
SUBSTITUTE SENATE BILL 5870

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Kline, Hargrove, Eide and Marr)

READ FIRST TIME 02/28/07.

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

1 prosecutors, and criminal defense attorneys being able to obtain and
2 use records relevant to crimes that affect Washington's citizens,
3 businesses, associations, organizations, and others who provide goods
4 or services, or conduct other activity in Washington. In the course of
5 fulfilling their duties to the public, law enforcement agencies,
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 or more 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) Jeopardy to 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 and CrR 2.3; any process issued
30 pursuant to chapter 9.73, 9A.82, 10.27, or 10.29 RCW; and any other
31 legal process signed by a judge of the superior court and issued in a
32 criminal matter which allows the search for or commands production of
33 records that are in the actual or constructive possession of the
34 recipient, regardless of whether the recipient or the records are
35 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, that has conducted business or
9 engaged in transactions occurring at least in part in this state upon
10 whom criminal process issued under this chapter is properly served.

11 NEW SECTION. **Sec. 3.** This section shall apply to any criminal
12 process allowing for search of or commanding production of records that
13 are in the actual or constructive possession of a recipient who
14 receives service outside Washington, regardless of whether the
15 recipient or the records are physically located within the state.

16 (1) When properly served with criminal process issued under this
17 section, the recipient shall provide the applicant all records sought
18 pursuant to the criminal process. The records shall be produced within
19 twenty business days of receipt of the criminal process, unless the
20 process requires earlier production. An applicant may consent to a
21 recipient's request for additional time to comply with the criminal
22 process.

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

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

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

10 NEW SECTION. **Sec. 4.** (1) Upon written request from the applicant,
11 or if ordered by the court, the recipient of criminal process shall
12 verify the authenticity of records that it produces by providing an
13 affidavit, declaration, or certification that complies with subsection
14 (2) of this section. The requirements of RCW 5.45.020 regarding
15 business records as evidence may be satisfied by an affidavit,
16 declaration, or certification that complies with subsection (2) of this
17 section, without the need for testimony from the custodian of records,
18 regardless of whether the business records were produced by a foreign
19 or Washington state entity.

20 (2) To be admissible without testimony from the custodian of
21 records, business records must be accompanied by an affidavit,
22 declaration, or certification by its record custodian or other
23 qualified person that includes contact information for the witness
24 completing the document and attests to the following:

25 (a) The witness is the custodian of the record or sets forth
26 evidence that the witness is qualified to testify about the record;

27 (b) The record was made at or near the time of the act, condition,
28 or event set forth in the record by, or from information transmitted
29 by, a person with knowledge of those matters;

30 (c) The record was made in the regular course of business;

31 (d) The identity of the record and the mode of its preparation; and

32 (e) Either that the record is the original or that it is a
33 duplicate that accurately reproduces the original.

34 (3) A party intending to offer a record into evidence under this
35 section must provide written notice of that intention to all adverse
36 parties, and must make the record and affidavit, declaration, or
37 certification available for inspection sufficiently in advance of their

1 offer into evidence to provide an adverse party with a fair opportunity
2 to challenge them. A motion opposing admission in evidence of the
3 record shall be made and determined by the court before trial and with
4 sufficient time to allow the party offering the record time, if the
5 motion is granted, to produce the custodian of the record or other
6 qualified person at trial, without creating hardship on the party or on
7 the custodian or other qualified person.

8 (4) Failure by a party to timely file a motion under subsection (4)
9 of this section shall constitute a waiver of objection to admission of
10 the evidence, but the court for good cause shown may grant relief from
11 the waiver. When the court grants relief from the waiver, and
12 thereafter determines the custodian of the record shall appear, a
13 continuance of the trial may be granted to provide the proponent of the
14 record sufficient time to arrange for the necessary witness to appear.

15 (5) Nothing in this section precludes either party from calling the
16 custodian of record of the record or other witness to testify regarding
17 the record.

18 NEW SECTION. **Sec. 5.** A Washington recipient, when served with
19 process that was issued by or in another state that on its face
20 purports to be valid criminal process shall comply with that process as
21 if that process had been issued by a Washington court.

22 NEW SECTION. **Sec. 6.** A recipient of criminal process or process
23 under sections 2 and 5 of this act, and any other person that responds
24 to such process is immune from civil and criminal liability for
25 complying with the process, and for any failure to provide notice of
26 any disclosure to the person who is the subject of or identified in the
27 disclosure.

28 NEW SECTION. **Sec. 7.** A judge of the superior court may issue any
29 criminal process to any recipient at any address, within or without the
30 state, for any matter over which the court has criminal jurisdiction
31 pursuant to RCW 9A.04.030. This section does not limit a court's
32 authority to issue warrants or legal process under other provisions of
33 state law.

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

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