

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5714

66th Legislature
2019 Regular Session

Passed by the Senate April 25, 2019
Yeas 48 Nays 0

President of the Senate

Passed by the House April 15, 2019
Yeas 97 Nays 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5714** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5714

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senate Law & Justice (originally sponsored by Senators Dhingra, Padden, Salomon, Kuderer, Billig, Darneille, Das, and Hasegawa)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to the reliability of evidence in criminal
2 proceedings; adding a new chapter to Title 10 RCW; and providing
3 expiration dates.

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

5 NEW SECTION. **Sec. 1.** INTENT. The legislature recognizes that
6 prosecuting attorneys, law enforcement, and society at large strive
7 for a criminal justice system that minimizes the risk actually
8 innocent people will be convicted. The legislature further recognizes
9 that mistaken identification by witnesses to crime and false
10 testimony by informants who are given benefits in exchange for their
11 testimony have contributed to the conviction of the innocent in
12 Washington state. Through the development of best practices related
13 to the collection of eyewitness evidence and the use of informant
14 witnesses, and the adoption of model guidelines to implement those
15 practices, the legislature aims to improve the quality of such
16 evidence and reduce the risk of wrongful conviction related to these
17 contributing factors.

18 NEW SECTION. **Sec. 2.** EYEWITNESS EVIDENCE WORK GROUP. (1) The
19 Washington association of sheriffs and police chiefs shall administer

1 a work group for the purpose of maximizing the reliability of
2 eyewitness evidence collected during criminal investigations.

3 (2) The president of the senate and the speaker of the house of
4 representatives shall jointly appoint the members of the work group
5 to include the following:

6 (a) One member representing the senate;

7 (b) One member representing the house of representatives;

8 (c) The chief of the Washington state patrol or the chief's
9 designee;

10 (d) One member representing the criminal justice training
11 commission with expertise in developing law enforcement training
12 curricula;

13 (e) The executive director of the Washington association of
14 sheriffs and police chiefs or the executive director's designee;

15 (f) Two members representing the Washington association of
16 prosecuting attorneys, each from a diverse geographical location;

17 (g) One member representing the Washington defender association;

18 (h) One member representing the Washington association of
19 criminal defense lawyers;

20 (i) One member representing the Washington innocence project; and

21 (j) One member from the scientific community with expertise in
22 eyewitness memory.

23 (3) The duties of the work group include, but are not limited to:

24 (a) Developing model guidelines for the collection of eyewitness
25 evidence consistent with the model policies adopted in 2015 by the
26 Washington association of sheriffs and police chiefs and the
27 Washington association of prosecuting attorneys. The model guidelines
28 must also: Be based on credible field, academic, or laboratory
29 research on eyewitness memory; be designed to reduce erroneous
30 eyewitness identifications and enhance the reliability and
31 objectivity of eyewitness identifications; and include standards for
32 blind administration of the identification procedure, filler
33 selection, instructions to the witness, and documenting a statement
34 of witness confidence immediately following any positive
35 identification;

36 (b) Designing law enforcement training for the collection and
37 documentation of eyewitness evidence based on the model guidelines
38 developed pursuant to this subsection; and

39 (c) In consultation with the University of Washington Tacoma and
40 the criminal justice training commission, designing a pilot project

1 for implementing and evaluating the effectiveness of the training
2 curriculum developed pursuant to this subsection.

3 (4) The work group shall hold its initial meeting no later than
4 July 31, 2019, and complete the model guidelines, training
5 curriculum, and proposal for the pilot project no later than November
6 30, 2019.

7 (5) The work group shall prepare and submit to the appropriate
8 committees of the legislature a report, including a summary of its
9 activities, the model guidelines, training curriculum, proposal for
10 the pilot project, and other related recommendations by November 30,
11 2019.

12 (6) The work group shall function within existing resources.

13 (7) This section expires December 31, 2022.

14 NEW SECTION. **Sec. 3.** INFORMANT RELIABILITY WORK GROUP. (1) For
15 the purposes of this section, "informant" means any person who: (a)
16 Was previously unconnected with the criminal case as either a witness
17 or a codefendant; (b) claims to have relevant information about the
18 crime; (c) is currently charged with a crime or is facing potential
19 criminal charges or is in custody; and (d) at any time receives
20 consideration in exchange for providing the information or testimony.

21 (2) The University of Washington school of law, in consultation
22 with the Washington association of prosecuting attorneys and
23 Washington innocence project, shall administer a work group on the
24 reliability of informant testimony. The primary purposes of the work
25 group are to adopt model guidelines and develop a training curriculum
26 based on those guidelines to assist prosecuting attorneys in
27 evaluating the reliability of information or testimony offered by an
28 informant before it is used in connection with any criminal
29 proceeding and in determining adequate preliminary disclosures to the
30 defense.

31 (3) The president of the senate and the speaker of the house of
32 representatives shall jointly appoint the members of the work group
33 to include the following:

34 (a) One member representing the senate;

35 (b) One member representing the house of representatives;

36 (c) The executive director of the Washington association of
37 sheriffs and police chiefs or the executive director's designee;

38 (d) Two members representing the Washington association of
39 prosecuting attorneys, each from a diverse geographical location;

- 1 (e) One member representing the Washington defender association;
2 (f) One member representing the Washington association of
3 criminal defense lawyers;
4 (g) One member representing the Washington innocence project; and
5 (h) One member of the board of the western states information
6 network.

7 (4) The duties of the work group include, but are not limited to:

8 (a) Developing model guidelines for prosecutors to determine
9 whether to use an informant in a criminal proceeding;

10 (b) Designing and implementing statewide training for prosecutors
11 and defense counsel based on the model guidelines; and

12 (c) Collecting local protocols required under section 4 of this
13 act.

14 (5) The work group shall hold its initial meeting no later than
15 July 31, 2019, and complete the model guidelines and training
16 curriculum no later than November 30, 2019.

17 (6) The work group shall coordinate with the Washington
18 association of prosecuting attorneys, Washington defender
19 association, and Washington association of criminal defense lawyers
20 to make specialized training based on the training curriculum
21 developed pursuant to subsection (4) of this section available to
22 prosecuting attorneys and criminal defense attorneys.

23 (7) The work group shall prepare and submit to the appropriate
24 committees of the legislature a report including the model
25 guidelines, the training curriculum, and a summary of its work by
26 November 30, 2019.

27 (8) The work group shall function within existing resources.

28 (9) This section expires December 31, 2022.

29 NEW SECTION. **Sec. 4.** LOCAL PROTOCOLS FOR THE USE OF INFORMANTS.

30 (1) No later than December 31, 2020, each county prosecuting attorney
31 shall:

32 (a) Adopt and implement a written local protocol for the use of
33 informants consistent with the model guidelines developed pursuant to
34 section 3 of this act, and submit a copy of the local protocol to the
35 work group established in section 3 of this act; and

36 (b) Establish and maintain a central record of informants used in
37 the course of criminal proceedings as well as formal offers to give
38 testimony or other information. This record is the confidential work
39 product of the office of the prosecuting attorney.

1 (2) If a county prosecutor adopts the model guidelines developed
2 by the work group established under section 3 of this act, it has met
3 the requirements of subsection (1)(a) of this section.

4 (3) If a county prosecutor chooses to adopt its own local
5 protocol, the protocol must articulate adequate preliminary
6 disclosures to the defense and include a list of procedures for
7 prosecuting attorneys to follow when evaluating the reliability of an
8 informant that includes:

9 (a) The complete criminal history of the informant including
10 pending criminal charges;

11 (b) Any consideration provided in exchange for the information or
12 testimony;

13 (c) Whether the informant's information or testimony was modified
14 or recanted;

15 (d) The number of times the informant has previously provided
16 information or testimony in exchange for consideration; and

17 (e) The kind and quality of other evidence corroborating the
18 informant's information or testimony.

19 (4) Nothing in this section diminishes federal constitutional
20 disclosure obligations to criminal defendants or any related
21 obligations under Washington case law, statutes, or court rules.

22 (5) For the purposes of this section, "informant" means any
23 person who: (a) Was previously unconnected with the criminal case as
24 either a witness or a codefendant; (b) claims to have relevant
25 information about the crime; (c) is currently charged with a crime or
26 is facing potential criminal charges or is in custody; and (d) at any
27 time receives consideration in exchange for providing the information
28 or testimony.

29 NEW SECTION. **Sec. 5.** JURY INSTRUCTION FOR INFORMANT TESTIMONY.

30 (1) If the testimony of an informant is admitted in a criminal
31 proceeding, the prosecuting attorney or defendant may request a jury
32 instruction on exercising caution in evaluating the credibility of an
33 informant. Except when otherwise determined by the court, the
34 instruction should be substantially similar to the following form:

35 "The testimony of an informant, given on behalf of the [State]
36 [City] [County] in exchange for a legal advantage or other benefit,
37 should be subjected to careful examination in the light of other
38 evidence in the case, and should be acted upon with great caution.
39 You, the jury, must weigh the credibility of his or her testimony.

1 You should not find the defendant guilty upon such testimony alone
2 unless, after carefully considering the testimony, you are satisfied
3 beyond a reasonable doubt of its truth."

4 (2) For the purposes of this section, "informant" has the same
5 meaning as in section 4 of this act.

6 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act
7 constitute a new chapter in Title 10 RCW.

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