

HOUSE BILL REPORT

HB 2532

As Reported by House Committee On: Labor & Workplace Standards

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

Brief Description: Concerning fairness in disciplinary actions of peace officers who appear on a prosecuting attorney's potential impeachment list.

Sponsors: Representatives Sells, Hayes, Holy, Sullivan, Irwin, Muri, Stanford, Ormsby and Johnson.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/15/18, 1/18/18 [DP].

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 the prosecutor's recurring witness list.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: Do pass. Signed by 7 members: Representatives Sells, Chair; Gregerson, Vice Chair; McCabe, Ranking Minority Member; Pike, Assistant Ranking Minority Member; Doglio, Frame and Manweller.

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

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.

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) Prosecutors have a duty to turn over impeachment evidence which is broader than turning over exculpatory evidence. If it looks like it could be used as impeachment, prosecutors turn it over to the defense. Sometimes these are minor things and they do not necessarily mean the officer is unreliable and the officer does not deserve to be disciplined. Prosecutors do not want the flow of information impeded. The bill makes it fair for officers so they are not disciplined solely for being on a *Brady* list. It ensures equity for all peace officers.

(Opposed) This bill is a solution in search of a problem, and it creates unintended consequences. There has not been a single incident where an officer has been disciplined solely because the officer is on a *Brady* list. The bill would prohibit an agency from taking

personnel action against an officer who is on a case even when prosecutors refuse to move forward on cases that the officer is involved in.

Persons Testifying: (In support) Representative Sells, prime sponsor; Teresa Taylor, Washington Council of Police and Sheriffs; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Opposed) James McMahon Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.