
SENATE BILL 5870

State of Washington 60th Legislature 2007 Regular Session

By Senators Kline, Hargrove, Eide and Marr

Read first time 02/05/2007. Referred to Committee on Judiciary.

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 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, upon whom criminal process issued
9 under this chapter is properly served.

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

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

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

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

36 (4) When properly served with criminal process issued under this
37 section, a recipient who seeks to quash the criminal process must seek

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

8 NEW SECTION. **Sec. 4.** (1) Upon written request from the applicant,
9 or if ordered by the court, the recipient of criminal process shall
10 verify the authenticity of records that it produces by providing an
11 affidavit, declaration, or certification that complies with subsection
12 (2) of this section and providing contact information for the person
13 completing the affidavit, declaration, or certification. Records
14 produced in compliance with this section are admissible as evidence.

15 (2) A record provided by a recipient of criminal process under this
16 section shall not be excluded as hearsay evidence or for lack of
17 foundation or authentication if accompanied by an affidavit,
18 declaration, or certification by its record custodian or other
19 qualified person that attests to the following:

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

23 (b) The record was made in the regular course of business;

24 (c) States the identity of the record and sets forth the mode of
25 its preparation; and

26 (d) If such record is not the original, it is a duplicate that
27 accurately reproduces the original.

28 (3) No evidence in the records in the form of opinion or diagnosis
29 is admissible under this section unless the opinion or diagnosis would
30 otherwise be admissible.

31 (4) A party intending to offer a record into evidence under this
32 section must provide written notice of that intention to all adverse
33 parties, and must make the record and affidavit, declaration, or
34 certification available for inspection sufficiently in advance of their
35 offer into evidence to provide an adverse party with a fair opportunity
36 to challenge them. A motion opposing admission in evidence of the
37 record shall be made and determined by the court before trial and with

1 sufficient time to allow the party offering the record time, if the
2 motion is granted, to produce the custodian of records or other
3 qualified person at trial, without creating hardship on the party or on
4 the custodian or other qualified person. A motion opposing
5 introduction of the records must be based on one or more of the
6 following reasons: (a) Failure to comply with this section; (b)
7 failure of the records, as proposed to be offered, to be substantially
8 understood without further explanation and no other witness is
9 available to explain them; or (c) admission of the records would
10 violate ER 403.

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

18 (6) Nothing in this section precludes either party from calling the
19 custodian of record of the record or other witness to testify regarding
20 the record.

21 NEW SECTION. **Sec. 5.** A Washington recipient, when served with
22 process that was issued by or in another state that, if it were issued
23 in Washington, would be criminal process, shall comply with that
24 process as if that warrant or other qualifying legal process had been
25 issued by a Washington court.

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

31 NEW SECTION. **Sec. 7.** A judge of the superior court may issue any
32 criminal process to any recipient at any address, within or without the
33 state, for any matter over which the court has criminal jurisdiction
34 pursuant to RCW 9A.04.030. This provision does not limit a court's

1 authority to issue warrants or legal process under other provisions of
2 state law.

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

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