

SHB 1088 - S COMM AMD

By Committee on Law & Justice

ADOPTED 03/09/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 10.93
4 RCW to read as follows:

5 (1) (a) Each county prosecutor shall develop and adopt a written
6 protocol addressing potential impeachment disclosures pursuant to
7 *Brady v. Maryland*, 373 U.S. 83 (1963), and subsequent case law. The
8 protocol must provide guidance for: (i) The types of conduct that
9 should be recognized as potentially exculpatory or as creating
10 potential impeachment material; (ii) how information about an officer
11 or officer conduct should be shared and maintained; and (iii) under
12 what circumstances an officer's information or name may be removed
13 from any list of potential impeachment disclosures.

14 (b) The protocol shall be developed by the prosecuting attorney
15 with consultation of agencies representing law enforcement officers
16 and local departments that will be impacted by the protocol.

17 (c) Subject to amounts appropriated for this purpose, no later
18 than June 30, 2022, the criminal justice training commission shall
19 provide, or contract with an organization that serves prosecuting
20 attorneys in Washington to provide, online training for potential
21 impeachment disclosures.

22 (d) Local protocols under this section shall be adopted and in
23 place no later than July 1, 2022. Local protocols must be reviewed
24 every two years to determine whether modifications are needed.

25 (2) (a) A law enforcement agency shall report the following
26 information to the prosecuting authority of any jurisdiction in which
27 the officer may testify as a witness:

28 (i) Any act by the officer that may be potentially exculpatory to
29 a criminal defendant; and

30 (ii) Misconduct that the officer has engaged in that affects his
31 or her credibility.

1 (b) The law enforcement agency shall report the information
2 within 10 days of the discovery of the act under (a)(i) of this
3 subsection or the misconduct under (a)(ii) of this subsection.

4 (3)(a) Prior to hiring any peace officer with previous law
5 enforcement experience, a law enforcement agency must inquire as to
6 whether the officer has ever been subject to potential impeachment
7 disclosure. The agency shall verify the officer's response with the
8 prosecuting authorities in the jurisdictions of the officer's
9 previous employment. Prosecuting authorities shall respond within 10
10 days of receiving a request from a law enforcement agency for
11 verification. The fact that an officer has been subject to
12 impeachment disclosure is not, in and of itself, a bar to employment.
13 Any prehiring process or hiring decision by an agency does not
14 constitute a personnel action under RCW 10.93.150.

15 (b) Within 10 days of hiring an officer with a prior potential
16 impeachment disclosure, the law enforcement agency shall forward that
17 information to the prosecuting authority of any jurisdiction in which
18 the officer may testify as a witness.

19 (4) An appointed or elected public official, public employee, or
20 public agency as defined in RCW 4.24.470 is immune from civil
21 liability for sharing impeachment information about a peace officer
22 with the peace officer's employer, potential employer, or prosecuting
23 authority unless it is shown that the official, employee, or agency
24 acted with gross negligence or in bad faith."

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25 On page 1, line 1 of the title, after "disclosures;" strike the
26 remainder of the title and insert "and adding a new section to
27 chapter 10.93 RCW."

EFFECT: Requires a written protocol addressing impeachment disclosures be developed and adopted by county prosecutors no later than July 1, 2022 instead of a model policy established by WAPA. Requires the CJTC provide online training regarding impeachment disclosures or contract with an organization that serves prosecuting attorneys in Washington to do so. Specifies a prosecutor must respond to a request for verification within 10 days. Provides immunity from

civil liability for sharing impeachment information about a peace officer in good faith.

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