
SENATE BILL 5714

State of Washington

66th Legislature

2019 Regular Session

By Senators Dhingra, Padden, Salomon, and Kuderer

1 AN ACT Relating to the reliability of evidence in criminal
2 proceedings; and creating new sections.

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

4 NEW SECTION. **Sec. 1.** INTENT. The legislature recognizes that
5 prosecuting attorneys, law enforcement, and society at large strive
6 for a criminal justice system that minimizes the risk actually
7 innocent people will be convicted. The legislature further recognizes
8 that mistaken identification by witnesses to crime and false
9 testimony by informants who are given benefits in exchange for their
10 testimony have contributed to the conviction of the not guilty in
11 Washington state. Through the development of best practices related
12 to eyewitness informants and evidence, and the adoption of model
13 guidelines to implement those practices, the legislature aims to
14 improve the quality of such evidence and reduce the risk of wrongful
15 conviction related to these contributing factors.

16 NEW SECTION. **Sec. 2.** EYEWITNESS EVIDENCE. (1) A work group is
17 established to adopt model guidelines and develop a training
18 curriculum using evidence-based best practices for law enforcement to
19 maximize the reliability of eyewitness evidence collected during
20 criminal investigations.

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

4 (i) One member representing the senate;

5 (ii) One member representing the house of representatives;

6 (iii) The chief of the Washington state patrol or the chief's
7 designee;

8 (iv) One member representing the criminal justice training
9 commission with expertise in developing law enforcement training
10 curricula;

11 (v) The executive director of the Washington association of
12 sheriffs and police chiefs or the executive director's designee;

13 (vi) Two members representing the Washington association of
14 prosecuting attorneys, each from a diverse geographical location;

15 (vii) One member representing the Washington defender
16 association;

17 (viii) One member representing the Washington association of
18 criminal defense lawyers;

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

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

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

24 (i) 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;

28 (ii) Designing and implementing statewide law enforcement
29 training for the collection and documentation of eyewitness evidence
30 based on the model guidelines developed pursuant to this subsection;
31 and

32 (iii) Collecting local protocols required under subsection (2) of
33 this section.

34 (c) The work group shall hold its initial meeting no later than
35 July 31, 2019, and complete the model guidelines and training
36 curriculum no later than November 30, 2019.

37 (d) The work group shall prepare and submit to the appropriate
38 committees of the legislature a report including the model
39 guidelines, training curriculum, and a summary of its work by
40 November 30, 2019.

(e) The work group shall function within existing resources.

(f) Following the submission of the report required under (d) of this subsection, the work group shall reconvene every three years to revise the model guidelines as needed in accordance with science-based best practices for the collection of eyewitness evidence.

(2)(a) No later than December 31, 2020, each law enforcement agency shall adopt and implement a written local protocol for the collection of eyewitness evidence consistent with the model guidelines developed pursuant to subsection (1) of this section, and submit a copy of the local protocol to the work group established under subsection (1) of this section.

(b) If a law enforcement agency adopts the model guidelines, it has met the requirements of this subsection.

(c) If a law enforcement agency chooses to adopt its own local protocol, the protocol must:

(i) Be based on credible field, academic, or laboratory research on eyewitness memory;

(ii) Be designed to reduce erroneous eyewitness identifications and enhance the reliability and objectivity of eyewitness identifications; and

(iii) Include standards for (A) blind administration of the identification procedure; (B) filler selection; (C) instructions to the witness; and (D) documenting a statement of witness confidence immediately following any positive identification.

(3) Specialized training based on the training curriculum developed pursuant to subsection (1) of this section shall be made available to persons responsible for the collection of eyewitness identification evidence during criminal investigations. Training participants shall have the opportunity to practice skills and receive feedback from instructors.

NEW SECTION. **Sec. 3. INFORMANTS.** (1) For the purposes of this section, "informant" means any person who: (a) Was previously unconnected with the criminal case as either a witness or a codefendant; (b) claims to have relevant information about the crime; (c) is currently charged with a crime or is facing potential criminal charges or is in custody; and (d) has agreed to consideration in exchange for providing the information or testimony.

(2) A work group is established to adopt model guidelines and develop a training curriculum based on those guidelines to assist

1 prosecuting attorneys in evaluating the reliability of information or
2 testimony offered by an informant before it is used in connection
3 with any criminal proceeding and in determining adequate preliminary
4 disclosures to the defense.

5 (a) The president of the senate and the speaker of the house of
6 representatives shall jointly appoint the members of the work group
7 to include the following:

8 (i) One member representing the senate;

9 (ii) One member representing the house of representatives;

10 (iii) The executive director of the Washington association of
11 sheriffs and police chiefs or the executive director's designee;

12 (iv) Two members representing the Washington association of
13 prosecuting attorneys, each from a diverse geographical location;

14 (v) One member representing the Washington defender association;

15 (vi) One member representing the Washington association of
16 criminal defense lawyers;

17 (vii) One member representing the Washington innocence project;
18 and

19 (viii) One member of the board of the western states information
20 network.

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

22 (i) Developing model guidelines to direct prosecutors in
23 determining whether to use an informant in a criminal proceeding;

24 (ii) Designing and implementing statewide training for
25 prosecutors and defense counsel based on the model guidelines; and

26 (iii) Collecting local protocols required under subsection (3) of
27 this section.

28 (c) The work group shall hold its initial meeting no later than
29 July 31, 2019, and complete the model guidelines and training
30 curriculum no later than November 30, 2019.

31 (d) The work group shall prepare and submit to the appropriate
32 committees of the legislature a report including the model
33 guidelines, the training curriculum, and a summary of its work by
34 November 30, 2019.

35 (e) The work group shall function within existing resources.

36 (3) No later than December 31, 2020, each county prosecuting
37 attorney shall:

38 (a) Adopt and implement a written local protocol for the use of
39 informants consistent with the model guidelines developed pursuant to
40 subsection (2) of this section, and submit a copy of the local

1 protocol to the work group established under subsection (2) of this
2 section.

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

6 (ii) If a county prosecutor chooses to adopt its own local
7 protocol, the protocol must include a list of procedures for
8 prosecuting attorneys to follow when evaluating the reliability of an
9 informant that includes:

10 (A) The complete criminal history of the informant including
11 pending criminal charges;

12 (B) The benefit provided, whether the informant's statement or
13 information was modified or recanted;

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

16 (D) The kind and quality of other evidence corroborating the
17 informant's statement or testimony;

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

22 (4) Specialized training based on the training curriculum
23 developed pursuant to subsection (2) of this section shall be made
24 available to prosecuting attorneys and criminal defense attorneys
25 related to the use of informants in the criminal justice system.

26 (5) Nothing in this section diminishes federal constitutional
27 disclosure obligations to criminal defendants or any related
28 obligations under Washington case law, statutes, or court rules.

29 NEW SECTION. **Sec. 4.** The judge shall provide the jury with an
30 instruction on exercising caution in evaluating the testimony of an
31 informant. The instruction should be substantially similar to the
32 following form:

33 "Testimony has been received in this trial from an informant. An
34 informant is a witness who provided testimony in exchange for a
35 promise by the government, for money or other advantage. For these
36 reasons, in evaluating the testimony of an informant, you should
37 consider the extent to which or whether the testimony may have been
38 influenced by any of these factors. In addition you should examine
39 the testimony of an informant with greater caution than that of other

1 witnesses. The testimony of a paid incentivized witness must be
2 subjected to a higher degree of scrutiny as to both weight and
3 credibility. You, the jury, must decide if such a witness has a
4 greater motive to testify truthfully or falsely. If you conclude that
5 the payment to the incentivized witness was fully or partially
6 contingent upon the content of his or her testimony at trial or upon
7 a finding of guilt, then you should subject his or her testimony to
8 an even higher degree of scrutiny."

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