



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 06, 2020

TIME: 3:56 PM

WSR 20-20-130

Agency: Washington State Patrol

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 20-17-140 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
- Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Chapter 446-16 Identification Section

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 9, 2020	10:00am	Call-in: 1-253-215-8782 Passcode: 198930	

Date of intended adoption: December 10, 2020 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kimberly Mathis, Agency Rules Coordinator
 Address: 106 11th Street SE: Olympia, WA 98507
 Email: wsprules@wsp.wa.gov
 Fax:
 Other:
 By (date) December 7, 2020

Assistance for persons with disabilities:

Contact Kimberly Mathis, Agency Rules Coordinator
 Phone: 360-596-4017
 Fax:
 TTY:
 Email: wsprules@wsp.wa.gov
 Other:
 By (date) December 7, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed changes will provide clean up and clarification to the existing language to ensure the rules reference and comply with current laws in the state of Washington.

Reasons supporting proposal: Updates are to provide clarity and clean up existing language.

Statutory authority for adoption: Chapter 10.97 and 43.43

Statute being implemented: Chapter 10.97 and 43.43

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Washington State Patrol

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Kimberly Mathis	Olympia, WA	360-596-4017
Implementation:	Becky Miner	Olympia, WA	360-534-2111
Enforcement:	Washington State Patrol	Olympia, WA	360-534-2111

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain: This rule is exempt pursuant to RCW 34.05.328(5)(b)(v)

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: October 5, 2020	Signature: 
Name: John R. Batiste	
Title: Chief	

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-010 Definitions. For the purposes of these rules, the following words and phrases will have the following meanings:

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

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

(3) "Disposition" means (~~that result which is reached at a determination~~) the formal conclusion of a criminal proceeding (~~against an individual at any~~) at whatever stage it occurs in the criminal justice system (~~and resulting in the culmination or final disposal of the criminal charge~~).

(4) (~~Section~~) Division means the (~~identification and criminal history section~~) criminal records division of the Washington state patrol.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-020 Scope of the rules. Criminal (~~offender~~) history record information will not be released or inspected except in accordance with RCW 43.43.700 et seq., RCW 10.97.050, and these rules.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-025 Deletion of arrest records. (1) A person desiring the destruction of his or her fingerprints and/or other identifying data, pursuant to RCW 43.43.730, must make his or her request on a form furnished by the (~~section~~) division.

(2) The request must be completed, signed by the person whose record is sought to be deleted and his or her signature witnessed. It must include the address of the applicant, the printed name and the address of the witness to the applicant's signature and such other information requested on the application as identifies the applicant and the offense for which the request of deletion is made.

(3) The request must include (~~reasonable~~) proof that the person making the request for deletion is the same person whose fingerprints or other identifying data are sought to be deleted. Such proof must include fingerprints of the applicant (~~if requested by the section~~).

(4) The request must include the information necessary for the (~~section~~) division to determine whether the request is consistent

with RCW 10.97.060 including all details pertaining to the decision not to prosecute, dismissal, or acquittal of the offense for which the fingerprints or other identifying data were taken.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-060 Disposition reports—When required. In every case where a fingerprint record (~~(or other report)~~) of the arrest of an individual on criminal charges has been submitted to the (~~(section)~~) division, the agency which makes the final determination of such criminal charges or in whose jurisdiction the final determination is made must report the disposition of such charges to the (~~(section)~~) division at whatever stage it occurs in the criminal justice system.

AMENDATORY SECTION (Amending WSR 16-21-024, filed 10/10/16, effective 11/10/16)

WAC 446-16-070 Report contents—General. The report of disposition must be made on forms provided or approved by the (~~(section)~~) division or shall be transferred electronically on forms approved by the (~~(section)~~) division. The disposition report must include all arrest details as they appeared on the fingerprint card (~~(or arrest record previously)~~) forwarded to the (~~(section)~~) division. The state identification number (~~and~~), process control number (PCN), and/or the transaction control number (TCN) must be indicated, if known, on the disposition report (~~(if fingerprints were taken)~~).

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-080 Report time limitations. All of the information requested on the disposition report must be completed and the report mailed or electronically transferred to the (~~(section)~~) division, within ten days of the date that a disposition becomes (~~(effective)~~) final.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-090 Law enforcement agencies—Reporting responsibilities. (1) If the disposition of criminal charges is made by the arresting agency, as where the individual is released without charge, the arresting agency shall fill in and complete the disposition report

and submit same to the (~~section~~) division. If the disposition is known at the time of the arrest (~~record or fingerprint card is submitted to the section~~), this information should be noted (~~thereon~~) on the fingerprint card or submitted electronically through livescan with the arrest information. In this case, it will be unnecessary to forward a disposition report.

(2) In all cases where the arresting agency does not make the final disposition, it shall initiate the preparation of a disposition report by recording the name of the individual arrested, the charges on which (~~he was~~) they were arrested, the name of the contributor of the (~~arrest or~~) fingerprint record, the process control and/or transaction control number, the arrest number and any other information that may identify the individual. At this stage the disposition of charges will be left blank (~~, but the agency will note the action that it has taken, e.g., referred to the prosecutor~~). The partially completed disposition report must then be included as part of the individual's case file and must be forwarded with other information concerning the charges against the individual to the prosecutor or other agency to which the arresting agency forwards the case.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-100 Prosecutorial agencies—Reporting responsibilities. The prosecutor (~~or county clerk~~) must promptly transmit the completed disposition information to the (~~section~~) division if the prosecutor determines not to file charges or the case is not otherwise acted upon by a judicial body. In such cases, the prosecutor (~~or county clerk~~) must mail or transfer the completed disposition report to the (~~section~~) division within ten days from the date that it is determined no further judicial action will be taken on the charges.

AMENDATORY SECTION (Amending WSR 10-01-109, filed 12/17/09, effective 1/17/10)

WAC 446-16-110 Courts—Reporting responsibilities. Where the disposition of criminal charges occurs as a result of action taken by or within the jurisdiction of any court in the state of Washington, the disposition of such charges must be submitted electronically to the WSP via the electronic data exchange between the administrative office of the courts (AOC) and WSP or promptly reported to the (~~section pursuant to rules of the supreme court of the state of Washington on forms approved by the supreme court and supplied by the section. However, in a county where the judicial information system or other secure method of electronic transfer of information has been implemented between the court and the section, the court may electronically provide the disposition information to the section~~) division on a disposition report form or judgment and sentence.