
HOUSE BILL 1719

State of Washington

52nd Legislature

1991 Regular Session

By Representatives Mielke, Riley, Chandler, Ludwig, Tate, Padden, Hargrove, Bowman, Zellinsky, P. Johnson, Sheldon, Orr, Broback, Forner, D. Sommers, Van Luven, Vance, Betrozoff, Fuhrman, May, Paris, Mitchell, Ballard, McLean, Nealey, Brumsickle, Hochstatter, Horn and Silver.

Read first time February 6, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to establishing an exclusionary rule for the
2 suppression of evidence; 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 in some
5 instances evidence of a crime is excluded from admission at trial
6 because it was illegally collected. The legislature further finds that
7 the illegality may be the result of a technicality rather than a lack
8 of good faith on the part of the collector. The legislature intends to
9 prohibit the suppression of evidence in both searches with a warrant
10 and warrantless arrests and searches if the law enforcement officer
11 collecting the evidence did so in good faith that he or she was doing
12 so legally, even if the evidence was subsequently ruled as being
13 illegally collected.

1 NEW SECTION. **Sec. 2.** Unless the context clearly requires
2 otherwise, the definitions in this section apply throughout this
3 chapter.

4 (1) "Evidence" means contraband, instrumentations, fruits of a
5 crime, or any other evidence which tends to prove a fact in issue.

6 (2) "Good faith" means whenever a law enforcement officer obtains
7 evidence:

8 (a) Pursuant to a search warrant obtained from a magistrate which
9 is free from obvious defects other than nondeliberate errors in
10 preparation and the officer reasonably believed the warrant to be
11 valid;

12 (b) Pursuant to a search resulting from an arrest, when:

13 (i) Under RCW 10.31.100 the officer reasonably believed he or she
14 possessed probable cause to make the arrest;

15 (ii) The officer procured or executed an invalid arrest warrant he
16 or she reasonably believed to be valid; or

17 (c) Pursuant to statute, local ordinance, judicial precedent, or
18 court rule which is later declared unconstitutional or otherwise
19 invalidated.

20 (3) "Pending criminal proceeding" means any criminal investigation
21 subject matter used in seeking an indictment or information.

22 NEW SECTION. **Sec. 3.** (1) A person aggrieved by an unlawful
23 seizure made by an officer and against whom there is a pending criminal
24 proceeding growing out of the subject matter of the seizure may file a
25 motion to suppress its use in evidence.

26 (2) The motion to suppress shall be in writing. It shall be filed
27 with the court in which a criminal proceeding growing out of the
28 subject matter of the seizure is pending against the moving party.

1 (3) The motion should be made before the commencement of the trial
2 of the moving party on the charge arising out of the seizure. If the
3 defendant was unaware of the grounds for suppression or had no
4 opportunity to file before trial, the trial judge may in the judge's
5 discretion, entertain a motion any time during the trial. Notice shall
6 be given to the prosecuting attorney of the date, time, place, and
7 nature of the hearing.

8 (4) The motion to suppress may be based upon any one or more of the
9 following grounds:

10 (a) The search and seizure were made without warrant and without
11 lawful authority;

12 (b) The warrant was improper upon its face or was illegally issued,
13 including the issuance of a warrant without proper showing of probable
14 cause;

15 (c) The property seized was not that described in the warrant and
16 that the officer was not otherwise lawfully privileged to seize the
17 same;

18 (d) The warrant was illegally executed by the officer; or

19 (e) In any other manner the search and seizure violated the rights
20 of the moving party under the fourth and fourteenth amendments of the
21 Constitution of the United States.

22 NEW SECTION. **Sec. 4.** A judge shall receive evidence on any
23 issue of fact necessary to the decision on a motion to suppress. The
24 burden of going forward with the evidence and the risk of nonpersuasion
25 shall be upon the state to show by a preponderance of the evidence that
26 the motion to suppress should be overruled.

27 NEW SECTION. **Sec. 5.** If a motion to suppress is granted, the
28 judge shall order the property or matter delivered to the moving party,

1 unless its retention is authorized or required by any other law of this
2 state.

3 NEW SECTION. **Sec. 6.** If a party in a criminal proceeding
4 seeks to exclude evidence from the trier of fact because of the conduct
5 of a peace officer in obtaining the evidence, the proponent of the
6 evidence may urge that the peace officer's conduct was taken in a
7 reasonable, good faith belief that the conduct was proper and that the
8 evidence discovered should not be kept from the trier of fact if
9 otherwise admissible.

10 NEW SECTION. **Sec. 7.** No court should suppress evidence which
11 is otherwise admissible in a civil or criminal proceeding if the
12 evidence was seized in good faith or as a result of a technical
13 violation.

14 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
15 constitute a new chapter in Title 10 RCW.