

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5714**

Chapter 359, Laws of 2019

66th Legislature  
2019 Regular Session

RELIABILITY OF EVIDENCE IN CRIMINAL PROCEEDINGS--EYEWITNESSES AND  
INFORMANTS

EFFECTIVE DATE: July 28, 2019

Passed by the Senate April 25, 2019  
Yeas 48 Nays 0

CYRUS HABIB

**President of the Senate**

Passed by the House April 15, 2019  
Yeas 97 Nays 0

FRANK CHOPP

**Speaker of the House of Representatives**

Approved May 9, 2019 3:42 PM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5714** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

**Secretary**

FILED

May 13, 2019

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5714**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

**State of Washington                      66th Legislature                      2019 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Dhingra, Padden, Salomon, Kuderer, Billig, Darneille, Das, and Hasegawa)

READ FIRST TIME 02/22/19.

1            AN ACT Relating to the reliability of evidence in criminal  
2 proceedings; adding a new chapter to Title 10 RCW; and providing  
3 expiration dates.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

18            NEW SECTION.    **Sec. 2.**    EYEWITNESS EVIDENCE WORK GROUP. (1) The  
19 Washington association of sheriffs and police chiefs shall administer

1 a work group for the purpose of maximizing the reliability of  
2 eyewitness evidence collected during criminal investigations.

3 (2) The president of the senate and the speaker of the house of  
4 representatives shall jointly appoint the members of the work group  
5 to include the following:

6 (a) One member representing the senate;

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

8 (c) The chief of the Washington state patrol or the chief's  
9 designee;

10 (d) One member representing the criminal justice training  
11 commission with expertise in developing law enforcement training  
12 curricula;

13 (e) The executive director of the Washington association of  
14 sheriffs and police chiefs or the executive director's designee;

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

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

18 (h) One member representing the Washington association of  
19 criminal defense lawyers;

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

21 (j) One member from the scientific community with expertise in  
22 eyewitness memory.

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

24 (a) Developing model guidelines for the collection of eyewitness  
25 evidence consistent with the model policies adopted in 2015 by the  
26 Washington association of sheriffs and police chiefs and the  
27 Washington association of prosecuting attorneys. The model guidelines  
28 must also: Be based on credible field, academic, or laboratory  
29 research on eyewitness memory; be designed to reduce erroneous  
30 eyewitness identifications and enhance the reliability and  
31 objectivity of eyewitness identifications; and include standards for  
32 blind administration of the identification procedure, filler  
33 selection, instructions to the witness, and documenting a statement  
34 of witness confidence immediately following any positive  
35 identification;

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

39 (c) In consultation with the University of Washington Tacoma and  
40 the criminal justice training commission, designing a pilot project

1 for implementing and evaluating the effectiveness of the training  
2 curriculum developed pursuant to this subsection.

3 (4) The work group shall hold its initial meeting no later than  
4 July 31, 2019, and complete the model guidelines, training  
5 curriculum, and proposal for the pilot project no later than November  
6 30, 2019.

7 (5) The work group shall prepare and submit to the appropriate  
8 committees of the legislature a report, including a summary of its  
9 activities, the model guidelines, training curriculum, proposal for  
10 the pilot project, and other related recommendations by November 30,  
11 2019.

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

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

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

21 (2) The University of Washington school of law, in consultation  
22 with the Washington association of prosecuting attorneys and  
23 Washington innocence project, shall administer a work group on the  
24 reliability of informant testimony. The primary purposes of the work  
25 group are to adopt model guidelines and develop a training curriculum  
26 based on those guidelines to assist prosecuting attorneys in  
27 evaluating the reliability of information or testimony offered by an  
28 informant before it is used in connection with any criminal  
29 proceeding and in determining adequate preliminary disclosures to the  
30 defense.

31 (3) The president of the senate and the speaker of the house of  
32 representatives shall jointly appoint the members of the work group  
33 to include the following:

34 (a) One member representing the senate;

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

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

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

- 1 (e) One member representing the Washington defender association;  
2 (f) One member representing the Washington association of  
3 criminal defense lawyers;  
4 (g) One member representing the Washington innocence project; and  
5 (h) One member of the board of the western states information  
6 network.

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

8 (a) Developing model guidelines for prosecutors to determine  
9 whether to use an informant in a criminal proceeding;

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

12 (c) Collecting local protocols required under section 4 of this  
13 act.

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

17 (6) The work group shall coordinate with the Washington  
18 association of prosecuting attorneys, Washington defender  
19 association, and Washington association of criminal defense lawyers  
20 to make specialized training based on the training curriculum  
21 developed pursuant to subsection (4) of this section available to  
22 prosecuting attorneys and criminal defense attorneys.

23 (7) The work group shall prepare and submit to the appropriate  
24 committees of the legislature a report including the model  
25 guidelines, the training curriculum, and a summary of its work by  
26 November 30, 2019.

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

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

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

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

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

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

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

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

9 (a) The complete criminal history of the informant including  
10 pending criminal charges;

11 (b) Any consideration provided in exchange for the information or  
12 testimony;

13 (c) Whether the informant's information or testimony was modified  
14 or recanted;

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

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

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

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

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

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

35 "The testimony of an informant, given on behalf of the [State]  
36 [City] [County] in exchange for a legal advantage or other benefit,  
37 should be subjected to careful examination in the light of other  
38 evidence in the case, and should be acted upon with great caution.  
39 You, the jury, must weigh the credibility of his or her testimony.

1 You should not find the defendant guilty upon such testimony alone  
2 unless, after carefully considering the testimony, you are satisfied  
3 beyond a reasonable doubt of its truth."

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

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

Passed by the Senate April 25, 2019.

Passed by the House April 15, 2019.

Approved by the Governor May 9, 2019.

Filed in Office of Secretary of State May 13, 2019.

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