

SENATE BILL REPORT

SB 6188

As Passed Senate, February 9, 2018

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: Law & Justice: 1/29/18, 2/01/18 [DP, w/oRec].

Floor Activity:

Passed Senate: 2/09/18, 41-6.

Brief Summary of Bill

- Prohibits disciplinary or adverse personnel action against a law enforcement officer solely because the officer's name appears on a list of witnesses, required by due process, with potential impeachment information about the officer that may exonerate the defendant.
- Allows disciplinary action for any underlying conduct that resulted in the officer being placed on the list.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Minority Report: That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

Staff: Tim Ford (786-7423)

Background: In *Brady v. Maryland* in 1963, the U.S. Supreme Court held that the prosecution's suppression of evidence favorable to an accused upon request violates constitutional due process requirements where the evidence is material either to guilt or to

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punishment. Disclosure of this evidence is required irrespective of the good faith or bad faith of the prosecutor. The principle behind this ruling about constitutional due process is to avoid unfair trials for the accused. Based on this case, prosecutors have a duty to disclose evidence of a material nature that may tend to exonerate or exculpate the defendant, or to reduce the penalty. This evidence includes a list of law enforcement officers who may be called as a witness where there is information about the officer that has a potential to affect the outcome of a criminal trial. This list is commonly called a Brady list.

Potential impeachment evidence includes information that a reasonable person could view as impairing the witness' credibility or competence. It is broadly required for any type of witness and can include, a witness' prior conviction, an expert's performance errors, or a law enforcement officer's misconduct related to truthfulness, bias, or other behavior that could be favorable to a 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 is 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 the holding in *Brady v. Maryland*.

A law enforcement agency is not prohibited from taking disciplinary action or 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.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill is about clarifying transparency and accountability in our legal system. A fair and just criminal prosecution means that information that would prove the innocence of the defendant or would enable the defense to more effectively impeach the credibility of government witnesses needs to be disclosed. Pretrial discovery rules requires prosecutors to provide exculpatory evidence to defense counsel. Evidence made through a list of law enforcement officers who may be called to testify where there is information about the officer has the potential to affect the outcome of the trial. There is a broad list of reasons why an officer's information may be provided to defense counsel. This bill ensures that a law enforcement agency may not take disciplinary action simply due to their presence on this list.

A disciplinary action must comply with collective bargaining agreements. Constitutional due process requires disclosure of exculpatory and impeachment evidence. Prosecutors have a

duty to provide this information. Law enforcement must cooperate with prosecutors to provide this information. This bill will ensure that law enforcement can provide prosecutors the information without fearing that merely being on this list will lead to discipline.

CON: In every instance where it had been claimed that a law enforcement officer was disciplined for merely being placed on the Brady list, it turned out to not be true. It is a solution in search of a problem. This may add new causes for litigation. There may be unintended consequences. A prosecutor may not take case referrals from an officer that is not credible, and not file any charges related to the work of that officer. We cannot go back and rediscipline an officer, so what do we do? An essential part of an officer's job is to testify in court.

Persons Testifying: PRO: Senator Manka Dhingra, Prime Sponsor; Tom McBride, Washington Association of Prosecuting Attorneys; Teresa Taylor, WACOPS.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs.

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