



POLICY 1809 (DRAFT)

Baltimore Police Department



Why do we have Policy 1809?

The purpose of this draft policy is to ensure the compliance of Baltimore Police Department (BPD) members with their solemn obligation to disclose Potential Exculpatory and Impeachment Evidence in criminal cases.

This obligation is established in the United States Constitution and the Maryland Declaration of Rights, and recognized through court decisions, including *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Fields v. State*, 432 Md. 650 (2013).



Overarching Principles of Policy 1809

BPD **must** identify and provide to the prosecution **any** Potential Exculpatory (*Brady* material) and Potential Impeachment Evidence (*Giglio* information) as soon as possible following the initiation of any criminal case in state or federal court.

DISCLOSURE REQUIREMENTS



Brady - Exculpatory Evidence, information that tends to prove innocence or lessen sentence (mitigation)



Giglio - Impeachment, statements of witnesses, witnesses changing statements, credibility



Giglio-Disciplinary History of an officer, disciplinary history impacts credibility

Do Your

DUTY

of

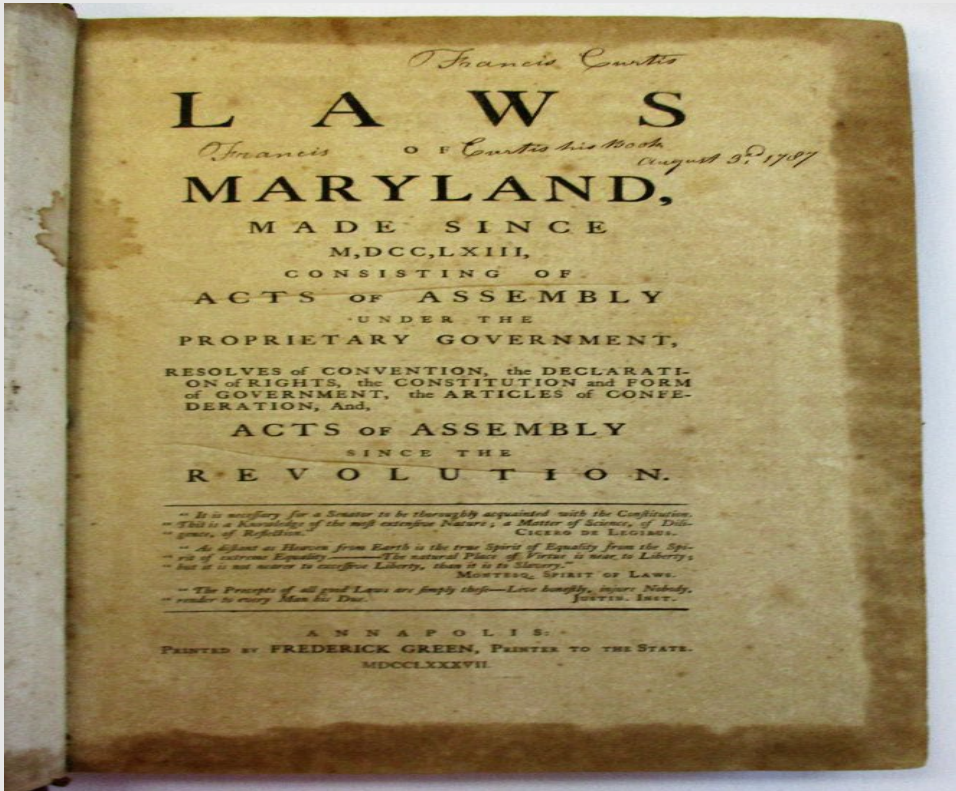
DISCLOSURE



DUTY IS ON THE STATE OR GOVERNMENT TO DISCLOSE

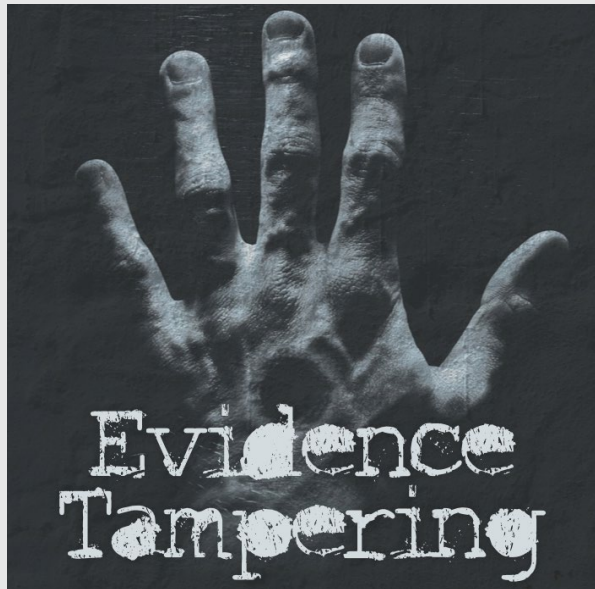
- Who is the State or Government?
 - All Prosecutors
 - All Law Enforcement





EXAMPLES OF BRADY MATERIAL

- Examples of Potential Exculpatory Evidence include, but are not limited to:
 - Information that tends to disprove the defendant's guilt
 - Information that tends to cast doubt on the admissibility of evidence



The Results of Brady Violations

[Excerpts- Exclusive: Murder Trial Dismissed Due To Brady Violation](#)



CAUSES OF BRADY VIOLATIONS?

- Poor training of law enforcement and prosecutors
- Win at any cost mentality
- Confirmation bias or tunnel vision that the defendant is guilty
- Pressure and stress to solve the case
- Lack of integrity

Potential Exculpatory Evidence

Examples include, but are not limited to:

- Information that tends to disprove the defendant's guilt concerning any count in a criminal case.
- Information that tends to cast doubt on the evidence that the government or state has, whether it is to be offered at trial or not.
- Information that could be the subject of a motion to suppress or exclude ***(for instance, information that tends to undermine probable cause for an arrest or a search and seizure warrant)***

Potential Exculpatory Evidence, Cont'd.

- Information related to the mishandling of physical evidence
- Information that tends to diminish the...
 - degree of the defendant's culpability (*lessens their guilt*)
 - severity of the offense charged
 - severity of the defendant's sentence (*evidence that might show the defendant is guilty of a crime, but of a lesser degree of that same crime or a crime with a lesser penalty*)

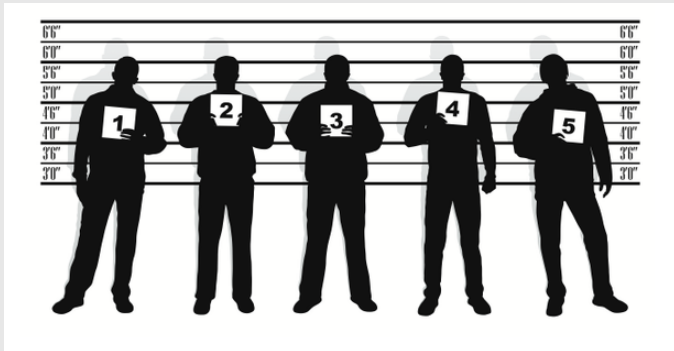
DISCLOSURE REQUIREMENTS



IMPEACHMENT, STATEMENTS AND INCONSISTENT STATEMENTS OF WITNESSES
SUPREME COURT CASE: GIGLIO V. UNITED STATES, 405 U.S. 150 (1972).

WHAT IS GIGLIO INFORMATION?

- Potential impeachment evidence against any witness, including officers.
 - Mis-identification or negative identification of a suspect.
 - Evidence of a witness's motive to lie.
 - Information that casts doubt on the credibility of the police or other witnesses.
 - Inconsistent statements of witnesses.
 - Information about a witness's intellectual or behavioral health disability.
 - Any formal or informal benefit or something of value received by a witness.





GIGLIO INFORMATION

Other examples, are:

- Any criminal record or criminal case pending against any anticipated witness for the government.
- Any formal or informal government offer of, or witness request for, leniency or favorable treatment in any existing or potential criminal case against that witness **(for instance, an offer of, or request for, immunity, non-prosecution, reduced charges, or a reduced sentence).**

DISCLOSURE REQUIREMENTS



GIGLIO-DISCIPLINARY HISTORY OF AN OFFICER, DISCIPLINARY
HISTORY IMPACTS CREDIBILITY

Potential Disciplinary Investigation Disclosures

- Any finding of misconduct relating to truthfulness or bias.
- Any past or pending criminal charge.
- Any allegation of misconduct regarding truthfulness, bias, or integrity (under Fields v. State, such allegations may qualify).
- Prior findings by a judge that an officer has testified untruthfully.
- Any misconduct that casts a substantial doubt on the accuracy of any evidence.
- Information suggesting that the officer is biased for or against a defendant.
- Information that officer's ability to perceive and recall truth is impaired.

Confidential Disciplinary Investigations

A disciplinary investigation may be conducted in a covert manner, such that its existence is concealed from the subject member in order to safeguard its integrity.

Not all open disciplinary investigations are confidential. Only those whose existence is concealed from the subject member are confidential.



New Process in Draft Policy 1809

- ❖ Some details are still being worked out, but these are the basics:
- ❖ There will be a form for members to complete.
- ❖ There will be three sections to the form corresponding to Brady-Giglio:
 - Member's disciplinary history
 - Potential exculpatory evidence
 - Potential impeachment evidence
- ❖ There will be a Brady/Giglio liaison at PIB to help members document and update their discipline history.
- ❖ Members will complete the exculpatory and impeachment sections for each case.
- ❖ The form will be provided to the prosecutor.
- ❖ There will be an e-learning with exact details before the policy goes live.

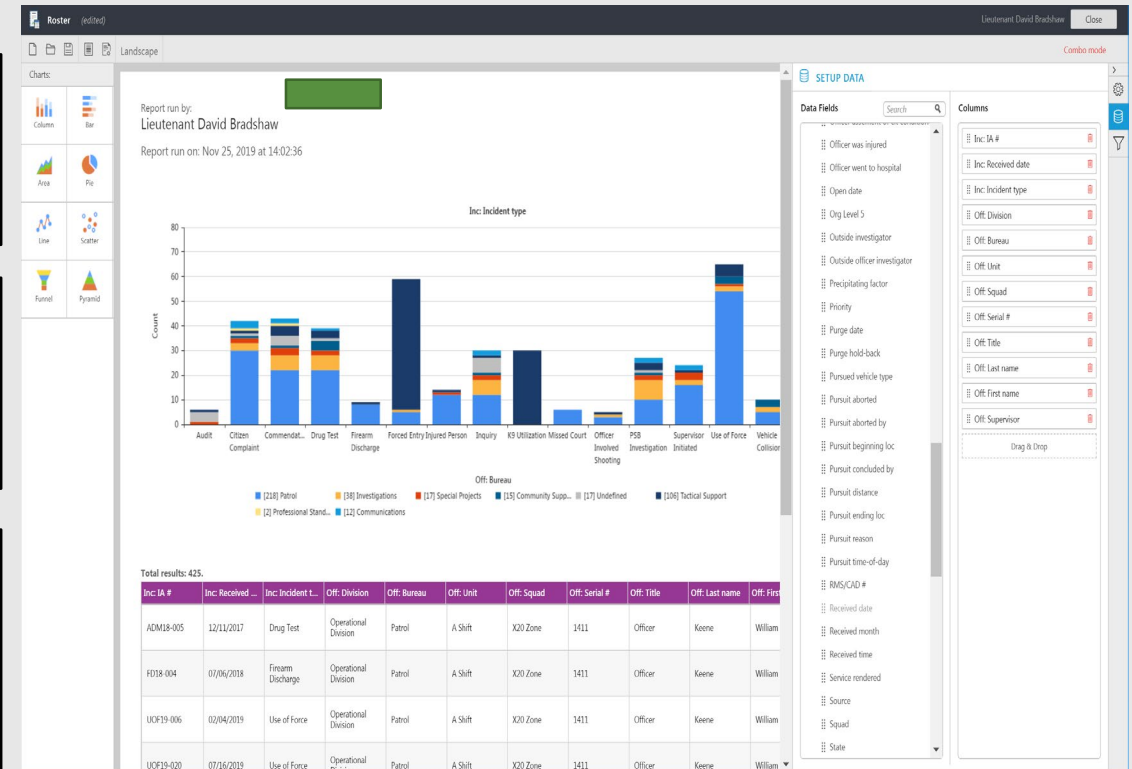
What is IAPro?

- Contains up-to-date information regarding the disciplinary histories of all BPD members

- Provides the OSA (*Office of State's Attorney*) and USAO (*United States Attorney's Office*) with access to IAPro

- Enables prosecutors to promptly determine whether any Potential Impeachment Evidence exists regarding BPD members involved in their cases

- Allows prosecutors to retrieve such evidence and provide it to the defense as required.



To the extent BPD members or prosecutors have questions or concerns about the completeness of the Potential Impeachment Evidence being provided regarding BPD members, they should contact the Brady/Giglio Liaison.

More on IAPro...

- All activity in IAPro is logged and tracked, allowing the Department to view everyone who has logged on and into any files.
- Any misuse of IAPro access will be reported to the appropriate management or licensing authority.
- Misuse of IAPro includes the inspection of member disciplinary histories unrelated to investigation or prosecution of a specific criminal complaint.



WHAT ARE BRADY LISTS?

[Excerpts- 'Brady' Lists Help Prosecutors Track Police Misconduct](#)

The End