

**SSB 5714 - H AMD 693**

By Representative Pellicciotti

**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 Washington association of sheriffs and police chiefs shall administer  
18 a work group for the purpose of maximizing the reliability of  
19 eyewitness evidence 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. The model guidelines  
14 must also: Be based on credible field, academic, or laboratory  
15 research on eyewitness memory; be designed to reduce erroneous  
16 eyewitness identifications and enhance the reliability and  
17 objectivity of eyewitness identifications; and include standards for  
18 blind administration of the identification procedure, filler  
19 selection, instructions to the witness, and documenting a statement  
20 of witness confidence immediately following any positive  
21 identification;

22 (b) Designing law enforcement training for the collection and  
23 documentation of eyewitness evidence based on the model guidelines  
24 developed pursuant to this subsection; and

25 (c) In consultation with the University of Washington Tacoma and  
26 the criminal justice training commission, designing a pilot project  
27 for implementing and evaluating the effectiveness of the training  
28 curriculum developed pursuant to this subsection.

29 (4) The work group shall hold its initial meeting no later than  
30 July 31, 2019, and complete the model guidelines, training  
31 curriculum, and proposal for the pilot project no later than November  
32 30, 2019.

33 (5) The work group shall prepare and submit to the appropriate  
34 committees of the legislature a report, including a summary of its  
35 activities, the model guidelines, training curriculum, proposal for  
36 the pilot project, and other related recommendations by November 30,  
37 2019.

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

39 (7) This section expires December 31, 2022.

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

8        (2) The University of Washington school of law, in consultation  
9 with the Washington association of prosecuting attorneys and  
10 Washington innocence project, shall administer a work group on the  
11 reliability of informant testimony. The primary purposes of the work  
12 group are to adopt model guidelines and develop a training curriculum  
13 based on those guidelines to assist prosecuting attorneys in  
14 evaluating the reliability of information or testimony offered by an  
15 informant before it is used in connection with any criminal  
16 proceeding and in determining adequate preliminary disclosures to the  
17 defense.

18        (3) The president of the senate and the speaker of the house of  
19 representatives shall jointly appoint the members of the work group  
20 to include the following:

- 21        (a) One member representing the senate;
- 22        (b) One member representing the house of representatives;
- 23        (c) The executive director of the Washington association of  
24 sheriffs and police chiefs or the executive director's designee;
- 25        (d) Two members representing the Washington association of  
26 prosecuting attorneys, each from a diverse geographical location;
- 27        (e) One member representing the Washington defender association;
- 28        (f) One member representing the Washington association of  
29 criminal defense lawyers;
- 30        (g) One member representing the Washington innocence project; and
- 31        (h) One member of the board of the western states information  
32 network.

33        (4) The duties of the work group include, but are not limited to:  
34        (a) Developing model guidelines for prosecutors to determine  
35 whether to use an informant in a criminal proceeding;  
36        (b) Designing and implementing statewide training for prosecutors  
37 and defense counsel based on the model guidelines; and  
38        (c) Collecting local protocols required under section 4 of this  
39 act.

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

4 (6) The work group shall coordinate with the Washington  
5 association of prosecuting attorneys, Washington defender  
6 association, and Washington association of criminal defense lawyers  
7 to make specialized training based on the training curriculum  
8 developed pursuant to subsection (4) of this section available to  
9 prosecuting attorneys and criminal defense attorneys.

10 (7) The work group shall prepare and submit to the appropriate  
11 committees of the legislature a report including the model  
12 guidelines, the training curriculum, and a summary of its work by  
13 November 30, 2019.

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

15 (9) This section expires December 31, 2022.

16 NEW SECTION. **Sec. 4.** LOCAL PROTOCOLS FOR THE USE OF INFORMANTS.

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

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

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

27 (2) If a county prosecutor adopts the model guidelines developed  
28 by the work group established under section 3 of this act, it has met  
29 the requirements of subsection (1)(a) of this section.

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

35 (a) The complete criminal history of the informant including  
36 pending criminal charges;

37 (b) Any consideration provided in exchange for the information or  
38 testimony;

1 (c) Whether the informant's information or testimony was modified  
2 or recanted;

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

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

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

10 (5) For the purposes of this section, "informant" means any  
11 person who: (a) Was previously unconnected with the criminal case as  
12 either a witness or a codefendant; (b) claims to have relevant  
13 information about the crime; (c) is currently charged with a crime or  
14 is facing potential criminal charges or is in custody; and (d) at any  
15 time receives consideration in exchange for providing the information  
16 or testimony.

17 NEW SECTION. **Sec. 5.** JURY INSTRUCTION FOR INFORMANT TESTIMONY.

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

23 "The testimony of an informant, given on behalf of the [State]  
24 [City] [County] in exchange for a legal advantage or other benefit,  
25 should be subjected to careful examination in the light of other  
26 evidence in the case, and should be acted upon with great caution.  
27 You, the jury, must weigh the credibility of his or her testimony.  
28 You should not find the defendant guilty upon such testimony alone  
29 unless, after carefully considering the testimony, you are satisfied  
30 beyond a reasonable doubt of its truth."

31 (2) For the purposes of this section, "informant" has the same  
32 meaning as in section 4 of this act.

33 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act  
34 constitute a new chapter in Title 10 RCW."

35 Correct the title.

EFFECT: (1) Specifies that the eyewitness evidence work group must be administered by the Washington Association of Sheriffs and Police Chiefs.

(2) Removes the requirement for specialized statewide training on eyewitness evidence to be made available; instead, requires the eyewitness evidence work group, in consultation with the University of Washington Tacoma and the Criminal Justice Training Commission, to design a pilot project for implementing and evaluating the effectiveness of the training curriculum developed by the work group.

(3) Removes the requirement for local law enforcement agencies to adopt protocols for the collection of eyewitness evidence. Provides that the model guidelines developed by the eyewitness evidence work group must be based on specified best practices.

(4) Removes the requirement for the eyewitness evidence work group to reconvene every three years. Expires the work group on December 31, 2022.

(5) Specifies that the work group on the reliability of informant testimony must be administered by the University of Washington School of Law, in consultation with the Washington Association of Prosecuting Attorneys and Washington Innocence Project. 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. Expires the work group on December 31, 2022.

(6) 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."

(7) Adds cross-references to the definition of "informant" in related sections of the underlying bill. Reorganizes provisions into different sections and subsections, and renames headers and creates new headers for new sections.

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

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