergency medical personnel, as licensed or certified by this state; or

(F) A member or former member of the Washington national guard acting in an emergency response capacity pursuant to chapter 38.52 RCW.

(ii) "Law enforcement officer" means a general authority Washington peace officer as defined in RCW 10.93.020.

(iii) "Limited authority law enforcement officer" means a limited authority Washington peace officer as defined in RCW 10.93.020 who is employed by the department of corrections, state parks and recreation commission, department of natural resources, liquor and cannabis board, or Washington state gambling commission.

(iv) "Peer support group client" means:

(A) A first responder;

(B) A department of corrections staff person; or

(C) A jail staff person.

(v) "Peer support group counselor" means:

(A) A first responder, department of corrections staff person, or jail staff person or a civilian employee of a first responder entity or agency, local jail, or state agency who has received training to provide emotional and moral support and counseling to a peer support group client who needs those services as a result of an incident in which the peer support group client was involved while acting in his or her official capacity; or

(B) A nonemployee counselor who has been designated by the first responder entity or agency, local jail, or state agency to provide emotional and moral support and counseling to a peer support group client who needs those services as a result of an incident in which the peer support group client was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a community sexual assault program or underserved populations provider, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of children, youth, and families as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(15). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

(9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW may not disclose, or be compelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;

(c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.217 (6) or (7); or

(e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose.

(10) An individual who acts as a sponsor providing guidance, emotional support, and counseling in an individualized manner to a person participating in an alcohol or drug addiction recovery fellowship may not testify in any civil action or proceeding about any communication made by the person participating in the addiction recovery fellowship to the individual who acts as a sponsor except with the written authorization of that person or, in the case of death or disability, the person's personal representative. [2020 c 302 § 113; 2020 c 42 § 1; 2019 c 98 § 1; 2018 c 165 § 1. Prior: 2016 sp.s. c 29 § 402; 2016 sp.s. c 24 § 1; 2012 c 29 § 12; 2009 c 424 § 1; 2008 c 6 § 402; 2007 c 472 § 1; prior: 2006 c 259 § 2; 2006 c 202 § 1; 2006 c 30 § 1; 2005 c 504 § 705; 2001 c 286 § 2; 1998 c 72 § 1; 1997 c 338 § 1; 1996 c 156 § 1; 1995 c 240 § 1; 1989 c 271 § 301; prior: 1989 c 10 § 1; 1987 c 439 § 11; 1987 c 212 § 1501; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

Rules of court: Cf. CR 43(g).

Reviser's note: This section was amended by 2020 c 42 § 1 and by 2020 c 302 § 113, 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 dates—2016 sp.s. c 29: See note following RCW 71.05.760.

Short title—Right of action—2016 sp.s. c 29: See notes following RCW 71.05.010.

Intent—2006 c 259: "The legislature intends, by amending RCW 5.60.060, to recognize that advocates help domestic violence victims by giving them the support and counseling they need to recover from their abuse, and by providing resources to achieve protection from further abuse. Without assurance that communications made with a domestic violence advocate will be confidential and protected from disclosure, victims will be deterred from confiding openly or seeking information and counseling, resulting in a failure to receive vital advocacy and support needed for recovery and protection from abuse. But investigative or prosecutorial functions performed by individuals who assist victims in the criminal legal system and in other state agencies are different from the advocacy and counseling functions performed by advocates who work under the auspices or supervision of a community victim services program. The legislature recognizes the important role played by individuals who assist victims in the criminal legal system and in other state agencies, but intends that the testimonial privilege not be extended to individuals who perform an investigative or prosecutorial function." [2006 c 259 § 1.]

Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504: See notes following RCW 71.05.027.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Maternal mortality review panel—Attendees and participants: RCW 70.54.450.

Nonsupport or family desertion, spouse or domestic partner as witness: RCW 26.20.071.

Optometrist—Client, privileged communications: RCW 18.53.200.

Psychologist—Client, privileged communications: RCW 18.83.110.

Report of abuse of children: Chapter 26.44 RCW.

Additional notes found at www.leg.wa.gov

5.60.070 Mediation. (1) If there is a court order to mediate, a written agreement between the parties to mediate, or if mediation is mandated under RCW 7.70.100, then any communication made or materials submitted in, or in connection with, the mediation proceeding, whether made or submitted to or by the mediator, a mediation organization, a party, or any person present, are privileged and confidential and are not subject to disclosure in any judicial or administrative proceeding except:

(a) When all parties to the mediation agree, in writing, to disclosure;

(b) When the written materials or tangible evidence are otherwise subject to discovery, and were not prepared specifically for use in and actually used in the mediation proceeding;

(c) When a written agreement to mediate permits disclosure;

(d) When disclosure is mandated by statute;

(e) When the written materials consist of a written settlement agreement or other agreement signed by the parties resulting from a mediation proceeding;

(f) When those communications or written materials pertain solely to administrative matters incidental to the mediation proceeding, including the agreement to mediate; or

(g) In a subsequent action between the mediator and a party to the mediation arising out of the mediation.

(2) When there is a court order, a written agreement to mediate, or when mediation is mandated under RCW 7.70.100, as described in subsection (1) of this section, the mediator or a representative of a mediation organization shall not testify in any judicial or administrative proceeding unless:

(a) All parties to the mediation and the mediator agree in writing; or

(b) In an action described in subsection (1)(g) of this section.

(3) Beginning on January 1, 2006, this section governs only mediations pursuant to a referral or an agreement made before January 1, 2006. Mediations pursuant to a referral or an agreement made on or after January 1, 2006, are governed by chapter 7.07 RCW. [2005 c 172 § 14; 1993 c 492 § 422; 1991 c 321 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Additional notes found at www.leg.wa.gov

5.60.072 Mediation by agency—Privilege and confidentiality. Notwithstanding the provisions of RCW 5.60.070 and chapter 7.07 RCW, when any party participates in mediation conducted by a state or federal agency under the provisions of a collective bargaining law or similar statute,

the agency's rules govern questions of privilege and confidentiality. [2005 c 172 § 15; 1991 c 321 § 2.]

Additional notes found at www.leg.wa.gov

Chapter 5.62 RCW

WITNESSES—REGISTERED NURSES

Sections

5.62.010	Definitions.
5.62.020	Registered nurse—Privileged communications—Exceptions.
5.62.030	Nurse-patient privilege subject to limitations and exemptions of physician-patient privilege.

5.62.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Registered nurse" means a registered nurse or advanced nurse practitioner licensed under chapter 18.79 RCW.

(2) "Protocol" means a regimen to be carried out by a registered nurse and prescribed by a licensed physician under chapter 18.71 RCW, or a licensed osteopathic physician under chapter 18.57 RCW, which is consistent with chapter 18.79 RCW and the rules adopted under that chapter.

(3) "Primary care" means screening, assessment, diagnosis, and treatment for the purpose of promotion of health and detection of disease or injury, as authorized by chapter 18.79 RCW and the rules adopted under that chapter. [1994 sp.s. c 9 § 703; 1987 c 198 § 1; 1985 c 447 § 1.]

Additional notes found at www.leg.wa.gov

5.62.020 Registered nurse—Privileged communications—Exceptions. No registered nurse providing primary care or practicing under protocols, whether or not the physical presence or direct supervision of a physician is required, may be examined in a civil or criminal action as to any information acquired in attending a patient in the registered nurse's professional capacity, if the information was necessary to enable the registered nurse to act in that capacity for the patient, unless:

(1) The patient consents to disclosure or, in the event of death or disability of the patient, his or her personal representative, heir, beneficiary, or devisee consents to disclosure; or

(2) The information relates to the contemplation or execution of a crime in the future, or relates to the neglect or the sexual or physical abuse of a child, or of a vulnerable adult as defined in RCW 74.34.020, or to a person subject to proceedings under chapter *70.96A, 71.05, or 71.34 RCW. [1989 c 271 § 302; 1986 c 212 § 1; 1985 c 447 § 2.]

***Reviser's note:** Chapter 70.96A RCW was repealed and/or recodified in its entirety pursuant to 2016 sp.s. c 29 §§ 301, 601, and 701.

Additional notes found at www.leg.wa.gov

5.62.030 Nurse-patient privilege subject to limitations and exemptions of physician-patient privilege. Notwithstanding anything to the contrary in this chapter, the privilege created in this chapter is subject to the same limitations and exemptions contained in RCW 26.44.060(3) and 51.04.050 as those limitations and exemptions relate to the physician/patient privilege of RCW 5.60.060. [2002 c 302 § 702; 1986 c 212 § 2; 1985 c 447 § 3.]

(2021 Ed.)

Chapter 5.64 RCW

ADMISSIBILITY OF CERTAIN GESTURES OF APOLOGY, SYMPATHY, FAULT, ETC. IN CIVIL ACTIONS AGAINST HEALTH CARE PROVIDERS

(Formerly: Admissibility—Furnishing, offering, or promising to pay medical expenses)

Sections

5.64.010	Civil actions against health care providers—Admissibility of evidence of furnishing or offering to pay medical expenses—Admissibility of expressions of apology, sympathy, fault, etc.
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5.64.010 Civil actions against health care providers—Admissibility of evidence of furnishing or offering to pay medical expenses—Admissibility of expressions of apology, sympathy, fault, etc. (1) In any civil action against a health care provider for personal injuries which is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible.

(2)(a) In a civil action against a health care provider for personal injuries that is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, a statement, affirmation, gesture, or conduct identified in (b) of this subsection is not admissible as evidence if:

(i) It was conveyed by a health care provider to the injured person, or to a person specified in RCW 7.70.065 (1)(a) or (2)(a) within thirty days of the act or omission that is the basis for the allegation of professional negligence or within thirty days of the time the health care provider discovered the act or omission that is the basis for the allegation of professional negligence, whichever period expires later; and

(ii) It relates to the discomfort, pain, suffering, injury, or death of the injured person as the result of the alleged professional negligence.

(b) (a) of this subsection applies to:

(i) Any statement, affirmation, gesture, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence; or

(ii) Any statement or affirmation regarding remedial actions that may be taken to address the act or omission that is the basis for the allegation of negligence. [2006 c 8 § 101; 1975-'76 2nd ex.s. c 56 § 3.]

Rules of court: *Cf. ER 409.*

Findings—Intent—2006 c 8: "The legislature finds that access to safe, affordable health care is one of the most important issues facing the citizens of Washington state. The legislature further finds that the rising cost of medical malpractice insurance has caused some physicians, particularly those in high-risk specialties such as obstetrics and emergency room practice, to be unavailable when and where the citizens need them the most. The answers to these problems are varied and complex, requiring comprehensive solutions that encourage patient safety practices, increase oversight of medical malpractice insurance, and making the civil justice system more understandable, fair, and efficient for all the participants.

It is the intent of the legislature to prioritize patient safety and the prevention of medical errors above all other considerations as legal changes are made to address the problem of high malpractice insurance premiums. Thousands of patients are injured each year as a result of medical errors, many of which can be avoided by supporting health care providers, facilities, and carriers in their efforts to reduce the incidence of those mistakes. It is also the legislature's intent to provide incentives to settle cases before resorting to court, and to provide the option of a more fair, efficient, and streamlined alternative to trials for those for whom settlement negotiations do not work. Finally, it is the intent of the legislature to provide the insurance commis-

sioner with the tools and information necessary to regulate medical malpractice insurance rates and policies so that they are fair to both the insurers and the insured." [2006 c 8 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 5.66 RCW ADMISSIBILITY OF CERTAIN GESTURES EXPRESSING SYMPATHY

Sections

5.66.010 Admissibility of sympathetic gestures.

5.66.010 Admissibility of sympathetic gestures. (1) The portion of statements, writings, or benevolent gestures expressing sympathy or a general sense of benevolence relating to the pain, suffering, or death of a person involved in an accident, and made to that person or to the family of that person, shall be inadmissible as evidence in a civil action. A statement of fault, however, which is part of, or in addition to, any of the above shall not be made inadmissible by this section.

(2) For purposes of this section:

(a) "Accident" means an occurrence resulting in injury or death to one or more persons that is not the result of willful action by a party.

(b) "Benevolent gestures" means actions that convey a sense of compassion or commiseration emanating from humane impulses.

(c) "Family" means the spouse or the domestic partner, parent, grandparent, stepmother, stepfather, child, grandchild, brother, sister, half brother, half sister, adopted child of a parent, or spouse's or domestic partner's parents of an injured party. [2008 c 6 § 403; 2002 c 334 § 1.]

Additional notes found at www.leg.wa.gov

Chapter 5.68 RCW NEWS MEDIA

Sections

5.68.010 Protection from compelled disclosure—Exceptions—Definition.

5.68.010 Protection from compelled disclosure—Exceptions—Definition. (1) Except as provided in subsection (2) of this section, no judicial, legislative, administrative, or other body with the power to issue a subpoena or other compulsory process may compel the news media to testify, produce, or otherwise disclose:

(a) The identity of a source of any news or information or any information that would tend to identify the source where such source has a reasonable expectation of confidentiality; or

(b) Any news or information obtained or prepared by the news media in its capacity in gathering, receiving, or processing news or information for potential communication to the public, including, but not limited to, any notes, outtakes, photographs, video or sound tapes, film, or other data of whatever sort in any medium now known or hereafter devised. This does not include physical evidence of a crime.

(2) A court may compel disclosure of the news or information described in subsection (1)(b) of this section if the

court finds that the party seeking such news or information established by clear and convincing evidence:

(a)(i) In a criminal investigation or prosecution, based on information other than that information being sought, that there are reasonable grounds to believe that a crime has occurred; or

(ii) In a civil action or proceeding, based on information other than that information being sought, that there is a prima facie cause of action; and

(b) In all matters, whether criminal or civil, that:

(i) The news or information is highly material and relevant;

(ii) The news or information is critical or necessary to the maintenance of a party's claim, defense, or proof of an issue material thereto;

(iii) The party seeking such news or information has exhausted all reasonable and available means to obtain it from alternative sources; and

(iv) There is a compelling public interest in the disclosure. A court may consider whether or not the news or information was obtained from a confidential source in evaluating the public interest in disclosure.

(3) The protection from compelled disclosure contained in subsection (1) of this section also applies to any subpoena issued to, or other compulsory process against, a nonnews media party where such subpoena or process seeks records, information, or other communications relating to business transactions between such nonnews media party and the news media for the purpose of discovering the identity of a source or obtaining news or information described in subsection (1) of this section. Whenever a subpoena is issued to, or other compulsory process is initiated against, a nonnews media party where such subpoena or process seeks information or communications on business transactions with the news media, the affected news media shall be given reasonable and timely notice of the subpoena or compulsory process before it is executed or initiated, as the case may be, and an opportunity to be heard. In the event that the subpoena to, or other compulsory process against, the nonnews media party is in connection with a criminal investigation in which the news media is the express target, and advance notice as provided in this section would pose a clear and substantial threat to the integrity of the investigation, the governmental authority shall so certify to such a threat in court and notification of the subpoena or compulsory process shall be given to the affected news media as soon thereafter as it is determined that such notification will no longer pose a clear and substantial threat to the integrity of the investigation.

(4) Publication or dissemination by the news media of news or information described in subsection (1) of this section, or a portion thereof, shall not constitute a waiver of the protection from compelled disclosure that is contained in subsection (1) of this section. In the event that the fact of publication of news or information must be proved in any proceeding, that fact and the contents of the publication may be established by judicial notice.

(5) The term "news media" means:

(a) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite station or network, or audio or audiovisual production company, or any entity that is in

the regular business of news gathering and disseminating news or information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution;

(b) Any person who is or has been an employee, agent, or independent contractor of any entity listed in (a) of this subsection, who is or has been engaged in bona fide news gathering for such entity, and who obtained or prepared the news or information that is sought while serving in that capacity; or

(c) Any parent, subsidiary, or affiliate of the entities listed in (a) or (b) of this subsection to the extent that the subpoena or other compulsory process seeks news or information described in subsection (1) of this section.

(6) In all matters adjudicated pursuant to this section, a court of competent jurisdiction may exercise its inherent powers to conduct all appropriate proceedings required in order to make necessary findings of fact and enter conclusions of law. [2007 c 196 § 1.]

Chapter 5.70 RCW DNA EVIDENCE

Sections

5.70.005	Definitions.
5.70.010	Preservation of DNA work product—Failure to preserve DNA work product.
5.70.020	Destruction of DNA reference samples—Expungement of DNA reference sample data.
5.70.030	Unreported sexual assault kits—Transportation to local law enforcement agency—Storage and preservation.
5.70.040	Sexual assault kits—Request for laboratory examination—Report to the legislature.
5.70.050	Duty to submit requests for forensic analysis of sexual assault kits within time prescribed—Exceptions.
5.70.060	Case status updates—Reports.

5.70.005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Association" means the Washington association of sheriffs and police chiefs.

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

- (i) The contents of a sexual assault examination kit;
- (ii) Blood;
- (iii) Semen;
- (iv) Hair;
- (v) Saliva;
- (vi) Skin tissue;
- (vii) Fingerprints;
- (viii) Bones;
- (ix) Teeth; or

(x) Any other identifiable human biological material or physical evidence.

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

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

(5) "Investigational status" means:

(a) The agency case or incident number;

(b) The date the request for forensic examination of the sexual assault kit was submitted to the Washington state patrol crime laboratory;

(c) The date the forensic examination was complete and reported to the law enforcement agency;

(d) Whether the case is open or closed;

(e) Whether the case was reopened as a result of the hit in the combined DNA index system;

(f) For open cases, whether the case remains:

(i) An active investigation;

(ii) Open pending forensic examination results; or

(iii) Open and inactive, in which case the agency must include a brief description as to why the case is inactive; and

(g) For closed cases, whether the case was closed as a result of:

(i) A referral for prosecution where charges were filed or the prosecutor is reviewing the case;

(ii) A referral for prosecution where the prosecutor declined to file charges based on the case being legally insufficient;

(iii) A referral for prosecution where the prosecutor declined to file charges because the case failed to meet prosecutorial charging standards;

(iv) After reviewing the results of the forensic examination, there was no evidence that a crime occurred, or there was lack of probable cause that a crime occurred;

(v) The inability to locate the victim or lack of victim participation; or

(vi) Any other reason, in which case the agency must include a brief description as to why the case closed.

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

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

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

(9) "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. [2021 c 118 § 1; 2020 c 26 § 2.]

Effective date—2021 c 118: See note following RCW 5.70.060.

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

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

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

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

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

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

(3) The failure of a law enforcement agency to preserve DNA work product does not constitute grounds in any criminal proceeding for challenging the admissibility of other DNA work product that was preserved in a case, and any evidence offered may not be excluded by a court on those grounds. The court may not set aside the conviction or sentence or order the reversal of a conviction under this section on the grounds that the DNA work product is no longer available. Unless the court finds that DNA work product was destroyed with malicious intent to violate this section, a person accused of committing a crime against a person has no cause of action against a law enforcement agency for failure to comply with the requirements of this section. If the court finds that DNA work product was destroyed with malicious intent to violate this section, the court may impose appropriate sanctions. Nothing in this section may be construed to create a private right of action on the part of any individual or entity against any law enforcement agency or any contractor of a law enforcement agency. [2020 c 26 § 1; 2015 c 221 § 1.]

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

5.70.020 Destruction of DNA reference samples—Expungement of DNA reference sample data. (1) Nothing in this chapter precludes the trial court from ordering the destruction of DNA reference samples contributed by a defendant who was charged and acquitted or whose conviction

was overturned in connection with a violent or sex offense as defined in RCW 9.94A.030.

(2)(a) A person may submit an application to the Washington state patrol to have his or her DNA reference sample data expunged from the Washington state patrol's DNA identification system in cases where: (i) The person's DNA reference sample was collected and entered into the system and (ii) the charges against the person were dismissed with prejudice or the person was found not guilty.

(b) The Washington state patrol must expunge the person's DNA reference sample data if he or she meets the criteria established in law or by rule. [2015 c 221 § 2.]

5.70.030 Unreported sexual assault kits—Transportation to local law enforcement agency—Storage and preservation. (1)(a) Any unreported sexual assault kit collected on or after June 30, 2020, must be transported from the collecting entity to the applicable local law enforcement agency.

(b) By January 1, 2021, unreported sexual assault kits collected prior to June 30, 2020, and stored according to the requirements of RCW 70.125.101 must be transported to the applicable local law enforcement agency.

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

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

(3) The term "applicable local law enforcement agency" refers to the local law enforcement agency that would have jurisdiction to investigate any related criminal allegations if they were to be reported to law enforcement. The applicable local law enforcement agency is determined through consultation between the collecting entity or, in the case of unreported sexual assault kits stored according to the requirements of RCW 70.125.101, the Washington state patrol, and local law enforcement agencies. [2020 c 26 § 3.]

Effective date—2020 c 26 § 3: "Section 3 of this act takes effect June 30, 2020." [2020 c 26 § 19.]

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

5.70.040 Sexual assault kits—Request for laboratory examination—Report to the legislature. (1) When a law enforcement agency receives a sexual assault kit, the law enforcement agency must, within thirty days of its receipt, submit a request for laboratory examination to the Washington state patrol crime laboratory for prioritization for testing by it or another accredited laboratory that holds an outsourcing agreement with the Washington state patrol if:

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

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

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

(2) Beginning May 1, 2022, when the Washington state patrol receives a request for laboratory examination of a sexual assault kit from a law enforcement agency, the Washing-

ton state patrol shall conduct the laboratory examination of the sexual assault kit, and when appropriate, enter relevant information into the combined DNA index system, within forty-five days of receipt of the request. The Washington state patrol crime laboratory must give priority to the laboratory examination of sexual assault kits at the request of a local law enforcement agency for:

- (a) Active investigations and cases with impending court dates;
- (b) Active investigations where public safety is an immediate concern;
- (c) Violent crimes investigations, including active sexual assault investigations;
- (d) Postconviction cases; and
- (e) Other crimes' investigations and nonactive investigations, such as previously unsubmitted older sexual assault kits or recently collected sexual assault kits that the submitting agency has determined to be lower priority based on their initial investigation.

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

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

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

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

(7) This section applies to sexual assault examinations performed on or after July 24, 2015.

(8)(a) Until June 30, 2023, the Washington state patrol shall compile the following information related to the sexual assault kits identified in this section and RCW 5.70.050:

- (i) The number of requests for laboratory examination made for sexual assault kits and the law enforcement agencies that submitted the requests; and
- (ii) The progress made towards testing the sexual assault kits, including the status of requests for laboratory examination made by each law enforcement agency.

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

(c) Beginning in 2015, the Washington state patrol shall report its findings and recommendations annually to the appropriate committees of the legislature and the governor by December 1st of each year. [2020 c 26 § 4; 2019 c 93 § 6; 2015 c 247 § 1. Formerly RCW 70.125.090.]

(2021 Ed.)

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

5.70.050 Duty to submit requests for forensic analysis of sexual assault kits within time prescribed—Exceptions.

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

(2) The Washington state patrol crime laboratory may consult with local law enforcement agencies to coordinate the efficient submission of requests for forensic analysis under this section in conjunction with the implementation of the statewide tracking system under RCW 43.43.545, provided that all requests are submitted and all required information is entered into the statewide sexual assault tracking system by October 1, 2019. The Washington state patrol crime laboratory shall facilitate the forensic analysis of all sexual assault kits submitted under this section by December 1, 2021. The analysis may be conducted by the Washington state patrol laboratory or an accredited laboratory holding a contract or agreement with the Washington state patrol. The Washington state patrol shall process the forensic analysis of sexual assault kits in accordance with the priorities in RCW 5.70.040(2).

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

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

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

(6) Nothing in this section may be construed to create a private right of action or claim on the part of any individual, entity, or agency against any law enforcement agency or any contractor of any law enforcement agency. [2020 c 26 § 5; 2019 c 93 § 7. Formerly RCW 70.125.100.]

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

5.70.060 Case status updates—Reports. (1) For any sexual assault kit under RCW 5.70.050 where forensic analysis has generated a profile that has resulted in a hit in the com-

bined DNA index system, the office of the attorney general shall request information from the applicable law enforcement agency and prosecuting attorney as to the case status of any related criminal investigation and prosecution, including information as provided under RCW 5.70.005(5) as well as any other relevant information. The law enforcement agency and prosecuting attorney shall provide requested case status updates to the office of the attorney general. The office of the attorney general shall consult with the association when developing any procedures for requesting and collecting case status updates under this section.

(2) Nothing in this section may be interpreted to require any law enforcement agency or prosecuting attorney to disclose any information that would jeopardize an active criminal investigation or prosecution.

(3) The attorney general's office shall report quarterly to the association the investigational status of any sexual assault kit under RCW 5.70.050.

(4) Beginning in 2022, in consultation with the attorney general's office, the association must submit reports on the information collected pursuant to this section to the governor and appropriate committees of the legislature by January 1st and July 1st of each year. [2021 c 118 § 2.]

Effective date—2021 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 [April 26, 2021]." [2021 c 118 § 5.]