Washington Association of
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POLICE CHIEFS

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HB 1054 – Tactics
- Original Bill
- House Bill Analysis 2021
- House Public Safety Hearing, Jan. 12, 2021
- WASPC's supplemental written testimony

SB 5051 / HB 1082 – Decertification
- SB 5051 Original Bill
- SB 5051 Senate Bill Report
- Senate Law & Justice Hearing, Jan. 18, 2021
- SB 5051 supplemental written testimony
- HB 1082 Original Bill
- HB 1082 House Bill Analysis 2021
- House Public Safety Hearing, Jan. 15, 2021
- HB 1082 supplemental written testimony

HB 1202 – Civil Cause of Action
- Original Bill

HB 1203 - Community Oversight Boards
- Original Bill

HB 1092 / SB 5259 – Data Collection
- HB 1092 Original Bill
- HB 1092 House Bill Analysis 2021
- HB 1092 House Bill Report
- House Public Safety Hearing, Jan. 14, 2021
- Supplemental written testimony
- SB 5259 Original Bill

HB 1267 – Office of Independent Investigations
- Original Bill

HB 1310 – Use of Force
- Original Bill

SB 5263 – Felony Bar
- Original Bill

SB 5066 – Duty to Intervene
- Original Bill
- Senate Bill Report (Orig.)
- Senate Bill Report
- Senate Law & Justice Hearing Jan. 19, 2021
- Supplemental written testimony

HB 1088 – Brady Disclosures
- Original Bill
- House Bill Analysis 2021
- House Civil Rights & Judiciary Hearing Jan. 20, 2021
- Supplemental written testimony

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Tuesday, January 12, 2021

House Public Safety Committee
John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

RE: Supplemental Testimony in Opposition to HB 1054

Chair Goodman, Ranking Member Mosbrucker, and Members of the Public Safety Committee,

Please accept this letter as a supplement to my verbal testimony to the committee this morning.

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I want to thank Representative Johnson for sharing an early draft of this legislation and taking the time to hear our feedback prior to introducing the bill. He was not obligated to reach out to us, nor was he obligated to hear from us – that he chose to do so is worthy of acknowledgement.

We also want to acknowledge that the topics addressed in HB 1054 are worthy of discussion, consideration, and topics where Washington's law enforcement should strive to continually improve. We want all persons to be able to go home safely at the end of each day. The language contained in HB 1054, however, creates unacceptable consequences and unreasonably places members of the public and law enforcement officer in unnecessary danger. Simply put, HB 1054 removes many opportunities for de-escalation.

It is our desire to work with Representative Johnson and the other members of the Public Safety Committee to address these legitimate issues in a more appropriate and productive manner.

Specific to the language contained in HB 1054, we wanted to call your attention to the following:

**Section 1 (1):** The definition of law enforcement agency fails to include most limited authority Washington law enforcement agencies, including, but not limited to, the Department of Natural Resources, the Department of Social and Health Services, the Gambling Commission, the State Lottery, the State Parks and Recreation Commission, the State Utilities and Transportation Commission, and the Office of the Insurance Commissioner. More than one of these agencies regularly utilizes uniformed law enforcement officers to conduct patrol activities within their jurisdictional boundaries.

**Section 2 (1):** We believe that special attention and consideration should be given to the use of chokeholds and neck restraints. We do not, however, believe that they should be prohibited. Our officers are empowered to use force capable of taking a human life. If a chokehold or neck restraint could be employed to avoid the use of deadly force, the interests of public safety demand that these techniques be available to them. We recommend that the Criminal Justice Training Commission, in consultation with WASPC and others, should utilize credible science to determine the appropriate use of chokeholds and, separately, neck restraints.

**Section 2 (3):** The definitions of chokehold fails to incorporate an intent to restrict a person's airway or blood flow. Instances where an officer needs to pull an aggressor off of another person typically include a leveraging of the neck as a point in the body to effect the 'pull.' Officers don't generally wrap their arms around the chest or stomach of an aggressor to separate them from their victim. In such instances, direct pressure may inadvertently be applied to a person's trachea or windpipe, which would be prohibited under the bill. Inappropriate definitions could result in an officer utilizing a higher level of force than otherwise necessary.

**Section 3:** We agree that the use of a police dog (K9) should be limited to those circumstances where necessary in the interests of public safety; that when a K9 is deployed, it is deployed on the identified public safety threat; that it uses a bite and hold technique; and that it disengages upon the command of its human partner. Certification standards for K9 teams exist in the Criminal Justice Training Commission, and through the Washington State Police Canine Association. WASPC supports partnering with these entities to review and strengthen existing certification standards to accomplish these goals. The language in Section 3 achieves none of these goals – it simply requires a leash. This requirement, if enacted, would create tangible barriers on the use of K9 officers to preserve the sanctity of the life of our human law enforcement officers. Simply put, we deploy a K9 officer in circumstances where a human cannot perform as well (eg - using speed to catch up to a subject fleeing on foot, using their smaller size to access a small space, etc.), and as a substitute to placing a human officer's life in danger (eg – entering a barricaded space, a crawlspace, blind space, etc). The provisions of Section 3 would require our officers to either allow a public safety threat to escape, or to utilize a higher level of force than otherwise necessary.

**Section 4:** The use of chloracetophenone (CN), O-chlorobenzylidene malontrile (CS), oleoresin capsicum (OC), and other similar chemical irritants should be reserved to those circumstances necessary in the interests of public safety. WASPC supports a review and establishment of a model policy/best practices relating to the use of CN/CS. There are two general circumstances where CN and/or CS gas are used: riots/unlawful gatherings, and barricaded subjects. We understand the motivation behind Section 4 is the Seattle Police Department's use of CN/CS during the riots/unlawful gatherings during the summer of 2020. We find it compelling that in the State Supreme Court's December 10, 2020 written ruling in the matter of the recall of Seattle Mayor Jenny Durkan, the Court went to great length to describe the policy and procedures in place for such tactics, and the oversight and control of its use. The primary use of CN/CS is barricaded subjects. Again, the provisions of this section remove tools and techniques used to de-escalate an already dangerous situation and force our officers to insufficiently address a threat to public safety or utilize more force than otherwise necessary. It is also notable that Section 4 appears to allow only one specific chemical to be used – OC. Because this section governs the specific chemicals and ignores how they are deployed, it would prohibit agencies from using another chemical irritant, regardless of whether that irritant were deemed more safe, or effective than OC.

**Section 5:** We agree that certain equipment and weapons are not appropriate for law enforcement use. Firearms and ammunition .50 caliber or greater, armed helicopters, tanks, rockets, rocket launchers, bayonets, grenades, grenade launchers, and missiles are all clearly not appropriate for law enforcement use. To this end, we would suggest adding biological, radiological, and nuclear weapons to the list. Prohibiting the use of armored vehicles, regardless of their form or function, however, is something we will always object to. Such prohibitions create a public policy that allows a law enforcement officer to use a vehicle so long as they are capable of being shot or blown up in it. We find such a policy abhorrent. Other prohibited equipment listed in Section 5 (2) require either further definition or removal. For example, a long range acoustic hailing device (more commonly known as a bullhorn or public address system) is a de-escalation technique used to provide notice to an illegal gathering, to establish communication with a barricaded subject, to warn bystanders of the need to evacuate, among other uses – this should not be prohibited. Directed energy systems and electromagnetic spectrum weapons are two examples of equipment that require further definition – we interpret those to prohibit the use of less-lethal equipment such as a Taser.

**Section 6:** We agree that members of the public should have a reasonable method of identifying an on-duty and uniformed officer. The language in this section, however, fails to appreciate that badge numbers are not universally (or even commonly) used to identify officers in Washington. Additionally, this language fails to acknowledge circumstances where an officer may be equipped with protective equipment such as a riot shield, diving equipment or other circumstances.

**Section 7 (2):** We acknowledge that no-knock warrants present a heightened risk of danger to the public, and to the officers executing them. The practice among Washington's law enforcement agencies over the past 30 years has reflected this acknowledgement. No-knock warrants are a very rare occurrence in this state for exactly this reason. We would support requiring officers seeking no-knock warrants to justify the heightened risk associated with such warrants against the threat to public safety of using a traditional warrant. Prohibiting them in all circumstances, however, creates an unacceptable public safety risk in our opinion. It is easy to question the use of a no-knock warrant in a simple drug possession case. It's not so simple to do so in cases of kidnapping, human trafficking, child sexual exploitation, and other serious criminal acts that our officers fight against.

**Section 8:** It would appear that the language in Section 8 removes the requirement that newly hired law enforcement officers receive training on vehicular pursuits between the effective date of the bill and January 1, 2023. This could result in as many as 1,200 officers who would not be required to receive training on vehicle pursuits.

**Section 9:** We acknowledge that vehicle pursuits can present significant risks to the pursuing officers and to the public, and we should exercise due diligence to ensure that these risks are necessary. Section 9, however, ignores the due diligence exercised by nearly all of Washington's law enforcement agencies and places the public at greater risk by prohibiting vehicle pursuits in all but the rarest of circumstances. Section 9 (2)(a)(i) prohibits, for example, an officer from pursuing a drunk or drugged driver, a domestic violence offender, a person in violation of a domestic violence court order, a car thief in a stolen car, a drug trafficker, a wrong way driver, a reckless driver, a hit and run driver, a person committing a hate crime offense, and a person escaping from a jail or prison, among other examples. Section 9 (2)(a)(ii) fails to allow vehicle pursuits for the purpose of arresting those who break the law. Section 9 (2)(a)(iv) requires an officer to allow a fleeing vehicle

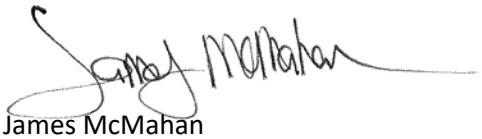
to go unpursued while the requisite factors are considered and approved by a supervisor, therefore increasing the risks associated with a pursuit if/when pursuit is authorized as the officer will need to use speed and risky maneuvers to catch up to the fleeing vehicle. Finally, many Washington law enforcement agencies do not have sufficient staffing to keep a supervisor on duty 24 hours a day.

**Section 9 (2) (b):** We agree that, except in very rare and limited circumstances, officers should be prohibited from firing a weapon at a moving vehicle. The language in Section 9 (2)(b) fails to acknowledge that vehicles are sometimes used as weapons. We do not advocate that our officers choose to stand in front of a vehicle and discharge their weapons when it moves. We also do not advocate to require our officers to surrender themselves to be run over by a vehicle if there are no reasonable means of escape. Whether it be an alley, a parking lot, or other circumstance, our officers should always have the right to defend themselves and should never be required to be run over by a vehicle.

**Section 10:** We see the value in having statewide data related to vehicular pursuits, but we insist that such reporting be fully funded by the state. We would strongly suggest requiring law enforcement agencies to provide the Criminal Justice Training Commission with copies of the incident reports from vehicular pursuits. Such an approach would eliminate nearly all fiscal impacts to the law enforcement agency and enable the Criminal Justice Training Commission to employ uniform and objective standards and criteria for coding and reporting. It is also important to note that the demographic characteristics of the operators and passengers in vehicle pursuits can only be known in those cases where a pursuit is successful in apprehending the operator and/or passenger(s) of the vehicle. It is also important to note that the requirement to collect the national origin of operators and passengers in a vehicle pursuit appears to require Washington's law enforcement officers to violate Washington law (See RCW 10.93.160 (4)(a)).

In summary, we agree that chokeholds, neck restraints, K9 deployments, chemical irritants, military equipment, officer identification, no-knock warrants, and vehicular pursuits are all topics worthy of examination and improvement, and we desire to work with the Legislature to address these important issues. We also believe, however, that these issues are important enough for the Legislature to get them right the first time, and that it is the Legislature's responsibility to ensure that well-intentioned language does not endanger the public or public servants. We look forward to assisting you in that process.

Respectfully submitted,



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Monday, January 18, 2021

Senate Law & Justice Committee
John A. Cherberg Building
PO Box 4066
Olympia, WA 98504-0466

RE: Supplemental Testimony to SB 5051

Chair Pedersen, Ranking Member Padden, and Members of the Law & Justice Committee,

Please accept this letter as a supplement to my verbal testimony to the committee this morning.

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I want to thank Senator Pedersen for introducing SB 5051. As you know, our association has proposed 13 recommendations to improve the public service of law enforcement in our state includes a recommendation to "Change licensure rules to provide that a law enforcement officer can lose their Peace Officer Certification for excessive use of force, showing a pattern of failing to follow public policy, and other serious breaches of the public's trust."

To this extent, we believe that the Legislature should enact a bill relating to the decertification of peace officers, but we strongly oppose the provisions in SB 5051.

We hope to work with you all to further refine this bill into a proposal that we could support. Given the depth, breadth, and length of the bill draft, this letter will primarily address larger themes and purposes within the draft, and not minor or technical provisions.

We have authored a bill draft consistent with our recommendations on the topic of decertification and encourage the Committee to give this proposal due consideration. That draft is appended to this letter.

**Suspension of Certification**

WASPC strongly opposes the concept of suspension of a peace officer or corrections officer certification. Such a notion essentially creates a second employer for every law enforcement and corrections officer in the state, and creates significant conflict and confusion for both law enforcement and corrections officers and law enforcement and corrections agencies.

We understand that there several examples of professional certification bodies that have authority to suspend a license, such as the Washington State Bar. Most, if not all of these examples, however, have one key distinction: those who hold such licenses commonly work for themselves. As such, there is no supervisory/disciplinary authority other than the state licensing authority.

In law enforcement, however, that is only possible in the case of the elected Sheriff themselves. In every other circumstance, by definition, a law enforcement officer is employed by, and subject to, a supervisory/disciplinary authority.

WASPC takes the same position on language granting authority for the CJTC to reprimand, require retraining, placement on probation, or other supervisory/disciplinary role referenced in the draft. Those are exclusively and properly reserved to the employing agency, not the CJTC.

**Mandatory Decertification**

WASPC opposes new mandatory decertification criteria, except instances where an officer voluntarily surrenders their certification. In all other instances, the CJTC should be empowered to decertify an officer, but not required to.

Mandatory decertification eliminates the ability to consider all of the facts and circumstances of the case, and creates significant challenges when interpreting the subjective nature of interactions with peace officers and corrections officers (many use of force policies include subjective language such as "should" and "when feasible").

For example, one circumstance in which decertification is mandatory is if the applicant has been convicted of a felony and the offense was not disclosed at the time of application for initial certification. Under this language, an individual who was adjudicated of a felony as a juvenile and had their record sealed or received a full and unconditional pardon, and exercised their right pursuant to RCW 13.50.260(6)(a) or (b) and treated the conviction as it "never occurred" and "replied accordingly to any inquiry about the events" would be the subject of mandatory decertification for having performed exactly as the Legislature directed.

**Criteria for Decertification**

Decertification is a very punitive response to officers whose behavior violates core principles and expectations of those to whom we entrust a significant amount of authority. WASPC is convinced that the existing criteria that makes an officer eligible for decertification consideration is much too limited. Eligibility for decertification should be expanded through a very carefully crafted and deliberate process.

**Ensuring the Proper Delivery of Law Enforcement & Corrections Services**

The language redefines the purpose of the CJTC to, among other things "ensure that law enforcement and correctional services are delivered to the people of Washington in a manner that fully complies with the Constitution and laws of this state and United States." This is a significant expansion of the purpose of the CJTC, and is a purpose to which the CJTC could not possibly accomplish. The CJTC does not control or oversee any law enforcement agency. It has no authority regarding how an agency delivers law enforcement or correctional services, nor should it. Those duties are the responsibility of the law enforcement and corrections agencies charged with such tasks, subject to the ways and means of their respective legislative authorities.

**Composition of the Commission**

WASPC opposes the restructuring of the composition of the CJTC Commission as proposed in this language. Under this language, more than half of Commissioners would have no direct knowledge of, or experience in, the professions of law enforcement or corrections, and only 5 of the 17 (29%) would be subject to the decisions of the Commission.

We again look to other professional licensing examples in this state – there are no laypersons in the Washington State Bar. The Washington State Medical Commission is comprised primarily of doctors (15 of the 21 (71%) are doctors or physician's assistants); 14 of the 15 member Washington State Electrical Board must be electricians or otherwise employed in the field; 14 of the 16 members of the Washington Dental Quality Assurance Commission must be employed in the field. The examples are numerous.

We do not maintain, however, that the Criminal Justice Training Commission should be without members of the public. In fact, we have openly advocated for public involvement in, and membership of, the CJTC. WASPC supported HB 2785 – a bill that went into effect less than a year ago to add both a tribal representative and an additional member of the public to the Commission.

**Parallel CJTC Investigations**

WASPC opposes provisions in the bill that require an agency to notify the CJTC prior to the agency's finding of wrongdoing by an officer, and such notification should be limited to findings of wrongdoing that would subject the officer to decertification consideration.

Requiring/allowing the CJTC to conduct parallel investigations prior to the completion of an agency's investigation not only wastes scarce public resources, but also could interfere with the agency's investigation, and, worse yet, could inadvertently immunize the officer from criminal charges.

**Ensure Adherence to Policy and Law**

The language gives broad authority for the CJTC to "provide for the comprehensive and timely investigation of complaints to ensure adherence to policy and law." This responsibility once again lies not in the CJTC, but in the law enforcement agencies that employ law enforcement officers. It would be unrealistic to expect the CJTC to perform such a task – particularly given the decentralized system of government in Washington – and would create false promises to the public that the CJTC could not, and should not, perform.

**Other Tests or Assessments**

This language grants the authority to the CJTC to require "any other test or assessment" to be performed in the pre-employment screening of those who have been offered a conditional offer of employment as a peace officer or corrections officer. This is not an appropriate role of the CJTC, has the potential to create significant unfunded mandates on both state and local governments, and would be an improper delegation of legislative authority.

**Brady Disclosures**

We support ensuring that an agency employing an officer who has previously been employed as a peace officer or corrections officer is aware of information required to be disclosed pursuant to *Brady/Giglio/5$^{th}$ amendment*. We oppose, however, requiring such information to be known or gathered by the potential employer, unless/until the Legislature significantly amends or repeals RCW 10.93.150. Requiring an agency to be in possession of this information prior to a personnel action, and simultaneously prohibiting an agency from making an adverse personnel action based on that information only puts agencies in a lose/lose scenario. Unless/until the Legislature significantly amends or repeals RCW 10.93.150, this information should only be gathered by an employing agency *after* the officer is hired.

**Authorized Complainants**

WASPC has significant concerns with allowing the CJTC to receive complaints from the public, or the CJTC initiating a complaint on its own initiative. Such complaints should always be directed to the appropriate law enforcement agency. The CJTC should only be authorized to receive complaints upon referral from a law enforcement or corrections officer or a law enforcement or corrections agency. This language creates a direct mechanism for individuals to harass and terrorize law enforcement officers with no basis in fact, nor any respect to the rights of law enforcement officers.

Should the Legislature authorize the CJTC to receive and investigate complaints by any person, or upon its own initiative, it should also amend the immunity provisions to exclude those complainants whose complaint is not based in fact, and was not conducted consistent with established rules of procedure and consistent with the rights of the subject of the complaint. Similarly, if the CJTC is granted authority to investigate and de-certify on its own initiative, the CJTC should not be immune from the consequences of having conducted such activities inappropriately.

**Complaints Without Merit**

This language repeals provisions in existing law that requires the CJTC to purge records associated with complaints that it finds are without merit. We find no public benefit achieved by requiring the retention of records that are found to be without merit. We find that such a practice only serves to undermine public trust in law enforcement – a purpose for which this draft directs the CJTC to adopt.

**Publicly Searchable Database**

We find no public benefit achieved through the establishment of the database described in the language. Such a database would serve to only undermine public trust in law enforcement, and facilitate confrontations between law enforcement and members of the public.

**Priority of the CJTC**

WASPC opposes the provision that repeals RCW 43.101.180. That section of law establishes that the first priority of the Criminal Justice Training Commission is the training of criminal justice personnel.

As you are very aware, law enforcement and corrections agencies have struggled for years with the lack of sufficient funding from the Legislature to comply with legislatively mandated training requirements for law enforcement and corrections personnel. Repealing language that clearly establishes training as the priority for the training commission only exacerbates chronic problems that put law enforcement and corrections agencies in a lose/lose scenario.

**Reserve Officers**

The language seems to presume that reserve officers are certified peace officers, which is not correct (at least under current law). Reserve officers, like peace officers, are required to undergo a background investigation, psychological examination, polygraph, etc., but reserve officers are not certified peace officers. While it may be worth discussing whether reserve officers should be certified peace officers, such a policy discussion warrants its own unique discussion in a separate bill.

**Limited Authority Officers**

The language seems to make the same incorrect presumption about limited authority law enforcement officers as it does regarding reserve officers. Additionally, limited authority law enforcement officers are significantly different than reserve officers, and we discourage including the two in the same definition.

**School Security Officers**

The language includes K-12 and higher ed security officers as "reserve officers" and creates a number of challenges, not the least of which is the fact that school security officers are not law enforcement officers. Including non-law enforcement officers into definitions of, and requirements for, law enforcement officers seems to only cause confusion and unintended consequences.

**Applicant**

The language defines "applicant" to refer to those who have already received a conditional offer of employment pending *certification*, apparently creating a conflict with existing provisions that require an applicant who receives a conditional offer of employment be subject to a *background investigation, polygraph, psychological examination, etc*.

**Confidentiality**

WASPC opposes the language changing the confidentiality of records held by the CJTC. Decertification proceedings should consider all facts and circumstances, and that information could very well include items that are not appropriate for public disclosure.

**Background Checks**

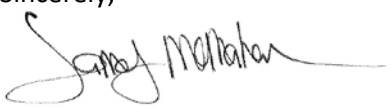
The language incorrectly presumes that the CJTC conducts background checks pursuant to RCW 43.101.095 or 096, and incorrectly presumes that the CJTC possesses such records.

To be clear, there are a number of provisions in this draft that we do support, and that we look forward to working with the Legislature to enact. The focus of this letter is to alert you to areas where we disagree with the language, so we have focused solely on those items here.

Finally, please do not interpret this feedback as the only items that require additional attention, discussion, or revision from our perspective. As you very well know, this language addresses a wide array of issues that have very serious consequences. This letter, while not as brief as we had intended, does not seek to identify all provisions of the language deserving of our feedback. We will soon also provide you with a line-by-line markup of our recommendations on SB 5051.

We anticipate the discussion on decertification to be a comprehensive one that will take place over several weeks, and we look forward to partnering with you and others to improve the public service of law enforcement in our state.

Sincerely,



James McMahan
Policy Director

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Friday, January 15, 2021

House Public Safety Committee
John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

RE: Supplemental Testimony to HB 1082

Chair Goodman, Ranking Member Mosbrucker, and Members of the Public Safety Committee,

Please accept this letter as a supplement to my verbal testimony to the committee this morning.

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I want to thank Representative Goodman for introducing HB 1082. As you know, our association has proposed 13 recommendations to improve the public service of law enforcement in our state includes a recommendation to "Change licensure rules to provide that a law enforcement officer can lose their Peace Officer Certification for excessive use of force, showing a pattern of failing to follow public policy, and other serious breaches of the public's trust."

To this extent, we believe that the Legislature should enact a bill relating to the decertification of peace officers, but we strongly oppose the provisions in HB 1082.

We hope to work with you all to further refine this bill into a proposal that we could support. Given the depth, breadth, and length of the bill draft, this letter will primarily address larger themes and purposes within the draft, and not minor or technical provisions.

We have authored a bill draft consistent with our recommendations on the topic of decertification and encourage the Committee to give this proposal due consideration.

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hold such licenses commonly work for themselves. As such, there is no supervisory/disciplinary authority other than the state licensing authority. In law enforcement, however, that is only possible in the case of the elected Sheriff themselves. In every other circumstance, by definition, a law enforcement officer is employed by, and subject to, a supervisory/disciplinary authority.

WASPC takes the same position on language granting authority for the CJTC to reprimand, require retraining, placement on probation, or other supervisory/disciplinary role referenced in the draft. Those are exclusively and properly reserved to the employing agency, not the CJTC.

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Mandatory decertification eliminates the ability to consider all of the facts and circumstances of the case, and creates significant challenges when interpreting the subjective nature of interactions with peace officers and corrections officers (many use of force policies include subjective language such as "should" and "when feasible").

For example, one circumstance in which decertification is mandatory is if the applicant has been convicted of a felony and the offense was not disclosed at the time of application for initial certification. Under this language, an individual who was adjudicated of a felony as a juvenile and had their record sealed or received a full and unconditional pardon, and exercised their right pursuant to RCW 13.50.260(6)(a) or (b) and treated the conviction as it "never occurred" and "replied accordingly to any inquiry about the events" would be the subject of mandatory decertification for having performed exactly as the Legislature directed.

Another circumstance for which decertification is mandatory under this language is when an officer engaged in the use of force which resulted in death or serious injury and the use of force violated the law or policy of the peace officer's employer. An officer who finds themselves unable to escape the path of a moving vehicle, where the vehicle itself is being used as a deadly weapon, and chooses to discharge their firearm to disable the vehicle before discharging their firearm at the driver of the vehicle (and the driver was killed or seriously injured) would be justified in the use of deadly force against the driver, but would have violated agency policy for attempting to disable the vehicle. This is not an exclusive list of examples where all/most would agree decertification is not merited, though would be required under this language.

**Criteria for Decertification**

Decertification is a very punitive response to officers whose behavior violates core principles and expectations of those to whom we entrust a significant amount of authority. WASPC is convinced that the existing criteria that makes an officer eligible for decertification consideration is much too limited. Eligibility for decertification should be expanded through a very carefully crafted and deliberate process.

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Requiring/allowing the CJTC to conduct parallel investigations prior to the completion of an agency's investigation not only wastes scarce public resources, but also could interfere with the agency's investigation, and, worse yet, could inadvertently immunize the officer from criminal charges.

**Ensure Adherence to Policy and Law**

The language gives broad authority for the CJTC to "provide for the comprehensive and timely investigation of complaints to ensure adherence to policy and law." This responsibility once again lies not in the CJTC, but in the law enforcement agencies that employ law enforcement officers. It would be unrealistic to expect the CJTC to perform such a task – particularly given the decentralized system of government in Washington – and would create false promises to the public that the CJTC could not, and should not, perform.

**Other Tests or Assessments**

This language grants the authority to the CJTC to require "any other test or assessment" to be performed in the pre-employment screening of those who have been offered a conditional offer of employment as a peace officer or corrections officer. This is not an appropriate role of the

CJTC, has the potential to create significant unfunded mandates on both state and local governments, and would be an improper delegation of legislative authority.

**Brady Disclosures**

We support ensuring that an agency employing an officer who has previously been employed as a peace officer or corrections officer is aware of information required to be disclosed pursuant to *Brady/Giglio/5th amendment*. We oppose, however, requiring such information to be known to/gathered by the potential employer, unless/until the Legislature significantly amends or repeals RCW 10.93.150. Requiring an agency to be in possession of this information prior to a personnel action, and simultaneously prohibiting an agency from making an adverse personnel action based on that information only puts agencies in a lose/lose scenario. Unless/until the Legislature significantly amends or repeals RCW 10.93.150, this information should only be gathered by an employing agency *after* the officer is hired.

**Authorized Complainants**

WASPC has significant concerns with allowing the CJTC to receive complaints from the public, or the CJTC initiating a complaint on its own initiative. Such complaints should always be directed to the appropriate law enforcement agency. The CJTC should only be authorized to receive complaints upon referral from a law enforcement or corrections officer or a law enforcement or corrections agency. This language creates a direct mechanism for individuals to harass and terrorize law enforcement officers with no basis in fact, nor any respect to the rights of law enforcement officers.

Should the Legislature authorize the CJTC to receive and investigate complaints by any person, or upon its own initiative, it should also amend the immunity provisions to exclude those complainants whose complaint is not based in fact, and was not conducted consistent with established rules of procedure and consistent with the rights of the subject of the complaint. Similarly, if the CJTC is granted authority to investigate and de-certify on its own initiative, the CJTC should not be immune from the consequences of having conducted such activities inappropriately.

**Complaints Without Merit**

This language repeals provisions in existing law that requires the CJTC to purge records associated with complaints that it finds are without merit. We find no public benefit achieved by requiring the retention of records that are found to be without merit. We find that such a practice only serves to undermine public trust in law enforcement – a purpose for which this draft directs the CJTC to adopt.

**Publicly Searchable Database**

We find no public benefit achieved through the establishment of the database described in the language. Such a database would serve to only undermine public trust in law enforcement, and facilitate confrontations between law enforcement and members of the public.

**Priority of the CJTC**

WASPC opposes the provision that repeals RCW 43.101.180. That section of law establishes that the first priority of the Criminal Justice Training Commission is the training of criminal justice personnel.

As you are very aware, law enforcement and corrections agencies have struggled for years with

the lack of sufficient funding from the Legislature to comply with legislatively mandated training requirements for law enforcement and corrections personnel. Repealing language that clearly establishes training as the priority for the training commission only exacerbates chronic problems that put law enforcement and corrections agencies in a lose/lose scenario.

**Reserve Officers**

The language seems to presume that reserve officers are certified peace officers, which is not correct (at least under current law). Reserve officers, like peace officers, are required to undergo a background investigation, psychological examination, polygraph, etc., but reserve officers are not certified peace officers. While it may be worth discussing whether reserve officers should be certified peace officers, such a policy discussion warrants its own unique discussion in a separate bill.

**Limited Authority Officers**

The language seems to make the same incorrect presumption about limited authority law enforcement officers as it does regarding reserve officers. Additionally, limited authority law enforcement officers are significantly different than reserve officers, and we discourage including the two in the same definition.

**School Security Officers**

The language includes K-12 and higher ed security officers as "reserve officers" and creates a number of challenges, not the least of which is the fact that school security officers are not law enforcement officers. Including non-law enforcement officers into definitions of, and requirements for, law enforcement officers seems to only cause confusion and unintended consequences.

**Applicant**

The language defines "applicant" to refer to those who have already received a conditional offer of employment pending *certification*, apparently creating a conflict with existing provisions that require an applicant who receives a conditional offer of employment be subject to a *background investigation, polygraph, psychological examination, etc*.

**Confidentiality**

WASPC opposes the language changing the confidentiality of records held by the CJTC. Decertification proceedings should consider all facts and circumstances, and that information could very well include items that are not appropriate for public disclosure.

**Background Checks**

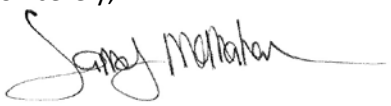
The language incorrectly presumes that the CJTC conducts background checks pursuant to RCW 43.101.095 or 096, and incorrectly presumes that the CJTC possesses such records.

To be clear, there are a number of provisions in this draft that we do support, and that we look forward to working with the Legislature to enact. The focus of this letter is to alert you to areas where we disagree with the language, so we have focused solely on those items here.

Finally, please do not interpret this feedback as the only items that require additional attention, discussion, or revision from our perspective. As you very well know, this language addresses a wide array of issues that have very serious consequences. This letter, while not as brief as we had intended, does not seek to identify all provisions of the language deserving of our feedback. We anticipate the

discussion on decertification to be a comprehensive one that will take place over several weeks, and we look forward to partnering with you and others to improve the public service of law enforcement in our state.

Sincerely,



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Thursday, January 14, 2021

House Public Safety Committee
John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

RE: Supplemental Testimony to HB 1092

Chair Goodman, Ranking Member Mosbrucker, and Members of the Public Safety Committee,

Please accept this letter as a supplement to my verbal testimony to the committee this afternoon.

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I want to thank Representative Lovick for introducing HB 1092. As you know, our association has advocated for the establishment of a uniform statewide system of data collection on deadly force incidents since 2015. Additionally, our proposed 13 recommendations to improve the public service of law enforcement in our state includes a recommendation to "require all Washington law enforcement agencies to submit data regarding the use of deadly force."

We appreciated the House's passage of SHB 2789 in the 2020 session, and were disappointed that the Senate did not also pass that bill. We are hopeful that this year will be different.

While we continue to call on the Legislature to enact a uniform, statewide data collection system, we oppose HB 1092 as introduced. We are hopeful, however, that we can work together and find common ground for a proposal that we can all support.

There are a few distinct considerations between HB 1092 and last year's legislation that are worthy of discussion:

1. Should Washington State have a statewide, uniform data collection system?
2. What entity should collect and publish the data?
3. What types of incidents should be reported?
4. What data elements should be collected?
5. Who should bear the financial burden of such a system?
6. What accountability measures should be enacted for failure to report?

**Should Washington have a statewide, uniform data collection system?**
Yes. WASPC has advocated for the creation of such a system since 2015. Uniform data on a statewide basis provides the opportunity to make more informed policy decisions on these incredibly important issues. It also enables individual law

enforcement agencies to conduct an internal evaluation as to how their agency compares to their peers in this state. It could enable Washington to objectively evaluate how we compare to other states.

**What entity should collect and publish the data?**

WASPC is our state's central repository for crime statistics and is the entity that the 2020 legislation proposed to have collect and publish the data – a bill that was supported by WASPC, the Attorney General, and 93 members of the House. WASPC is willing to serve as the central repository for a statewide data collection system, though that does not factor into our support or opposition to legislation. In other words, we don't have a specific interest on what entity collects the data, provided the entity is efficient and effective, and not overly expensive.

We do not object to the establishment of this program at Washington State University, so long as the costs of housing such a program at WSU are not more than twice what it would cost to have WASPC perform the same function.

**What types of incidents should be reported?**

There is a proportional relationship between the types of incidents reported and the value of the data collected. In a pure policy consideration, we would advocate for a great number of incidents and interactions to be reported, as this data provides for the most informed and useful policy decisions and actionable data by individual law enforcement agencies and executives. Our members, however, operate in a much more complex environment, and this question needs to be carefully weighed, and balanced with, the question of who should bear the financial burden of this system.

Washington State has the fewest number of commissioned law enforcement officers per capita in the nation, and 2019 was the 10th consecutive year that we've been 51st in the nation in this measure. A majority of Washington's law enforcement agencies employ 15 or fewer law enforcement officers. Some Washington law enforcement agencies already cannot provide 24-hour service. Some Puget Sound area agencies still do not have a supervisor on duty for overnight shift.

We will have created a disservice to the public by creating a rich data collection system if it means that agencies had to divert an officer from patrol to provide the data. Similarly, if the state covered 100 percent of the costs associated with collecting data on a broad array of incidents, we will serve the public in a responsible manner.

More specifically, HB 1089 would require reporting of some incidents not regularly tracked by most law enforcement agencies. Except in circumstances where a law enforcement agency is negligent in its data collection practices, a statewide data collection system should not require a law enforcement agency to collect new categories of data.

**"Tort Payouts"**

WASPC takes significant issue with the provisions in HB 1092 that would require local government entities to report the amount of "tort payouts" involving an allegation of improper use of force (Section 4).

Not only would this provision require agencies to violate the terms of confidentiality agreements that are common with such "payouts," it incorrectly presumes that a "payout" is equivalent to a wrongful act. Tort claims are often settled for reasons other than guilt. When the cost to the taxpayer of winning a lawsuit is more expensive than settling, public agencies and decision makers sometimes make rational and appropriate decisions to settle. For example, in FY2017, the Attorney General's

Office paid a $1,182,996 indemnity claim in the Highway 530 Landslide litigation over allegations of improprieties related to discovery in the case. We do not believe that such a "payout" should be held up as a reflection of the Attorney General's Office, or an indication of wrongdoing by the Attorney General. We ask the same treatment of Washington's law enforcement agencies.

Furthermore, it important that the Legislature understand how common it is for a single claim to be filed alleging a number of harms, and that settlement discussions are often global in nature, without distinguishing what portion of the "payout" is for which portion(s) of the claim.
Finally, the publication of this information – at least at the local level - would perpetuate the false narrative that significant resources exist that could be used for reform but are instead used for such "payouts." Unlike the state, the vast majority of Washington's local governments are not self-insured. They carry liability insurance that works just like vehicle or medical insurance where the insured pays a regular premium and a "payout" is only made upon a covered claim.

While it may be true that the state, a self-insured entity, could assert its sovereign immunity rights to immunize itself from most claims and instead repurpose those funds for other purposes (the Department of Enterprise Service's 2019 analysis shows that the state paid more than $179 million in "indemnity payouts" in FY 2019), local governments do not have such options. Legislation that suggests otherwise would, in our view, be a disservice to those we are sworn to serve and perpetuate a false narrative that only leads to further erosion of public trust in government institutions. We need to focus on solutions that enhance and increase public trust in a comprehensive way.

**What data elements should be collected?**

Similar to the question of what incidents should be reported, the data elements collected are directly proportional to the value of the information. To that end, in a pure policy consideration, we would advocate for a great number of data elements to be reported, as this data provides for the most informed policy decisions and actionable data by individual law enforcement agencies. Our members, however, operate in a much more complex environment, and this question needs to be carefully weighed, and balanced with, the question of who should bear the financial burden of this system.

Again, Washington State has the fewest number of commissioned law enforcement officers per capita in the nation, and 2019 was the 10th consecutive year that we've been 51st in the nation in this measure. A majority of Washington's law enforcement agencies employ 15 or fewer law enforcement officers. Some Washington law enforcement agencies already cannot provide 24-hour service. Some Puget Sound area agencies do not have a supervisor on duty for graveyard shift. We will have created a disservice to the public if Washington created a rich data collection system if it meant that agencies had to pull an officer off of patrol to provide the data. Similarly, if the state covered 100% of the costs associated with collecting a broad array of data elements in these incidents, we will have served the public in a responsible manner.

HB 1092 seeks to collect less information than the proposal that both of our organizations supported just a few months ago, and we appreciate the spirit in which this change is offered. We find value, however, in data that enables apples-to-apples comparisons among the states – at least as it relates to deadly force incidents. Keeping in mind our position on the financial responsibility, we believe that common ground might easily be found here.

**Who should bear the financial burden of such a system?**

As with the previous two considerations, WASPC's position on this question is conditional. There is a basic level of responsibility that all Washington law enforcement agencies bear to collect and report

data related to instances where deadly force is used. All Washington law enforcement agencies should be required to report such instances, even if it means the agency must bear the financial burden of doing so. Deadly force interactions in Washington State are, thankfully, so rare that the cost of reporting such data in those instances is minor compared to the other responsibilities of an agency. This is reflected in the fiscal note for HB 2789 which indicates "no fiscal impact."

HB 1092, however, vastly expands the circumstances where reporting is required, far more often than those contemplated in HB 2789 – some of which are not currently regularly tracked by most agencies. This proposal represents a significant financial burden on Washington's law enforcement agencies – a burden that we cannot afford. WASPC will oppose HB 1092 unless and until language is included to ensure that the bill creates no fiscal impact to Washington's law enforcement agencies.

Aside from the provisions of RCW 43.135.060, which prohibit unfunded mandates by the Legislature, Washington's law enforcement agencies have borne the burden of the state's abandonment of its financial responsibility in countless ways. Some of the more recent circumstances include, but are not limited to:

- the elimination of the Public Safety Education Account, followed by a 25 percent" local share" of the cost to comply with the requirement to train newly hired law enforcement officers at the state Criminal Justice Training Commission;
- the transfer of more than $30 million from the Criminal Justice Treatment Account over the previous four biennia for other purposes; and
- the failure to re-invest savings realized in community corrections legislation to make "historic investments of more law enforcement on the streets" and "to expand services for inmates re-entering society as well as increase the number of corrections officers."

These are a few examples that demonstrate our experience receiving the short end of the stick. We understand that future legislatures cannot be bound just as well as we understand the public safety impacts of unfunded mandates on Washington's law enforcement agencies.

A reporting system that only requires law enforcement agencies to submit incident reports for reportable incidents to WSU would have very minimal impacts on law enforcement agencies. We are aware of at least one data reporting system that uses this approach, enabling a static cadre of trained experts to review the incident reports and use a uniform coding interpretation. This is a promising approach that merits further exploration.

Washington's law enforcement agencies remain committed to our years-long call for the Legislature to create a uniform, statewide deadly force data collection system. We see tangible value to the creation of a system that collects a broad array of useful data from a broad set of incidents. However, we stand firm in our commitment to actively oppose any data collection proposal beyond deadly force without our satisfaction that 100 percent of the cost of implementation is borne by the state.

We hope that our candid feedback is productive to our ongoing discussions on this important issue, and we remain confident that we can find common ground here.

Sincerely,

James McMahan
Policy Director

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Tuesday, January 19, 2021

Senate Law & Justice Committee
John A. Cherberg Building
PO Box 4066
Olympia, WA 98504-0466

RE: Supplemental Testimony to SB 5066

Chair Pedersen, Ranking Member Padden, and Members of the Law & Justice Committee,

Please accept this letter as a supplement to my verbal testimony to the committee this morning.

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I want to thank Senator Dhingra for introducing SB 5066. As you know, our association has proposed 13 recommendations to improve the public service of law enforcement in our state includes a recommendation to "Require all law enforcement officers to intervene and report to their agency whenever another law enforcement officer uses excessive force or knowingly violates the rights of any person. Violation of this duty should be cause for discipline, up to and including termination."

To this extent, we believe that the Legislature should enact a bill creating a duty to intervene for law enforcement officers, though we request the opportunity to work with you to perfect SB 5066.

We have authored a bill draft consistent with our recommendations on the topic of decertification and encourage the Committee to give this proposal due consideration. That draft is appended to this letter.

The areas of the bill we would like to help you perfect include the following:

**Status of observing officer** (Section 1 (1))
A duty to intervene needs to be carefully crafted so as to not require an observing officer's duty to intervene to inadvertently escalate a situation, or cause the observed officer to perceive the intervening officer as a threat. As such, we recommend that "immediately identifiable" be supplemented with "uniformed and on duty."

**Status of observed officer** (Section 1 (1))
The bill language does not specify whether the observed officer is on duty in the conduct of their official business or off duty. We request that this language be clarified to apply to officers who are on duty in the conduct of their official business and perceived to be using excessive force.

**Duty to render first aid** (Section 1 (1))
It is unclear to us whether Section 1 (1) incorporates the existing duty to render first

aid into the duty to newly created duty to intervene, and whether an officer's failure to render first aid pursuant to RCW 36.28A.445 also subjects the officer to decertification proceedings pursuant to RCW 43.101.105. We request that the language be clarified as to the Legislature's intent.

**Status of observing officer** (Section 1 (2))
The bill language does not specify whether the duty to report wrongdoing applies to observations by an officer who is on duty or off duty, or both. We recommend that, in the context of our proposed definition of wrongdoing below, this duty apply to observing officers who are either on duty or off duty.

**Status of observed officer** (Section 1 (2))
The bill language referencing the observed peace officer does not specify whether the observed officer is on duty in the conduct of their official business or off duty. We recommend that, in the context of our proposed definition of wrongdoing below, this duty apply to observed officers who are either on duty or off duty.

**Notice to the criminal justice training commission** (Section 1 (4))
The requirement that a law enforcement agency send notice to the Criminal Justice Training Commission of "any disciplinary decision" resulting from a peace officer's failure to intervene or failure to report seems to be inclusive of decisions where it was determined that an officer did not fail to intervene or fail to report. Such instances, in our view, need not be reported to the commission. Requiring agencies to report decisions that upheld the actions of the officer in such circumstances seems to unnecessarily consume time and resources in our law enforcement agencies and the Criminal Justice Training Commission. We request that this section be amended to only require such notice when the agency determines that an officer failed to intervene or failed to report pursuant to this act.

**Definition of excessive force** (Section 1 (5) (a))
The definition of excessive force seems excessively restrictive and could result in unintended physical altercations between law enforcement officers.

> **Exceeds the degree**
> The definition of excessive force references "the degree" of force permitted. The use of this term in the singular, and the use of the term "degree" requires an officer to intervene if the officer perceives the use of force to exceed their understanding of the situation in any manner whatsoever. This does not take into consideration what the observing officer may not know or may not see that the officer using force knows or sees. Requiring intervention, which may often come in the form of physical intervention, in such cases places both officers in potential danger. To this end, we recommend defining excessive force as "force that is clearly beyond that which is objectively reasonable under the circumstances."
>
> **Policy or law**
> The definition of excessive force utilizes the phrase "permitted by policy or law" to serve as the baseline to determine what force does and does not require intervention. We ask this question: Whose policy? It is not only common, but regular, that officers from one agency respond to the same scene to back up officers from another agency. Those agencies may have differing policies as to what tactics and level of force are authorized under certain circumstances. As written, SB 5066 would require an observing officer whose employing agency does not allow a particular tactic or level of force to intervene, which may often come in the form of physical intervention, against an officer from another agency who is perfectly in sync with their employing agencies policy on authorized tactics and level of force for that situation. We again recommend defining excessive force as "force that is clearly beyond that which is objectively reasonable under the circumstances."

**Definition of wrongdoing** (Section 1 (5) (b))
The definition of wrongdoing in SB 5066 is, in our opinion, too subjective and too broad to be properly implemented. Particularly given the consequences for failure to report wrongdoing, a law enforcement officer would be required to report a great number of perfectly reasonable actions that would overwhelm the effective administration of the law enforcement agency. This would not allow our agencies to properly serve the public. We recommend that this definition be amended to define wrongdoing to mean "conduct is a knowing violation of clearly established rights of any person or any conduct that constitutes a criminal act."

**Subjective terms**
Objective terms such as "contrary to law" is something that can be fairly and consistently implemented. Subjective terms such as "harmful" or "in violation of the public's trust" create circumstances where an officer would, understandably, feel obligated to report any circumstance where any person, whether reasonable or not, might interpret conduct as wrongdoing. For example, if an officer fails to respond to the scene of a reported property crime, would that conduct be a violation of the public's trust? Perhaps. However, several law enforcement agencies have instituted practices to not respond to certain property offenses, instead recommending that the victim submit a report online.

**Professional standards or ethical rules**
We are not aware of any uniform professional standards or ethical rules for law enforcement officers. Unlike other professions where such uniform standards exist, such as the Rules of Professional Conduct for attorneys, the standards and rules for law enforcement officers are found in statutory law, case law, and agency policy. As such, the reference to professional standards or ethical rules appears to reference standards or rules that do not exist in a single source.

**5th Amendment protections**
A duty to report wrongdoing, both as proposed in the current bill language and under our proposed definition, would include conduct that constitutes a criminal act. As the Committee is aware, law enforcement agencies are authorized to compel statements from an officer, though the 5th amendment to the US Constitution protects those statements from being used against the officer in a criminal proceeding. We respectfully request that language be included in this bill to specify that "Nothing in this act requires an officer to be compelled to incriminate themselves in violation of the officer's rights under the 5th amendment to the United States Constitution."

**Exempt from collective bargaining**
We respectfully request that language be included in this bill to specify that "the act does not constitute personnel matters, working conditions, or any other change that requires collective bargaining."

We look forward to partnering with you and others to improve the public service of law enforcement in our state.

Sincerely,

James McMahan
Policy Director

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Wednesday, January 20, 2021

House Civil Rights & Judiciary Committee
John L. O'Brien Building
PO Box 40600
Olympia, WA 98504-0600

RE: HB 1088

Chair Hansen, Ranking Member Walsh, and Members of the Civil Rights & Judiciary Committee,

Please accept this letter as a supplement to my verbal testimony to the committee this morning.

On behalf of the Washington Association of Sheriffs and Police Chiefs (WASPC), I want to thank Representative Lovick for introducing HB 1088. Establishing statewide standards for potential impeachment disclosures is helpful, and something that we hope you enact. However, we do ask that you address two specific provisions of the bill.

**Section 1 (2)**
The language in section 1 (2), in our opinion, inaccurately reflects the rulings of the United States Supreme Court in Brady v Maryland, 373 U.S. 83 (1963), Giglio v United States, 405 U.S. 150 (1972), and other relevant case law. This inaccurate reflection comes in the implication that an agency can make a potential impeachment disclosure *either* within 10 days of the discovery of such act *or* within ten days of an official determination of such an act. This not our understanding, and we respectfully request that legislation not contribute to inaccurate understanding of our duties as established by the US Supreme Court. The consequences of getting this wrong are too great to allow for an inaccuracy in statute.

**Section 1 (3)**
RCW 10.93.150, enacted by the 2018 Legislature, specifically prohibits any *adverse personnel action* by a law enforcement agency due to an officer's name being on a Brady/potential impeachment list. Section 1 (3) of HB 1088 requires our agencies to seek and obtain information that they are specifically prohibited from using. We respectfully request that Section 1 (3) be amended to require law enforcement agencies to seek and obtain such information *after* making the decision to hire. Alternatively, we ask that HB 1088 also amend RCW 10.93.150 to declare that hiring and promotion decisions to not constitute personnel actions pursuant to that section.

Thank you for considering our feedback. We look forward to partnering with you and others to improve the public service of law enforcement in our state.

Sincerely,

James McMahan
Policy Director