
SENATE BILL 5004

State of Washington

62nd Legislature

2011 Regular Session

By Senator Pflug

Read first time 01/10/11. Referred to Committee on Judiciary.

1 AN ACT Relating to disclosure and regulation of criminal informant
2 evidence and testimony; and adding a new 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 evidence and
5 testimony from criminal informants who have reason to seek leniency and
6 other benefits from the criminal justice system are inherently suspect
7 because a system in which criminal informants are rewarded by the state
8 produces dangerous incentives to manufacture or fabricate evidence.

9 This act is intended to address the unreliability of informant
10 evidence and testimony by providing a method to assess informant
11 evidence and testimony and to corroborate its substance.

12 NEW SECTION. **Sec. 2.** The definitions in this section apply
13 throughout this chapter unless the context clearly requires otherwise.

14 (1) "Electronic recording" or "electronically recorded" means an
15 audio and visual recording that is an authentic, accurate, unaltered
16 record of an informant statement.

17 (2) "Informant" means any criminal suspect, whether or not they are
18 detained or incarcerated, who provides information in exchange for a

1 deal, promise, inducement, or benefit, or expectation thereof. This
2 definition does not include victims of the crime being prosecuted or
3 experts.

4 (3) "Statement" means an oral, written, sign language, or nonverbal
5 communication.

6 NEW SECTION. **Sec. 3.** (1) All statements made by an informant
7 relating to a crime by an adult or juvenile shall be electronically
8 recorded.

9 (2) If an audio and visual recording is not practicable, an audio
10 recording is an acceptable alternative to audio and visual recording.

11 (3) Every electronic recording of a statement by an informant shall
12 be clearly identified and catalogued by law enforcement personnel.

13 (4) Every electronic recording shall be preserved by law
14 enforcement personnel until all appeals, postconviction, and habeas
15 corpus proceedings connected to that testimony are final and concluded,
16 or the time within which such proceedings must be brought has expired.

17 (5) Upon motion by the defendant, the court may order that a copy
18 of the recording be preserved for any period beyond the expiration of
19 all appeals.

20 NEW SECTION. **Sec. 4.** (1) In any case relating to a crime by an
21 adult or juvenile, the prosecution must disclose in a timely manner its
22 intent to rely on evidence provided by an informant or to introduce the
23 testimony of an informant.

24 (2) The prosecution shall also in a timely manner, prior to trial
25 or the entry of a guilty plea, disclose in discovery the following
26 factors:

27 (a) The complete criminal history of the informant;

28 (b) Any deals, promises, inducements, or benefits that the offering
29 party has made or will make in the future to the informant;

30 (c) The substance of the statements made by the accused to the
31 informant;

32 (d) The time and place of the statements given by the accused to
33 the informant, the time and place of the disclosure of the informant
34 statement to law enforcement officials, and the names of all persons
35 present when the statements by the accused and the informant were made;

1 (e) Whether at any time the informant modified or recanted that
2 testimony or statement and, if so, the time and place of the
3 modification or recantation, the nature of the modification or
4 recantation, and the names of the persons who were present at the
5 modification or recantation;

6 (f) Other cases in which the informant testified, provided that the
7 existence of such testimony can be ascertained through reasonable
8 inquiry and whether the informant received any promise, inducement, or
9 benefit in exchange for or subsequent to that testimony or statement;

10 (g) If known, the relationship between the accused and the
11 informant, including the amount of time they were incarcerated in the
12 same custodial section of the jail or prison; and

13 (h) Any other information relevant to the informant's credibility.

14 NEW SECTION. **Sec. 5.** (1) Before a trial or any other proceeding
15 in which the state intends to introduce the testimony of an informant,
16 the court shall hold a pretrial hearing to assess the reliability and
17 to determine whether the state can corroborate the content of informant
18 testimony relating to a crime by an adult or juvenile unless the
19 defendant waives such a hearing.

20 (2) On the issue of reliability, the court shall consider all of
21 the factors enumerated in section 4(2) of this act. If the prosecution
22 fails to show by a preponderance of the evidence that the informant's
23 testimony is reliable, the court shall render the testimony
24 inadmissible.

25 (3) On the issue of corroboration, the court must determine whether
26 the informant's testimony is corroborated by other evidence tending to
27 connect the defendant with the crime committed. Corroboration is not
28 sufficient if the corroboration only shows the commission of the
29 offense. Corroboration shall not be provided by evidence or testimony
30 from another informant. If the prosecution fails to show corroboration
31 by a preponderance of the evidence, the court shall render the
32 testimony inadmissible.

33 NEW SECTION. **Sec. 6.** If, after conviction, a defendant makes a
34 substantial showing that an informant witness provided false
35 information that might have affected the outcome of the trial, the
36 court shall hold a reliability hearing as provided in section 5 of this

1 act. If the court concludes by clear and convincing evidence that the
2 informant witness provided false evidence, the court shall order a new
3 trial.

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

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