

HOUSE BILL REPORT

HB 2347

As Passed House:

February 13, 1998

Title: An act relating to establishing an exclusionary rule for the suppression of evidence.

Brief Description: Establishing an exclusionary rule for suppression of evidence.

Sponsors: Representative Sterk.

Brief History:

Committee Activity:

Law & Justice: 1/20/98, 2/4/98 [DP].

Floor Activity:

Passed House: 2/13/98, 54-42.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

Staff: Bill Perry (786-7123).

Background:

EVIDENCE GATHERING BY THE GOVERNMENT

Both the state and federal constitutions restrict the government's authority to gather evidence. The Fourth Amendment to the U.S. Constitution prohibits "unreasonable searches and seizures." Article I, Section 7 of the state constitution requires "authority of law" before a person may "be disturbed in private affairs, or his home invaded." As a general proposition these protections include the requirement of a search warrant issued upon probable cause by a detached and neutral party such as a judge. Warrantless

searches are also possible with probable cause under specific circumstances, such as incident to an arrest, as defined by court decisions.

A long standing issue has been: What ought to be done when the government violates these constitutional protections? Legal scholars and others have debated at length the question of how best to deter unreasonable searches or seizures. There are sanctions with potential deterrent effect that may be available against offending officers or agencies. In some instances, statutes or the common law may allow civil lawsuits or criminal prosecutions. Internal agency disciplinary action may also be possible against an offending officer. The sanction that has received the most attention, however, is the so-called "exclusionary rule."

THE EXCLUSIONARY RULE

The exclusionary rule says that, in general, the government may not use evidence that was obtained in violation of the constitutional prohibition against unreasonable searches and seizures. This rule to "exclude" illegally obtained evidence was announced by the U.S. Supreme Court in a 1914 decision, Weeks v. United States.

Some opinions of the Supreme Court after Weeks suggest that the exclusionary rule is constitutionally required. The rule has been called "essential" and "the only effectively available way" to compel governmental respect for the constitution. (Mapp v. Ohio and Elkins v. United States) However, critics of the rule, including many members of the Supreme Court over the years, have questioned the rule's wisdom as well as its necessity, origins, purposes and effectiveness. The chief argument made against the exclusionary rule is that by excluding potentially reliable and relevant evidence, it can cause the guilty to go free simply "because the constable has blundered."

A number of exceptions to the exclusionary rule have been developed by the Court. Not all evidence seized illegally is inadmissible. For instance, although illegally obtained evidence may not be admissible on the question of guilt, it may nonetheless be heard to impeach a witness. Evidence obtained pursuant to a subsequently invalidated statute may be admissible. A defendant may not be able to exclude evidence that was obtained in violation of someone else's rights, but not in violation of his or her own rights. Perhaps the most significant exception to the exclusionary rule has been the recent development of a "good faith" exception.

THE "GOOD FAITH" EXCEPTION

The good faith exception to the exclusionary rule was adopted by the Court in United States v. Leon, a 1984 decision. The exception allows for the admission of evidence obtained as the result of an officer's objective, good faith reliance on a warrant issued by a detached and neutral magistrate, even if the warrant was later found to be defective. In Leon the warrant was found to have been based on unreliable

information. The Court found that the magistrate who issued the warrant had erred in concluding there was probable cause for the warrant. However, the warrant was also found to have been valid on its face, and the officers' reliance on it was found to have been objectively reasonable. In announcing its decision, the Court observed that "the exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges and magistrates." A later decision, Arizona v. Evans, extended the good faith exception to include objectively reasonable police reliance on an invalid arrest warrant that served as the basis for a search incident to the arrest. A clerical error by court personnel had resulted in the police using the arrest warrant even though the warrant had been quashed.

The Washington State Supreme Court has yet to rule explicitly on the question of possible independent state grounds for evaluating a good faith exception to the exclusionary rule. However, as recently as October of 1997 the state court remarked:

The exclusionary rule in this state has a long history, independent from that of the federal rule... When an individual's right to privacy is violated, article I, section 7 requires the application of the exclusionary rule. (In Re Personal Restraint Petition of Maxfield)

Summary of Bill: The Legislature declares that it intends to prohibit suppression of evidence gathered with or without a warrant, if the evidence is collected in the good faith belief that the collection was legal. The courts should not suppress evidence that is otherwise admissible in a civil or criminal proceeding if the evidence was seized in good faith or as a result of a technical violation.

If a defendant seeks exclusion of evidence because of the conduct of a police officer in obtaining the evidence, the state may urge that the officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence should not be excluded if otherwise admissible.

Good faith is defined as collecting evidence:

- Pursuant to a search warrant that is free from obvious defects and that the officer reasonably believed to be valid;
- Pursuant to a search resulting from an arrest, if the officer reasonably believed he or she either had probable cause to make a warrantless arrest or had obtained a valid warrant; or
- Pursuant to a statute, rule, or court precedent that is later declared unconstitutional.

A procedure is established in criminal proceedings for seeking the suppression of illegally seized evidence. The motion to suppress should be made by the person aggrieved by an unlawful seizure prior to trial. However, if the person had no

opportunity to file the motion or was unaware of grounds for the motion, the court may entertain the motion during trial. Grounds for a motion to suppress are:

- o The search and seizure were without warrant and without lawful authority;
- The warrant was improper on its face or was illegally issued;
- The property seized was not the property described in the warrant;
- The warrant was illegally executed by the officer; or
- The search and seizure otherwise violated the person's rights under the Fourth and 14th Amendments to the U.S. Constitution.

In a motion to suppress, the burden is on the state to show by a preponderance of the evidence that the motion should be denied.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: It is an outrage that evidence is suppressed for technicalities. If officers act in good faith, suppressing evidence is not going to deter violations. Many states and the federal government have a good faith exception to the exclusionary rule.

Testimony Against: The bill assumes the existence of a problem we don't have, and creates a problem we don't want. The exclusionary rule does not seriously hamper criminal prosecutions, but it does protect citizens' privacy rights at a modest cost. The bill goes much farther than the federal rule.

Testified: Representative Sterk, prime sponsor; Tim Schellberg, Washington Association of Sheriffs and Police Chiefs (pro); and Steve Thayer, Washington Association of Criminal Defense Lawyers (con).