

FINAL BILL REPORT

SSB 5714

C 359 L 19
Synopsis as Enacted

Brief Description: Concerning the reliability of evidence in criminal proceedings.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Dhingra, Padden, Salomon, Kuderer, Billig, Darneille, Das and Hasegawa).

Senate Committee on Law & Justice
House Committee on Public Safety

Background: Social sciences research shows eyewitness evidence can be unreliable. Eyewitness misidentification can be one factor leading to a wrongful conviction. In 2014, the National Academy of Sciences published a comprehensive review of scientific literature on eyewitness testimony. The report, *Identifying the Culprit: Assessing Eyewitness Identification*, explains the causes of eyewitness misidentification. It also suggests solutions to mitigate the impact of unreliable eyewitness testimony. Law enforcement and the courts have an obligation to reduce the chances of a wrongful conviction based on eyewitness misidentification, according to the National Center for State Courts (NCSC). The NCSC recommends that courts take note of recent research developments when addressing eyewitness misidentification problems.

Another factor which may lead to a wrongful conviction is exaggerated or false testimony from incentivized informants. Criminal informants may provide useful information during criminal investigations and may be important trial witnesses. Informants may be unwilling to testify in court unless they receive something in return for their testimony. Commonly, informants agree to testify because the state offers an incentive for their testimony. Courts recognize the risk of false or exaggerated testimony when informants testify for the state in criminal trials. Prosecutors must evaluate the information or testimony offered by an informant and assess its reliability before they use it. Prosecutors disclose preliminary information about witnesses to defense counsel. Many state and federal trial courts, including those in the ninth, fifth, and tenth circuits, instruct the jury in a criminal case to use extra care when evaluating the truthfulness of incentivized informant testimony.

Summary: The president of the Senate and the speaker of the House of Representatives must appoint a work group, administered by the Washington Association of Sheriffs and Police Chiefs, to develop a pilot program to evaluate and implement the eyewitness testimony training curriculum the work group develops in consultation with the University of Washington Tacoma and the Criminal Justice Training Commission. The work group must

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submit its report to the Legislature no later than November 30, 2019, and the group terminates on December 31, 2022.

The president of the Senate and the speaker of the House of Representatives must appoint a work group, administered by the University of Washington Law School in consultation with the Washington Association of Prosecuting Attorneys, to adopt model guidelines and a training curriculum on the reliability of informant testimony. The work group must complete the model guidelines and training curriculum by November 30, 2019. The work group must coordinate training for prosecutors and defense attorneys on the model guidelines for informant testimony it develops in coordination with the Washington Association of Prosecuting Attorneys, Washington Defender Association, and Washington Association of Criminal Defense Lawyers. The work group terminates on December 31, 2022.

The term informant means a person who:

- was previously unconnected with the criminal case as either a witness or a codefendant;
- claims to have relevant information about the crime;
- is currently charged with a crime, or is facing potential criminal charges, or is in custody; and
- at any time receives consideration in exchange for providing the information or testimony.

Either the prosecution or the defendant may request the trial court to instruct the jury to use caution when evaluating the credibility of an informant. The court must use the following language in giving its instruction unless it decides otherwise:

"The testimony of an informant, given on behalf of the [State] [City] [County] in exchange for a legal advantage or other benefit, should be subjected to careful examination in the light of other evidence in the case, and should be acted upon with great caution. You, the jury, must weigh the credibility of the testimony. You should not find the defendant guilty upon such testimony alone unless, after carefully considering the testimony, you are satisfied beyond a reasonable doubt of its truth."

Votes on Final Passage:

Senate	48	0	
House	97	0	(House amended)
Senate	48	0	(Senate concurred)

Effective: July 28, 2019