

HOUSE BILL REPORT

SSB 6590

As Passed House - Amended:

February 28, 2010

Title: An act relating to law enforcement officer conduct.

Brief Description: Stating the policy that law enforcement personnel be truthful and honest in the conduct of official business.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Kline, Delvin, Brandland and Hargrove).

Brief History:

Committee Activity:

Public Safety & Emergency Preparedness: 2/23/10 [DPA].

Floor Activity:

Passed House: 2/28/10, 94-0.

Brief Summary of Substitute Bill (As Amended by House)

- Creates a new Washington policy that states that all law enforcement personnel must be truthful and honest in the conduct of their official business.

HOUSE COMMITTEE ON PUBLIC SAFETY & EMERGENCY PREPAREDNESS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Hurst, Chair; O'Brien, Vice Chair; Pearson, Ranking Minority Member; Klippert, Assistant Ranking Minority Member; Appleton, Goodman, Kirby and Ross.

Staff: Yvonne Walker (786-7841).

Background:

In 2001 Kitsap County (County) terminated Kitsap County Sheriff Deputy Brian LaFrance for 29 documented incidents of misconduct including dishonesty, mishandling evidence, and disobeying direct orders. The case went to arbitration and the arbitrator heard the case pursuant to a collective bargaining agreement and determined the charges were accurate, but

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termination was not the appropriate penalty. The arbitrator concluded that the County had failed to show the degree of discipline administered was reasonably related to the seriousness of the proven offenses. The arbitrator determined that Deputy LaFrance's mental disability was apparent from his behavior and that the County should have referred him for counseling and fitness for duty exams. The award ordered reinstatement of the deputy's employment (pending the deputy's successful passage of the County's physical and psychological exam) and granted the deputy access to any benefits available to officers in good standing as the date of his discharge, but denied back pay.

Both parties appealed the arbitrator's decision. The matter went to the Court of Appeals which reversed the arbitrator's decision. In 2009 the matter eventually was decided by the Washington Supreme Court (Court) in the case of *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, 167 Wn. 2d 428 (2009). The Court found that an arbitration decision arising out of a collective bargaining agreement could be vacated if it violated explicit, well defined, and dominant public policy. The Court reviewed Washington law and found that there was no explicit, well defined, and dominate public policy requiring termination of an officer found to have been untruthful. The Court also held that the arbitrator did not exceed his authority by denying back pay and that the arbitration award itself did not mandate awarding back pay. The Court reversed the decision of the Court of Appeals and reinstated the original arbitration award.

Summary of Amended Bill:

A new policy is created within the Criminal Justice Training Commission which states that all commissioned, appointed, and elected law enforcement personnel must comply with their oath of office and agency policies regarding the duty to be truthful and honest in the conduct of their official business.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is to make sure police officers are truthful and honest. The problem is the surprising statement by the Court's decision that there is no explicit well defined policy requiring honesty of those enforcing the laws of the state. The Court has basically stated that there is no public interest in police officers being truthful. If the Legislature allows the Court ruling to stand then it will change the way law enforcement and the system behave in immeasurable ways, including how police officers will be treated in court.

There are already statutes that require certification for law enforcement officers, training, polygraph tests, psychological exams, and even background investigation checks. So why would there not be a public policy that ensures that there is truthfulness and honesty in an

officer's career? It is imperative that law enforcement officers are held at a higher standard in their profession.

It is becoming commonplace in criminal trials that defenders make jurors aware that the Court has said that there is no policy requiring officers to be honest. Prosecutors have an obligation to provide defense counsel with information that is part of the Brady materials. Honest officers make for better criminal justice and it would just be better to have a trial based on truth. This new policy will provide uniformity around the state.

(In support with amendment) Dishonest and untruthful officers are not condoned. This was a case that was eventually decided by the Court which ruled in favor of the original arbitration agreement.

One of the committee amendments that is being offered makes it even clearer that law enforcement officers need to comply with their oath of office and agency policies regarding the duty to be truthful and honest in the conduct of their official business. The concerns with the original bill draft have been lessened with the amendment that is being offered in committee. The amendment basically tells each officer to abide by local policies. This makes the bill stronger.

(Opposed) There are some concerns with this bill. It is expected that all members of law enforcement are to be truthful and honest. When reviewing potential legislation, it is important to look at the circumstances that created the impetus for its introduction. In this case, it was a county that failed to justify its termination of an employee under its collective bargaining agreement. Then the case was argued to the Court to overturn a lawful arbitration decision. The Court said the arbitrator had not exceeded its authority nor did his decision violate any law. Therefore the county was denied its request remedy. Law enforcement officers are already held at a higher standard. They take an oath of office and their code of conduct is addressed by their respective department.

The other aspect in the bill that is troublesome is a lack of exception provided for where in the course of the officer's duties the officer needs to be less than candid. It appears that officers would be required to acknowledge that they are law enforcement officers. Cases would be more difficult to develop without some exception to the language in the bill. A proposed change in law is not justified just because of one case of one employer that did a bad job of putting on their grievance. This bill is a solution looking for a problem.

Persons Testifying: (In support) Senator Kline, prime sponsor; Representative Ericks; Don Pierce, Washington Association of Sheriffs and Police Chiefs; Bruce Bjork, Department of Fish and Wildlife; Dan Kimball, Thurston County Sheriff; Russ Hauge, Kitsap County Prosecuting Attorney; and Kimberly Gordon, Washington Association of Criminal Defense Lawyers and Washington Defender Association.

(In support with amendment) Bill Hanson, Fraternal Order of Police; Jamie Daniels, Washington Council of Police and Sheriffs; and Rick Jensen, Washington State Patrol Troopers Association.

(Opposed) Owen Linch, Joint Council of Teamsters.

Persons Signed In To Testify But Not Testifying: (In support) Tom McBride, Washington Association of Prosecuting Attorneys.