



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 01, 2018

TIME: 1:59 PM

WSR 18-10-089

Agency: Washington State Patrol

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: This proposed new WAC section in chapter 446-95 WAC seeks to prescribe and standardize the format of sexual assault kits used by medical facilities throughout the state.

Citation of rules affected by this order:

New: 446-95
Repealed:
Amended:
Suspended:

Statutory authority for adoption: 43.17.060

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-07-107 on March 21, 2018 (date).
Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Other:

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

| | | | | | | |
|----------------------------------|-----|----------|---------|-----|----------|-----|
| Federal statute: | New | ___ | Amended | ___ | Repealed | ___ |
| Federal rules or standards: | New | ___ | Amended | ___ | Repealed | ___ |
| Recently enacted state statutes: | New | <u>6</u> | Amended | ___ | Repealed | ___ |

The number of sections adopted at the request of a nongovernmental entity:

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted on the agency's own initiative:

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

| | | | | | |
|-----|-----|---------|-----|----------|-----|
| New | ___ | Amended | ___ | Repealed | ___ |
|-----|-----|---------|-----|----------|-----|

The number of sections adopted using:

| | | | | | | |
|--------------------------------|-----|-----|---------|-----|----------|-----|
| Negotiated rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Pilot rule making: | New | ___ | Amended | ___ | Repealed | ___ |
| Other alternative rule making: | New | ___ | Amended | ___ | Repealed | ___ |

Date Adopted: May 1, 2018

Name: John R. Batiste

Title: Chief

Signature:



Chapter 446-95 WAC
STATEWIDE SEXUAL ASSAULT KIT TRACKING SYSTEM

NEW SECTION

WAC 446-95-010 Authority and purpose. (1) RCW 43.43.545 requires the Washington state patrol to create and operate a statewide sexual assault kit tracking system. The authority the legislature gave to the Washington state patrol to implement a tracking system requires adoption of rules establishing a uniform sexual assault kit to allow successful implementation of the sexual assault kit tracking initiative.

(2) The purposes of these rules are to:

(a) Implement the intent and purpose of RCW 43.43.545 and 43.43.546 to track the location and status of sexual assault kits throughout the criminal justice process, including the initial collection and possible storage at medical facilities, receipt and storage at law enforcement agencies, receipt and analysis at forensic laboratories, and possible destruction.

(b) Establish standards and procedures to track the location and status of sexual assault kits throughout the criminal justice process.

(3) These rules are necessary to:

(a) Ensure all sexual assault kits used within the state of Washington are standardized for tracking in the sexual assault kit tracking system;

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

(c) Allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(4) These rules apply to all entities participating in the sexual assault kit tracking system established by the Washington state patrol. Pursuant to RCW 35.21.195, 36.27.020, 36.28.200, 43.43.546, and 70.41.365, those entities include, but are not limited to:

(a) Hospitals licensed under chapter 70.41 RCW performing sexual assault forensic examinations in the state of Washington;

(b) Washington state patrol forensic laboratory services bureau;

(c) All commissioned city, county, and state law enforcement officers; and

(d) Prosecuting attorneys.

(5) The sexual assault kit tracking system is not intended to replace or alter existing chain of custody systems, processes, procedures, rules, regulations, or legal requirements of any participating entity.

(6) This rule is not intended to provide grounds to challenge the admissibility of DNA evidence in court proceedings. Nothing in this section is intended to create a private right of action or claim on the part of any individual, entity, or agency against commissioned city, county, and state law enforcement agencies.

NEW SECTION

WAC 446-95-020 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Hospital" means any institution, place, building, or agency licensed under chapter 70.41 RCW;

(2) "Sexual assault kit" or "SAK" means a standardized box containing items for collecting and storing forensic evidence;

(3) "Washington sexual assault kit" or "WSAK" means a standardized SAK distributed by the approved vendor including a unique identifier, containing items for collecting and storing forensic evidence; with unique login information to be provided to the survivor allowing tracking of the WSAK;

(4) "Sexual assault kit tracking system" or "tracking system" means a secure system accessible via the internet intended for the purposes of tracking all Washington sexual assault kits, regardless of when they were collected;

(5) "Survivor" or "victim" means any person who suffers physical, emotional, financial, and/or psychological impact as a proximate result of a sexual assault;

(6) "Sexual assault" has the same meaning as in RCW 70.125.030;

(7) "Unique identifier" means a numeric or alphanumeric string that is associated with a single entity within a given system (i.e., barcode).

NEW SECTION

WAC 446-95-030 Washington sexual assault kits. (1) The Washington state patrol shall ensure that the standards for the WSAK are consistent with the standards or guidelines established by a committee which may include representatives from medical specialists, sexual assault nurse examiners, attorneys, forensic scientists, and law enforcement personnel in Washington state. The Washington state department of enterprise services may establish a master contract for the supply of WSAKs that meet these standards or guidelines.

(2) WSAKs procured by hospitals or other entities shall be ordered from and payment provided to the approved contracted vendor.

(3) Each WSAK shall bear a Washington sexual assault kit tracking system unique identifier.

(4) Each WSAK shall contain the information needed for a survivor to track the location of their WSAK using the tracking system.

NEW SECTION

WAC 446-95-040 Survivor tracking of their Washington sexual assault kit. (1) The tracking system shall allow survivors of sexual assault to anonymously track or receive updates regarding the status and location of their sexual assault kits.

(2) Survivors shall be given unique login information to access the status and location of their WSAK at the discretion of the appro-

priate hospital, medical facility, or law enforcement agency personnel.

(3) Destruction of a WSAK shall be documented in the system.

NEW SECTION

WAC 446-95-050 Receipt and processing of sexual assault kits.

(1) The approved vendor will distribute WSAKs with a unique identifier. The WSAK is entered by the vendor using the tracking system prior to shipment. Upon delivery, the WSAKs are entered using the tracking system as acknowledgment of receipt.

(2) The WSAK becomes trackable by the survivor when the unique identifier is entered to document that a forensic medical examination has taken place.

(3) The tracking system is not intended to replace existing processes and procedures established regarding the collection of evidence, or delay in any way the care of the survivor or law enforcement notification.

NEW SECTION

WAC 446-95-060 Updates and tracking of sexual assault kits. (1)

The use of the tracking system or a WSAK should not alter the existing procedures, rules, regulations, or legal requirements for hospitals and law enforcement agencies.

(2) The tracking system is not intended to provide "real-time" location data. There are circumstances (such as shipping times) that might create delays in location status being reported. Kits are entered into the tracking system upon arrival at their intended destination. WSAKs are not recorded as they leave a destination.

(3) To ensure proper tracking of the WSAK, the affixed unique identifier must be readable. The WSAK should be packaged separately from other evidence, and without secondary packaging.

(4) Tracking begins when a WSAK or SAK is initially entered in the tracking system.

(a) Sexual assault kits not bearing a tracking system unique identifier, located at hospitals and law enforcement agencies, shall be provided a unique identifier. This shall be affixed to the SAK and entered for use by the tracking system.

(b) The tracking system will not provide historical data for existing SAKs prior to the initial entry.

(5) Subsequent transfers/changes in location will be documented by the tracking system.

Washington State Patrol
Concise Explanatory Statement
WAC 446-95 Sexual Assault Kits

After filing the CR 102, the proposed language was sent to all known stakeholders.

The hearing for WAC 446-95 was held on Tuesday, April 24, 2018 in Room 4060 in the Helen Sommers Building on 106 11th Avenue SW; Olympia WA 98504.

There were no public attendees at the hearing and no written comments were sent in.

In attendance from the Patrol were:

- Kimberly Mathis, Office of Government & Media Relations
- Captain Monica Alexander, Office of Government & Media Relations
- Gail Martin, WSP Crime Lab
- Larry Hebert, Forensic Lab Services Bureau Director
- Jennifer Burkdoll, WSP Crime Lab
- Nichole Minas, WSP Crime Lab

The proposed amendments were not challenged. Therefore no changes are being made to the language. The final language filed will be the same as the language filed with the CR 102.

Thank you.

Kimberly Mathis

Rules Coordinator

Washington State Patrol