
HOUSE BILL 3281

State of Washington 59th Legislature 2006 Regular Session

By Representatives Roach, Halpern, Jarrett, Rodne, Nixon, McCune,
Shabro and McDonald

Read first time 02/01/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to records in criminal investigations; and adding
2 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 many businesses,
5 associations, and organizations providing goods and services to the
6 public or conducting other activity in Washington, or otherwise
7 affecting residents of Washington now operate nationally or globally
8 and often maintain their business records in a location outside the
9 state of Washington. The legislature further finds that bringing
10 persons or organizations committing crimes in Washington to justice is
11 a matter of great public interest because these crimes have a
12 significant effect on businesses, associations, and other organizations
13 that conduct business in Washington, as well as on Washington citizens,
14 and result in significant losses to persons, businesses, associations,
15 and other organizations victimized by those crimes, as well as persons
16 not directly victimized when businesses or others more directly
17 affected by these crimes must raise prices to cover crime losses. The
18 ability of law enforcement and the criminal justice system to
19 effectively perform their duties to the public often depends upon law

1 enforcement, prosecutors, and criminal defense attorneys being able to
2 obtain and use records relevant to crimes that affect Washington's
3 citizens, businesses, associations, organizations, and others who
4 provide goods or services, or conduct other activity in Washington. In
5 the course of fulfilling their duties to the public, law enforcement,
6 prosecutors and criminal defense attorneys must frequently obtain
7 records from these entities, and be able to use the records in court.
8 The ability to obtain and use these records has an impact on Washington
9 citizens because it affects the ability to enforce Washington's
10 criminal laws and affects the deterrence value arising from criminal
11 prosecution. Effectively combating crime requires laws facilitating
12 and requiring that all those who possess records relevant to a criminal
13 investigation comply with the legal process issued in connection with
14 criminal investigations or litigation.

15 NEW SECTION. **Sec. 2.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires otherwise.

17 (1) "Adverse result" includes one of the following possible
18 consequences:

19 (a) Danger to the life or physical safety of an individual;

20 (b) A flight from prosecution;

21 (c) The destruction of, potential loss of, or tampering with
22 evidence;

23 (d) The intimidation of potential witnesses;

24 (e) Jeopardizing an investigation or undue delay of a trial.

25 (2) "Applicant" means a law enforcement officer, prosecuting
26 attorney, deputy or special deputy prosecuting attorney, or defense
27 attorney who is seeking criminal process under section 3 of this act.

28 (3) "Criminal process" means a search warrant or legal process
29 issued pursuant to RCW 10.79.015; any process issued pursuant to
30 chapter 10.27, 10.29, or 9.73 RCW; and any other legal process signed
31 by a judge of the superior court and issued in a criminal matter where
32 the warrant or legal process allows for search of or commands
33 production of records that are in the actual or constructive possession
34 of the recipient, regardless of whether the recipient or the records
35 are physically located within the state.

36 (4) "Defense attorney" means an attorney of record for a person

1 charged with a crime when the attorney is seeking the issuance of
2 criminal process for the defense of the criminal case.

3 (5) "Properly served" means delivery by hand or in a manner
4 reasonably allowing for proof of delivery if delivered by United States
5 mail, overnight delivery service, or facsimile to the recipient
6 addressee of criminal process.

7 (6) "Recipient" means a person as defined in RCW 9A.04.110, or a
8 business as defined in RCW 5.45.010, upon whom criminal process issued
9 under this section is properly served.

10 NEW SECTION. **Sec. 3.** The following apply to any criminal process
11 allowing for search of or commanding production of records that are in
12 the actual or constructive possession of the recipient, regardless of
13 whether the recipient or the records are physically located within the
14 state:

15 (1) When properly served with criminal process, the recipient shall
16 provide the applicant all records sought pursuant to the criminal
17 process within twenty business days of receipt, including those records
18 maintained or located outside this state. An applicant may consent to
19 a recipient's request for additional time to comply with the criminal
20 process.

21 (2) Criminal process issued under this chapter must contain the
22 following language in bold type on the first page of the document:
23 "This [warrant, subpoena, order] is issued pursuant to RCW [insert
24 citation to this statute]. A response is due within twenty business
25 days of receipt, unless a shorter time is stated herein, or the
26 applicant consents to a recipient's request for additional time to
27 comply."

28 (3) If the judge finds that failure to produce records within
29 twenty business days would cause an adverse result, the criminal
30 process may require production of records within less than twenty
31 business days of receipt. A court may reasonably extend the time
32 required for production of the records upon finding that the recipient
33 has shown good cause for that extension and that an extension of time
34 would not cause an adverse result.

35 (4) When properly served with criminal process, a recipient who
36 seeks to quash the criminal process must seek relief from the court
37 where the criminal process was issued, within the time originally

1 required for production of records. The court shall hear and decide
2 the motion no later than five court days after the motion is filed. An
3 applicant's consent, under subsection (1) of this section, to a
4 recipient's request for additional time to comply with the criminal
5 process does not extend the date by which a recipient must seek the
6 relief designated in this section.

7 (5) Upon written request from the applicant, or if ordered by the
8 court, the recipient of criminal process shall verify the authenticity
9 of records that it produces by providing an affidavit, declaration, or
10 certification that complies with subsection (6) of this section.
11 Records produced in compliance with this section are admissible in
12 evidence as set forth in subsections (6) through (9) of this section.

13 (6) Unless, in the opinion of the court, the source of information
14 or the method and time of preparation do not justify admission, a
15 record provided by a recipient of criminal process under this section
16 shall not be excluded as hearsay evidence if accompanied by an
17 affidavit, declaration, or certification that attests to the following:

18 (a) The record was made at or near the time of the occurrence of
19 the matters set forth by, or from information transmitted by, a person
20 with knowledge of those matters;

21 (b) The record was kept in the course of a regularly conducted
22 business activity;

23 (c) The affidavit, declaration, or certification was prepared by
24 and signed by the record custodian or other qualified witness who
25 states the identity of the record and sets forth the mode of its
26 preparation; and

27 (d) If the record is not the original, it is a duplicate of the
28 original.

29 (7) An affidavit or certification completed in compliance with
30 subsection (6) of this section shall authenticate the record or
31 duplicate.

32 (8) No evidence in the records in the form of opinion or diagnosis
33 is admissible under subsection (6) or (7) of this section, unless such
34 opinion or diagnosis would otherwise be admissible.

35 (9) As soon after the arraignment as practicable, but no later than
36 the omnibus hearing, a party intending to offer in evidence under this
37 section a record of regularly conducted business activity shall provide
38 written notice of that intention to each other party. A motion

1 opposing admission in evidence of the record shall be made by the
2 opposing party and determined by the court before trial. Failure by a
3 party to timely file such motion shall constitute a waiver of objection
4 to the record or duplicate, but the court for cause shown may grant
5 relief from the waiver.

6 (10) A Washington recipient, when served with a warrant or other
7 qualifying legal process that was issued by or in another state and
8 that, if it were issued in Washington, would be criminal process, shall
9 produce those records as if that warrant or other qualifying legal
10 process had been issued by a Washington court.

11 (11) No cause of action shall lie against any foreign or Washington
12 recipient of criminal process or a search warrant or other qualifying
13 legal process as provided in subsection (10) of this section, its
14 officers, employees, agents, or other persons specified in the warrant
15 or process for providing records, information, facilities, or
16 assistance in accordance with the terms of the warrant or process.

17 (12) A judge of the superior court may issue any criminal process
18 to any recipient at any address, within or without the state, for any
19 matter over which the court has criminal jurisdiction pursuant to RCW
20 9A.04.030. This provision does not limit a court's authority to issue
21 warrants or legal process under other provisions of state law.

22 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act constitute
23 a new chapter in Title 10 RCW.

--- END ---