

# SENATE BILL REPORT

## SB 6148

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As Reported by Senate Committee On:  
Law & Justice, January 30, 2020

**Title:** An act relating to peace officer certification.

**Brief Description:** Concerning peace officer certification.

**Sponsors:** Senators Salomon, Van De Wege, Nguyen and Das.

**Brief History:**

**Committee Activity:** Law & Justice: 1/21/20, 1/30/20 [DPS].

**Brief Summary of First Substitute Bill**

- Retains the requirement for polygraph testing.
- Clarifies that the law may not be construed to require a law enforcement agency to deem an applicant unsuitable for employment based solely on a polygraph examination.
- Further clarifies that this provision may not be construed to affect other pre-employment techniques or hiring determinations.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 6148 be substituted therefor, and the substitute bill do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy, Kuderer, Salomon and Wilson, L..

**Staff:** Tim Ford (786-7423)

**Background:** The Criminal Justice Training Commission (Commission) certifies applicants for the position of fully commissioned peace officer or fully commissioned reserve peace officer. The Commission may require an applicant to take and pass a polygraph and psychological examination. In addition to the polygraph and psychological examinations, applicants must submit to a background investigation including a check of criminal history. The Commission may use the tests and investigation to judge an applicant's suitability for employment. For the purposes of rules adopted by the Commission, officers of the

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Washington State Patrol are considered peace officers, and are subject to the same requirements and rules as city and county law enforcement agencies. The peace officer seeking certification is required to pay a portion of the polygraph test fee, or \$400, whichever is less.

Polygraph tests measure and record three different biological functions—heart rate/blood pressure, respiration, and skin conductivity. Rate and depth of respiration are measured by pneumographs wrapped around a subject's chest to measure thoracic movements or volume change during respiration. Cardiovascular activity is assessed by a blood pressure cuff. Skin conductivity—galvanic response, is measured through electrodes attached to a subject's fingertips. The test involves asking a set of control questions and relevant questions while measuring the arousal of the test subject for the purpose of inferring deception in the subject's answers to the relevant questions.

The Washington State Supreme Court held in the case of *State v. Renfro*, the general rule in Washington has been that polygraph testimony is inadmissible absent stipulation by both parties.

**Summary of Bill (First Substitute):** Polygraph testing is retained. The requirement for polygraph testing does not require a law enforcement agency to reject an applicant based solely on the polygraph examination results. Other pre-employment screening techniques are not affected by this law.

**EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (First Substitute):**

- Retains the requirement for polygraph testing
- Clarifies that the law may not be construed to require a law enforcement agency to deem an applicant unsuitable for employment based solely on a polygraph examination.
- Further clarifies that this provision may not be construed to affect other pre-employment techniques or hiring determinations.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2021.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: A constituent is a military veteran of 17 years who had top secret clearance applied to become a police officer and took two different polygraphs for two different cities but failed different parts. Former CIA director James Woolsey said that he does not agree with the use of polygraphs for pre-employment tests. There are articles on the subjectivity of the test gives interpretation of these tests which is probably why we do not admit them in court.

This test unnecessarily hampers well qualified candidates the ability to serve their communities as law enforcement officers. This testing has been banned for almost all other types of employment. There are well documented flaws in the type of testing. Federal law banned the use of polygraphs in 1988 for most employers.

CON: We fully support a hiring process that comprehensively endeavors to hire applicants that are worthy of your trust, citizens trust, and also the trust and dependence upon their peers. In recent years law enforcement officers have been held to a higher and higher standard. A polygraph is a critical component, not the end all and be all to a hiring process that we fully support to make sure we are hiring the best. Recruits have made confessions prior to the administration of the polygraph test, which include sex crimes, domestic violence, drug use, assaults, theft, lying in court, DUI's, and even one admitted to a homicide. We should not be removing valuable screening tools.

**Persons Testifying:** PRO: Senator Jesse Salomon, Prime Sponsor; Judson Bennett, citizen.

CON: Jeff DeVere, Washington Council of Police and Sheriffs; Neil Weaver, Washington State Patrol; Derek Zable, Criminal Justice Training Commission; James McMahan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** No one.