

FINAL BILL REPORT

SB 6188

C 265 L 18
Synopsis as Enacted

Brief Description: Encouraging fairness in disciplinary actions of peace officers.

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

Senate Committee on Law & Justice
House Committee on Labor & Workplace Standards

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 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: 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.

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.

Votes on Final Passage:

Senate	41	6
House	98	0

Effective: June 7, 2018