

Chapter 10.56 RCW
WITNESSES—EYEWITNESSES AND INFORMANTS

Sections

10.56.010 Intent.
10.56.040 Local protocols for the use of informants.
10.56.050 Jury instruction for informant testimony.

RCW 10.56.010 Intent. The legislature recognizes that prosecuting attorneys, law enforcement, and society at large strive for a criminal justice system that minimizes the risk [that] actually innocent people will be convicted. The legislature further recognizes that mistaken identification by witnesses to crime and false testimony by informants who are given benefits in exchange for their testimony have contributed to the conviction of the innocent in Washington state. Through the development of best practices related to the collection of eyewitness evidence and the use of informant witnesses, and the adoption of model guidelines to implement those practices, the legislature aims to improve the quality of such evidence and reduce the risk of wrongful conviction related to these contributing factors. [2019 c 359 § 1.]

RCW 10.56.040 Local protocols for the use of informants. (1) No later than December 31, 2020, each county prosecuting attorney shall:

- (a) Adopt and implement a written local protocol for the use of informants consistent with the model guidelines developed pursuant to *RCW 10.56.030, and submit a copy of the local protocol to the work group established in *RCW 10.56.030; and
- (b) Establish and maintain a central record of informants used in the course of criminal proceedings as well as formal offers to give testimony or other information. This record is the confidential work product of the office of the prosecuting attorney.

(2) If a county prosecutor adopts the model guidelines developed by the work group established under *RCW 10.56.030, it has met the requirements of subsection (1)(a) of this section.

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

- (a) The complete criminal history of the informant including pending criminal charges;
- (b) Any consideration provided in exchange for the information or testimony;
- (c) Whether the informant's information or testimony was modified or recanted;
- (d) The number of times the informant has previously provided information or testimony in exchange for consideration; and
- (e) The kind and quality of other evidence corroborating the informant's information or testimony.

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

(5) 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) at any time receives consideration in exchange for providing the information or testimony. [2019 c 359 § 4.]

***Reviser's note:** RCW 10.56.030 expired December 31, 2022.

RCW 10.56.050 Jury instruction for informant testimony. (1) If the testimony of an informant is admitted in a criminal proceeding, the prosecuting attorney or defendant may request a jury instruction on exercising caution in evaluating the credibility of an informant. Except when otherwise determined by the court, the instruction should be substantially similar to the following form:

"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."

(2) For the purposes of this section, "informant" has the same meaning as in RCW 10.56.040. [2019 c 359 § 5.]