

**SSB 5714** - H COMM AMD

By Committee on Public Safety

**NOT ADOPTED 04/15/2019**

1 Strike everything after the enacting clause and insert the  
2 following:

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

16 NEW SECTION. **Sec. 2.** EYEWITNESS EVIDENCE WORK GROUP. (1) The  
17 University of Washington Tacoma shall convene a work group for the  
18 purpose of maximizing the reliability of eyewitness evidence  
19 collected during criminal investigations.

20 (2) The president of the senate and the speaker of the house of  
21 representatives shall jointly appoint the members of the work group  
22 to include the following:

- 23 (a) One member representing the senate;
- 24 (b) One member representing the house of representatives;
- 25 (c) The chief of the Washington state patrol or the chief's  
26 designee;
- 27 (d) One member representing the criminal justice training  
28 commission with expertise in developing law enforcement training  
29 curricula;
- 30 (e) The executive director of the Washington association of  
31 sheriffs and police chiefs or the executive director's designee;

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

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

4 (h) One member representing the Washington association of  
5 criminal defense lawyers;

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

7 (j) One member from the scientific community with expertise in  
8 eyewitness memory.

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

10 (a) Developing model guidelines for the collection of eyewitness  
11 evidence consistent with the model policies adopted in 2015 by the  
12 Washington association of sheriffs and police chiefs and the  
13 Washington association of prosecuting attorneys;

14 (b) Designing and implementing statewide law enforcement training  
15 for the collection and documentation of eyewitness evidence based on  
16 the model guidelines developed pursuant to this subsection; and

17 (c) Collecting local protocols required under section 3 of this  
18 act.

19 (4) The work group shall hold its initial meeting no later than  
20 July 31, 2019, and complete the model guidelines and training  
21 curriculum no later than November 30, 2019.

22 (5) The work group shall prepare and submit to the appropriate  
23 committees of the legislature a report including the model  
24 guidelines, training curriculum, and a summary of its work by  
25 November 30, 2019. Following the submission of the report, the work  
26 group must reconvene every three years to revise the model guidelines  
27 as needed in accordance with science-based best practices for the  
28 collection of eyewitness evidence.

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

30 NEW SECTION. **Sec. 3.** LOCAL PROTOCOLS FOR EYEWITNESS EVIDENCE.

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

36 (2) If a law enforcement agency adopts the model guidelines, it  
37 has met the requirements of this section.

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

1 (a) Be based on credible field, academic, or laboratory research  
2 on eyewitness memory;

3 (b) Be designed to reduce erroneous eyewitness identifications  
4 and enhance the reliability and objectivity of eyewitness  
5 identifications; and

6 (c) Include standards for: (i) Blind administration of the  
7 identification procedure; (ii) filler selection; (iii) instructions  
8 to the witness; and (iv) documenting a statement of witness  
9 confidence immediately following any positive identification.

10 NEW SECTION. **Sec. 4.** TRAINING ON EYEWITNESS EVIDENCE  
11 PROCEDURES. Beginning October 1, 2020, the criminal justice training  
12 commission shall make available specialized training based on the  
13 training curriculum developed pursuant to section 2 of this act to  
14 persons responsible for the collection of eyewitness identification  
15 evidence during criminal investigations. For the purposes of  
16 providing training based on the required curriculum, the commission  
17 shall consult with the University of Washington Tacoma and the work  
18 group under section 2 of this act. Training participants shall have  
19 the opportunity to practice skills and receive feedback from  
20 instructors.

21 NEW SECTION. **Sec. 5.** INFORMANT RELIABILITY WORK GROUP. (1) For  
22 the purposes of this section, "informant" means any person who: (a)  
23 Was previously unconnected with the criminal case as either a witness  
24 or a codefendant; (b) claims to have relevant information about the  
25 crime; (c) is currently charged with a crime or is facing potential  
26 criminal charges or is in custody; and (d) at any time receives  
27 consideration in exchange for providing the information or testimony.

28 (2) The Washington innocence project, through the University of  
29 Washington school of law, and in consultation with the Washington  
30 association of prosecuting attorneys, shall convene a work group on  
31 the reliability of informant testimony. The primary purposes of the  
32 work group are to adopt model guidelines and develop a training  
33 curriculum based on those guidelines to assist prosecuting attorneys  
34 in evaluating the reliability of information or testimony offered by  
35 an informant before it is used in connection with any criminal  
36 proceeding and in determining adequate preliminary disclosures to the  
37 defense.

1 (3) 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 (a) One member representing the senate;

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

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

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

10 (e) One member representing the Washington defender association;

11 (f) One member representing the Washington association of  
12 criminal defense lawyers;

13 (g) One member representing the Washington innocence project; and

14 (h) One member of the board of the western states information  
15 network.

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

17 (a) Developing model guidelines to direct prosecutors in  
18 determining whether to use an informant in a criminal proceeding;

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

21 (c) Collecting local protocols required under section 6 of this  
22 act.

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

26 (6) The work group shall coordinate with the Washington  
27 association of prosecuting attorneys, Washington defender  
28 association, and Washington association of criminal defense lawyers  
29 to make specialized training based on the training curriculum  
30 developed pursuant to subsection (4) of this section available to  
31 prosecuting attorneys and criminal defense attorneys.

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

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

37 NEW SECTION. **Sec. 6.** LOCAL PROTOCOLS FOR THE USE OF INFORMANTS.

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

1 (a) Adopt and implement a written local protocol for the use of  
2 informants consistent with the model guidelines developed pursuant to  
3 section 5 of this act, and submit a copy of the local protocol to the  
4 work group established in section 5 of this act; and

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

9 (2) If a county prosecutor adopts the model guidelines developed  
10 by the work group established under section 5 of this act, it has met  
11 the requirements of this section.

12 (3) If a county prosecutor chooses to adopt its own local  
13 protocol, the protocol must articulate adequate preliminary  
14 disclosures to the defense and include a list of procedures for  
15 prosecuting attorneys to follow when evaluating the reliability of an  
16 informant that includes:

17 (a) The complete criminal history of the informant including  
18 pending criminal charges;

19 (b) Any consideration provided in exchange for the information or  
20 testimony;

21 (c) Whether the informant's information or testimony was modified  
22 or recanted;

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

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

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

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

32 NEW SECTION. **Sec. 7.** JURY INSTRUCTION FOR INFORMANT TESTIMONY.

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

38 "The testimony of an informant, given on behalf of the [State]  
39 [City] [County] in exchange for a legal advantage or other benefit,

1 should be subjected to careful examination in the light of other  
2 evidence in the case, and should be acted upon with great caution.  
3 You, the jury, must weigh the credibility of his or her testimony.  
4 You should not find the defendant guilty upon such testimony alone  
5 unless, after carefully considering the testimony, you are satisfied  
6 beyond a reasonable doubt of its truth."

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

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

11 Correct the title.

EFFECT: (1) Specifies that the eyewitness evidence work group must be convened by the University of Washington Tacoma (UW-Tacoma).

(2) Specifies that the Criminal Justice Training Commission (CJTC), in consultation with UW-Tacoma and the eyewitness evidence work group, provides the specialized training on eyewitness identification evidence required in the underlying bill. Specifies that the CJTC is required to provide the training beginning October 1, 2020.

(3) Specifies that the work group on the reliability of informant testimony be convened by the Washington Innocence Project, through the University of Washington School of Law, and in consultation with the Washington Association of Prosecuting Attorneys.

(4) Specifies that the work group, in consultation with the Washington Association of Prosecuting Attorneys, Washington Defender Association, and Washington Association of Criminal Defense Lawyers, must make available the specialized training on informant testimony required in the underlying bill.

(5) Provides that a prosecuting attorney or defendant may request a jury instruction exercising caution in evaluating the credibility of an informant (rather than requiring a judge to provide a jury instruction exercising caution in evaluating the testimony of an informant). Removes requirements relating to the Washington Pattern Instructions Committee's development of a jury instruction, and instead specifies that the jury instruction in the striking amendment should be used unless otherwise determined by the court. Replaces the jury instruction included in the underlying bill with the following: "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 his or her 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."

(6) Adds cross-references to the definition of "informant" in related sections of the underlying bill.

(7) Reorganizes provisions into different sections and subsections, renames headers and creates new headers for new sections, and removes duplicative language.

(8) Codifies the underlying bill into a new chapter in Title 10 RCW.

--- END ---