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**SUBSTITUTE SENATE BILL 5714**

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**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; and creating new sections.

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

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

17 NEW SECTION. **Sec. 2.** EYEWITNESS EVIDENCE. (1) A work group is  
18 established to adopt model guidelines and develop a training  
19 curriculum using evidence-based best practices for law enforcement to

1 maximize the reliability of eyewitness evidence collected during  
2 criminal investigations.

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

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

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

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

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

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

17 (vii) One member representing the Washington defender  
18 association;

19 (viii) One member representing the Washington association of  
20 criminal defense lawyers;

21 (ix) One member representing the Washington innocence project;  
22 and

23 (x) One member from the scientific community with expertise in  
24 eyewitness memory.

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

26 (i) Developing model guidelines for the collection of eyewitness  
27 evidence consistent with the model policies adopted in 2015 by the  
28 Washington association of sheriffs and police chiefs and the  
29 Washington association of prosecuting attorneys;

30 (ii) Designing and implementing statewide law enforcement  
31 training for the collection and documentation of eyewitness evidence  
32 based on the model guidelines developed pursuant to this subsection;  
33 and

34 (iii) Collecting local protocols required under subsection (2) of  
35 this section.

36 (c) The work group shall hold its initial meeting no later than  
37 July 31, 2019, and complete the model guidelines and training  
38 curriculum no later than November 30, 2019.

39 (d) The work group shall prepare and submit to the appropriate  
40 committees of the legislature a report including the model

1 guidelines, training curriculum, and a summary of its work by  
2 November 30, 2019.

3 (e) The work group shall function within existing resources.

4 (f) Following the submission of the report required under (d) of  
5 this subsection, the work group shall reconvene every three years to  
6 revise the model guidelines as needed in accordance with science-  
7 based best practices for the collection of eyewitness evidence.

8 (2)(a) No later than December 31, 2020, each law enforcement  
9 agency shall adopt and implement a written local protocol for the  
10 collection of eyewitness evidence consistent with the model  
11 guidelines developed pursuant to subsection (1) of this section, and  
12 submit a copy of the local protocol to the work group established  
13 under subsection (1) of this section.

14 (b) If a law enforcement agency adopts the model guidelines, it  
15 has met the requirements of this subsection.

16 (c) If a law enforcement agency chooses to adopt its own local  
17 protocol, the protocol must:

18 (i) Be based on credible field, academic, or laboratory research  
19 on eyewitness memory;

20 (ii) Be designed to reduce erroneous eyewitness identifications  
21 and enhance the reliability and objectivity of eyewitness  
22 identifications; and

23 (iii) Include standards for (A) blind administration of the  
24 identification procedure; (B) filler selection; (C) instructions to  
25 the witness; and (D) documenting a statement of witness confidence  
26 immediately following any positive identification.

27 (3) Specialized training based on the training curriculum  
28 developed pursuant to subsection (1) of this section shall be made  
29 available to persons responsible for the collection of eyewitness  
30 identification evidence during criminal investigations. Training  
31 participants shall have the opportunity to practice skills and  
32 receive feedback from instructors.

33 NEW SECTION. **Sec. 3.** INFORMANTS. (1) For the purposes of this  
34 section, "informant" means any person who: (a) Was previously  
35 unconnected with the criminal case as either a witness or a  
36 codefendant; (b) claims to have relevant information about the crime;  
37 (c) is currently charged with a crime or is facing potential criminal  
38 charges or is in custody; and (d) at any time receives consideration  
39 in exchange for providing the information or testimony.

1 (2) A work group is established to adopt model guidelines and  
2 develop a training curriculum based on those guidelines to assist  
3 prosecuting attorneys in evaluating the reliability of information or  
4 testimony offered by an informant before it is used in connection  
5 with any criminal proceeding and in determining adequate preliminary  
6 disclosures to the defense.

7 (a) The president of the senate and the speaker of the house of  
8 representatives shall jointly appoint the members of the work group  
9 to include the following:

10 (i) One member representing the senate;

11 (ii) One member representing the house of representatives;

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

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

16 (v) One member representing the Washington defender association;

17 (vi) One member representing the Washington association of  
18 criminal defense lawyers;

19 (vii) One member representing the Washington innocence project;

20 and

21 (viii) One member of the board of the western states information  
22 network.

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

24 (i) Developing model guidelines to direct prosecutors in  
25 determining whether to use an informant in a criminal proceeding;

26 (ii) Designing and implementing statewide training for  
27 prosecutors and defense counsel based on the model guidelines; and

28 (iii) Collecting local protocols required under subsection (3) of  
29 this section.

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

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

37 (e) The work group shall function within existing resources.

38 (3) No later than December 31, 2020, each county prosecuting  
39 attorney 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 subsection (2) of this section, and submit a copy of the local  
4 protocol to the work group established under subsection (2) of this  
5 section.

6 (i) If a county prosecutor adopts the model guidelines developed  
7 by the work group established under subsection (2) of this section,  
8 it has met the requirements of this subsection.

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

14 (A) The complete criminal history of the informant including  
15 pending criminal charges;

16 (B) Any consideration provided in exchange for the information or  
17 testimony;

18 (C) Whether the informant's information or testimony was modified  
19 or recanted;

20 (D) The number of times the informant has previously provided  
21 information or testimony in exchange for consideration; and

22 (E) The kind and quality of other evidence corroborating the  
23 informant's information or testimony;

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

28 (4) Specialized training based on the training curriculum  
29 developed pursuant to subsection (2) of this section shall be made  
30 available to prosecuting attorneys and criminal defense attorneys  
31 related to the use of informants in the criminal justice system.

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

35 NEW SECTION. **Sec. 4.** The judge shall provide the jury with an  
36 instruction on exercising caution in evaluating the testimony of an  
37 informant. Unless the Washington pattern instructions committee  
38 adopts its own language by December 1, 2019, the instruction should  
39 be substantially similar to the following form:

1        "The testimony of an informant in exchange for a promise by the  
2 government, for money, or other advantage must always be examined and  
3 weighed by the jury with greater care and caution than the testimony  
4 of ordinary witnesses. You, the jury, must decide whether the  
5 informant's testimony has been affected by these circumstances, by  
6 the informant's interest in the outcome of the case, by prejudice  
7 against the defendant, or by the benefits that the informant has  
8 received. You should keep in mind that such testimony is always to be  
9 received with caution and weighed with great care.

10        You should never convict any defendant upon the unsupported  
11 testimony of an informant unless you believe that testimony beyond a  
12 reasonable doubt."

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