

HOUSE BILL REPORT

SB 6188

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: Encouraging fairness in disciplinary actions of peace officers.

Sponsors: Senators Dhingra, O'Ban, Wilson, Van De Wege and Kuderer.

Brief History:

Committee Activity:

Labor & Workplace Standards: 2/19/18, 2/22/18 [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 is subject to a *Brady* disclosure or 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) The bill allows prosecutors to make decisions based on their ethical obligations and separates those considerations from any disciplinary action. There are many reasons why an officer's name might appear on the prosecutor's *Brady* list and it should not be an automatic reason for disciplinary action. This bill will result in greater security and stability in the criminal justice system. This bill protects the collective bargaining rights of the rank and file officers in the state.

(Opposed) None.

Persons Testifying: Senator Dhingra, prime sponsor; and Teresa Taylor, Washington Council of Police and Sheriffs.

Persons Signed In To Testify But Not Testifying: None.