

# FINAL BILL REPORT

## SHB 1088

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Synopsis as Enacted

**Brief Description:** Concerning potential impeachment disclosures.

**Sponsors:** House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Lovick, Goodman, Fitzgibbon, Johnson, J., Slatter, Wylie, Ramos, Bateman, Berry, Dolan, Tharinger, Simmons, Ryu, Ramel, Shewmake, Leavitt, Senn, Peterson, Gregerson, Valdez, Callan, Chopp, Duerr, Ormsby, Taylor, Lekanoff, Santos, Macri, Frame, Orwall, Berg, Pollet and Harris-Talley).

**House Committee on Civil Rights & Judiciary**  
**Senate Committee on Law & Justice**

**Background:**

Prosecutors have an affirmative duty to disclose exculpatory evidence to the defense. This duty arises from constitutional due process requirements, as well as court rules and rules of professional conduct for prosecuting attorneys.

Under the United States Supreme Court case *Brady v. Maryland (Brady)* and subsequent case law, the prosecution is required to disclose evidence that is both favorable to the accused and material to either guilt or punishment. The duty to disclose applies even if the defense has not requested the information. This obligation extends not only to potentially exculpatory evidence, but also to evidence impeaching the credibility of a government witness. Potential impeachment evidence includes information that a reasonable person could view as impairing the witness' credibility or competence. With respect to police officers who are government witnesses, impeachment evidence can include a prior conviction related to dishonesty, misconduct involving dishonesty or abuse of authority, and evidence tending to show a bias or some motive to lie.

Under court rules, a prosecutor must disclose to the defense any material or information within the prosecutor's knowledge that tends to negate the defendant's guilt as to the offense charged, including any prior criminal convictions of any government witness. The Rules of

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Professional Conduct establish special responsibilities of prosecutors, including the obligation for a prosecutor to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.

In 2013 the Washington Association of Prosecuting Attorneys developed a model policy on potential impeachment disclosures. The model policy provides guidance to prosecuting attorneys on the scope of the duty of disclosure and addresses procedures to be followed when making potential impeachment disclosure determinations and maintaining any list of potential impeachment disclosures. The Washington Association of Sheriffs and Police Chiefs (WASPC) also has adopted a model policy that addresses potential impeachment disclosure information that may be in the possession of law enforcement agencies and standards for disclosure of the information to prosecutors.

### **Summary:**

#### Washington Association of Prosecuting Attorneys Model Policy.

Each county prosecutor must develop and adopt a written protocol addressing potential impeachment disclosures. The protocol must be developed with consultation of agencies representing law enforcement officers and local departments affected by the policy. Protocols must be adopted and in place no later than July 1, 2022, and reviewed every two years.

The protocol must provide guidance for: (i) the types of conduct that should be recognized as potentially exculpatory or as creating potential impeachment material; (ii) how information about an officer or officer conduct should be shared and maintained; and (iii) under what circumstances an officer's information or name may be removed from any list of potential impeachment disclosures.

Subject to amounts appropriated for this purpose, the Criminal Justice Training Commission must provide, or contract with an organization to provide, online training for potential impeachment disclosures no later than June 30, 2022.

#### Law Enforcement Responsibilities.

A law enforcement agency must report to prosecuting authorities the discovery of an act of an officer that may be potentially exculpatory to a criminal defendant, or that an officer has engaged in misconduct affecting his or her credibility. The report must be made to the prosecuting authority of any jurisdiction in which the officer may testify as a witness within 10 days of the agency's discovery of the act or misconduct.

Prior to hiring an officer with previous law enforcement experience, an agency must inquire as to whether the officer has ever been subject to potential impeachment disclosure, and must verify the response with the prosecuting authorities in the jurisdictions of the officer's previous employment. Prosecuting authorities must respond within 10 days of receiving a

request from a law enforcement agency for verification.

The fact that an officer has been subject to impeachment disclosure is not, in and of itself, a bar to employment. Any pre-hiring process or hiring decision by an agency does not constitute a "personnel action" action under a statute that prohibits adverse personnel action against an officer solely because the officer's name is on a potential impeachment disclosure list. Within 10 days of hiring an officer with a prior potential impeachment disclosure, the agency must forward that information to the prosecuting authority of any jurisdiction where the officer may testify as a witness.

An appointed or elected public official, public employee, or public agency is immune from civil liability for sharing impeachment information with a peace officer's employer, potential employer, or prosecuting authority unless the official, employee, or agency acted with gross negligence or in bad faith.

**Votes on Final Passage:**

House	61	37	
Senate	46	3	(Senate amended)
House	63	35	(House concurred)

**Effective:** July 25, 2021