

HOUSE BILL REPORT

HB 1512

As Passed House:
February 16, 2016

Title: An act relating to fairness in disciplinary actions of peace officers who appear on a prosecuting attorney's potential impeachment list.

Brief Description: Encouraging fairness in disciplinary actions of peace officers.

Sponsors: Representatives Sells, Hayes, Moscoso and Ormsby.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/3/15, 2/9/15, 2/10/15 [DP].

Floor Activity:

Passed House: 3/4/15, 98-0.

Floor Activity:

Passed House: 2/16/16, 97-0.

Brief Summary of Bill

- Prohibits a law enforcement agency from taking disciplinary or other adverse personnel action against a peace officer solely because the officer's name appears on a prosecutor's recurring witnesses list.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 7 members: Representatives Sells, Chair; Gregerson, Vice Chair; Manweller, Ranking Minority Member; McCabe, Moeller, Ormsby and G. Hunt.

Staff: Trudes Tango (786-7384).

Background:

Prosecutors have an affirmative duty to disclose exculpatory evidence to the defense. This duty is based on constitutional due process requirements, as explained in a United States Supreme Court case, *Brady v. Maryland (Brady)*, and since modified by subsequent cases. In

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addition to *Brady*, the duty to disclose is also established in court rules and rules of professional conduct for prosecutors.

Prosecutors must disclose information that could be used to impeach witnesses. Potential impeachment evidence includes information that a reasonable person could view as impairing the witness' credibility or competence. It can include, for example, a witness' prior conviction, a forensic scientist's performance errors, or a law enforcement officer's misconduct related to truthfulness, bias, or other behavior that could be exculpatory to the criminal defendant.

Summary of Bill:

A law enforcement agency may not take disciplinary action or any other adverse personnel action against a peace officer solely because:

- the officer's name has been placed on a list maintained by a prosecuting attorney's office of recurring witnesses for whom there is known potential impeachment information; or
- the officer's name may otherwise be subject to disclosure pursuant to *Brady*.

A law enforcement agency is not prohibited from taking disciplinary action or any other adverse personnel action against a peace officer based on the underlying acts or omission for which that officer's name was placed on the list or may be subject to disclosure, so long as the law enforcement agency's actions conform to the rules and procedures established through collective bargaining.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) There shouldn't be an assumption that an officer engaged in misconduct just because the officer's name appears on a potential impeachment list. An officer can be placed on the list based on allegations. Whether a name is removed from the list is at the discretion of the prosecutor. The bill makes it clear that the officer can still be disciplined for the underlying actions. There are no standards about whether evidence is too old or too ambiguous to disclose. The bill will help prosecutors comply with their duties and send the message to officers that they can share information with prosecutors without fear. This benefits prosecutors, not just officers.

(Opposed) None.

Persons Testifying: Representative Sells, prime sponsor; Jamie Daniels, Washington Council of Police and Sheriffs; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.