

SENATE BILL REPORT

SB 5589

As Reported by Senate Committee On:
Law & Justice, February 3, 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: Senators O'Ban, Pedersen, Pearson and Roach.

Brief History:

Committee Activity: Law & Justice: 2/03/16, 2/03/16 [DP].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Padden, Chair; O'Ban, Vice Chair; Pedersen, Ranking Minority Member; Darneille, Frockt, Pearson and Roach.

Staff: Melissa Burke-Cain (786-7755)

Background: Under a landmark U.S. Supreme Court case, *Brady v. Maryland*, 373 U.S. 83 (1963), prosecutors have a duty to disclose potentially exculpatory evidence to defense counsel prior to trial. This disclosure is often referred to as a "Brady disclosure" and can include witness statements, evidence that conflicts with the prosecution's witnesses, or evidence that could allow the defense to impeach the credibility of a prosecution witness. Because of the Brady ruling, prosecutors are required to notify defendants and their attorneys whenever a law enforcement official involved in their case has known credibility issues when acting in an official capacity. Although information in a "Brady disclosure" may pertain to law enforcement officers, often the information has not been substantiated or proven to any degree.

Summary of Bill: A law enforcement agency may not take punitive action against a peace officer solely because the officer's name was placed on a potential impeachment list in a "Brady disclosure." The law enforcement agency may take punitive or personnel action based on the underlying acts or omissions causing the officer's name to be placed on a "Brady disclosure" list. No disciplinary action may be taken against a peace officer by a law enforcement agency solely because that officer's name has been placed on a list maintained

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by the prosecutor's office of recurring witnesses having known potential impeachment information or subject to being placed on a "Brady disclosure" list. Nothing prohibits the agency from taking personnel action based on the underlying acts which caused the officer to be placed on the recurring witness "Brady disclosure" list so long as the agency complies with the rules and procedures adopted by an applicable collective bargaining agreement.

Appropriation: None

Fiscal Note: Not requested

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: It is important not to allow an unrelated issue to harm or interfere with a police officer's career if it is not based on work performance, but solely on the basis of an unsubstantiated claim causing the officer to be listed in a "Brady disclosure". This bill protects officers from unfair disciplinary action, retains the officer's right to participate in the disciplinary process and also allows the prosecutor to fulfill disclosure obligations under the Brady case. The mere stigma of an accusation can destroy a career, California has a similar law and similar language is being collectively bargained in contracts around the state. The bill text is simple and represents current state laws. A Brady disclosure usually means that the officer may be subject to impeachment for a complaint of dishonesty, excessive use of force, but it can be old information, or very minor complaints. Being listed on a "Brady disclosure" is rarely used to impeach testimony of an officer on the witness stand. An officer can be placed on a "Brady disclosure" list without any substantiation. It can even be based on hearsay. CON: This is a remedy to a theoretical problem. The bill creates a problem for law enforcement agency management because it creates a special class within the workforce that could use this law as a defense in disciplinary cases. The bill would force the agency to prove the negative that discipline is not solely based on a "Brady disclosure" listing. The bill puts the law enforcement agency in a difficult position if multiple acts are disciplined, but none alone are sufficient to terminate the officer's employment. The prosecutor decides whether to bring a case, and may determine that no case can be brought because of the officer's Brady listing. As a result, the agency has an officer who cannot be effective in the field because the prosecutor would not want the officer testify.

Persons Testifying: PRO: Senator O' Ban, prime sponsor; Craig Bulkley, WACOPS; Chris Tracey, Tacoma Police Guild and WACOPS; Tom Mc Bride, WA Assn. of Prosecuting Attorneys; CON: James McMahon, WA Assn. Sheriffs and Police Chiefs.

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