

SENATE BILL REPORT

HB 1512

As of March 27, 2015

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: Passed House: 3/04/15, 98-0.

Committee Activity: Law & Justice: 3/26/15.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: In criminal cases, prosecutors must disclose any evidence that may help defend the accused based on a constitutional due process requirement from a 1963 U.S. Supreme Court case. Sometimes, the favorable evidence may include testimony from a law enforcement officer who may be identified as a trial witness for impeachment purposes. The officer's testimony and knowledge may weaken the prosecution's case, but that does not necessarily mean that the officer has made a mistake or engaged in work-related misconduct. Some law enforcement agencies may take adverse personnel action against, or penalize an officer for being listed as a potential exculpatory witness for the defense.

Summary of Bill: A law enforcement agency may not take adverse personnel action against a peace officer solely because the officer was identified to the defense as a potential exculpatory witness in order to protect the accused's due process rights. The law enforcement agency may take personnel action against the officer based on the underlying conduct or any acts that cause the officer to be listed so long as the action complies with the negotiated labor agreements between the agency and its officers.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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.

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

Staff Summary of Public Testimony: PRO: This bill tries to appropriately balance the needs of police officers and the law enforcement agencies that employ them. A police officer may be on a "Brady list" for many reasons – *Brady v. Maryland*, a 1963 U.S. Supreme Court case establishing a due process requirement for prosecutors to notify defendant of potentially favorable evidence. In complying with *Brady* obligations, prosecutors err on the side of transparency. An officer may be listed routinely because they previously made mistakes and the testimony they provide may be impeached, or because the officer has been accused of wrongdoing connected with duties. An officer may be on a Brady list for a complaint of misconduct but later exonerated of any wrongdoing. The officer should not face adverse personnel actions just because they are on a Brady list. An employing jurisdiction needs to be able to address underlying misconduct through its disciplinary processes. On occasion, a large jurisdiction may try to reassign the officer to other duties, but a small jurisdiction may not have sufficient resources to change an officer's assignment. The bill will provide prosecutors with more certainty on this issue. There are some concerns with what may constitute an adverse personnel action or whether the bill could nullify the terms of some disciplinary process. A prosecutor's decision to put an officer on a *Brady* list is not the same as a finding of untruthfulness.

Persons Testifying: PRO: Representative Hayes, prime sponsor; Chris Tracy, WA Council of Police and Sheriffs; Rob Huss, WA State Patrol; Tom McBride, WA Assn. of Prosecuting Attorneys.

Persons Signed in to Testify But Not Testifying: No one.