
HOUSE BILL 2347

State of Washington

55th Legislature

1998 Regular Session

By Representative Sterk

Read first time 01/12/98. Referred to Committee on Law & Justice.

1 AN ACT Relating to establishing an exclusionary rule for the
2 suppression of evidence; and adding a new chapter to Title 10 RCW.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that in some instances
5 evidence of a crime is excluded from admission at trial because it was
6 illegally collected. The legislature further finds that the illegality
7 may be the result of a technicality rather than a lack of good faith on
8 the part of the collector. The legislature intends to prohibit the
9 suppression of evidence in both searches with a warrant and warrantless
10 arrests and searches if the law enforcement officer collecting the
11 evidence did so in good faith that he or she was doing so legally, even
12 if the evidence was subsequently ruled as being illegally collected.

13 NEW SECTION. **Sec. 2.** Unless the context clearly requires
14 otherwise, the definitions in this section apply throughout this
15 chapter.

16 (1) "Evidence" means contraband, instrumentations, fruits of a
17 crime, or any other evidence which tends to prove a fact in issue.

1 (2) "Good faith" means whenever a law enforcement officer obtains
2 evidence:

3 (a) Pursuant to a search warrant obtained from a magistrate which
4 is free from obvious defects other than nondeliberate errors in
5 preparation and the officer reasonably believed the warrant to be
6 valid;

7 (b) Pursuant to a search resulting from an arrest, when:

8 (i) Under RCW 10.31.100 the officer reasonably believed he or she
9 possessed probable cause to make the arrest;

10 (ii) The officer procured or executed an invalid arrest warrant he
11 or she reasonably believed to be valid; or

12 (c) Pursuant to statute, local ordinance, judicial precedent, or
13 court rule which is later declared unconstitutional or otherwise
14 invalidated.

15 (3) "Pending criminal proceeding" means any criminal investigation
16 subject matter used in seeking an indictment or information.

17 NEW SECTION. **Sec. 3.** (1) A person aggrieved by an unlawful
18 seizure made by an officer and against whom there is a pending criminal
19 proceeding growing out of the subject matter of the seizure may file a
20 motion to suppress its use in evidence.

21 (2) The motion to suppress shall be in writing. It shall be filed
22 with the court in which a criminal proceeding growing out of the
23 subject matter of the seizure is pending against the moving party.

24 (3) The motion should be made before the commencement of the trial
25 of the moving party on the charge arising out of the seizure. If the
26 defendant was unaware of the grounds for suppression or had no
27 opportunity to file before trial, the trial judge may in the judge's
28 discretion, entertain a motion any time during the trial. Notice shall
29 be given to the prosecuting attorney of the date, time, place, and
30 nature of the hearing.

31 (4) The motion to suppress may be based upon any one or more of the
32 following grounds:

33 (a) The search and seizure were made without warrant and without
34 lawful authority;

35 (b) The warrant was improper upon its face or was illegally issued,
36 including the issuance of a warrant without proper showing of probable
37 cause;

1 (c) The property seized was not that described in the warrant and
2 that the officer was not otherwise lawfully privileged to seize the
3 same;

4 (d) The warrant was illegally executed by the officer; or

5 (e) In any other manner the search and seizure violated the rights
6 of the moving party under the fourth and fourteenth amendments of the
7 Constitution of the United States.

8 NEW SECTION. **Sec. 4.** A judge shall receive evidence on any issue
9 of fact necessary to the decision on a motion to suppress. The burden
10 of going forward with the evidence and the risk of nonpersuasion shall
11 be upon the state to show by a preponderance of the evidence that the
12 motion to suppress should be overruled.

13 NEW SECTION. **Sec. 5.** If a motion to suppress is granted, the
14 judge shall order the property or matter delivered to the moving party,
15 unless its retention is authorized or required by any other law of this
16 state.

17 NEW SECTION. **Sec. 6.** If a party in a criminal proceeding seeks to
18 exclude evidence from the trier of fact because of the conduct of a
19 peace officer in obtaining the evidence, the proponent of the evidence
20 may urge that the peace officer's conduct was taken in a reasonable,
21 good faith belief that the conduct was proper and that the evidence
22 discovered should not be kept from the trier of fact if otherwise
23 admissible.

24 NEW SECTION. **Sec. 7.** No court should suppress evidence that is
25 otherwise admissible in a civil or criminal proceeding if the evidence
26 was seized in good faith or as a result of a technical violation.

27 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act constitute
28 a new chapter in Title 10 RCW.

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