

**LITTLE ROCK POLICE DEPARTMENT
GENERAL ORDER**

EXCULPATORY EVIDENCE

DATE: 11/27/2023	DISTRIBUTION: DEPARTMENTAL	REPLACES: NEW	NUMBER: G.O. 337
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I. Purpose

The Department and its personnel should take all necessary steps to assure that no one is convicted of a criminal offense without due process of law. The purpose of this policy is to ensure that department personnel comply with the legal decisions that clarify the requirements of United States Supreme Court decision such as Brady v. Maryland (1963), Giglio v. United States (1972), United States v. Bagley (1985), and Kyles v. Whitley (1995). Exculpatory evidence will not be withheld from a criminal defendant by department personnel.

II. Policy

It is the policy of this department to require that sworn personnel provide all potentially exculpatory evidence to prosecutors. The Brady-Giglio-Bagley-Kyles decisions and subsequent rulings have made it a duty of all law enforcement agencies whether formally requested to do so or not to (1) identify and provide to the prosecution any Exculpatory Evidence and Brady-Giglio-Bagley-Kyles material that is favorable to the defendant and would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant, and (2) any material relevant to the credibility of government witnesses, including but not limited to, law enforcement officers.

III. Definitions

- A. Exculpatory Evidence/Brady Material - Evidence in the government's possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a witness. Exculpatory evidence is material if there is a reasonable probability that the trial would have resulted in a different outcome had the evidence been disclosed to the defense.
- B. Duty to Disclose - The landmark decision of Brady v. Maryland (1963) places an affirmative constitutional duty on a prosecutor to disclose exculpatory evidence to a defendant. This duty has been extended to police agencies through case law, requiring law enforcement agencies to notify the prosecutor of any potential exculpatory information.
- C. Material Evidence - Exculpatory evidence is "material" if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding. A

"reasonable probability" is a probability sufficient to undermine confidence in the outcome of the trial or sentencing of a criminal case.

IV. Procedures

- A. Personnel shall ensure they are familiar with the requirements of this policy.
- B. The defense is not required to request potential Brady material. It is the department's responsibility to disclose such material, as soon as reasonably possible, to the office of the prosecutor, or in time for effective use at trial. Responsibility for disclosing such material extends from indictment through the trial and sentencing process. It is the prosecutor's responsibility to establish whether material disclosed by this department must be provided to the defense.
- C. Personnel files may be provided or opened to the prosecution or defense as part of a Brady/Giglio disclosure, as is consistent with the law. In such instances, personnel will be notified that their files are being provided.
- D. Officers are required to document all investigative activity involved in an investigation, including exculpatory information. Each employee who is notified to appear as a witness in a criminal case has an individual obligation under this policy to notify the prosecutor on the specific case of any sustained disciplinary history that may impact credibility and qualify as "Brady" material.
- E. Examples of Brady material that may be subject to disclosure include, but may not be limited to, the following:
 - 1. Information that would directly negate the defendant's guilt concerning any count in an indictment;
 - 2. Information that would cast doubt on the admissibility of evidence that the government plans to offer that could be subject to a motion to suppress or exclude;
 - 3. Any criminal record or criminal matter pending against any witness whom the prosecution anticipates calling;
 - 4. The failure of any proposed witness to make an unassisted positive identification of a defendant;
 - 5. Information that casts doubt on the credibility or accuracy of a witness or evidence;
 - 6. An inconsistent statement made orally or in writing by any proposed witness;
 - 7. Statements made orally or in writing by any person that are inconsistent with any statement of a proposed government witness regarding the alleged criminal conduct of the defendant;

8. Information regarding any mental or physical impairment of any governmental witness that would cast doubt on the witness' ability to testify accurately and truthfully at trial;
 9. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines;
 10. A finding of misconduct by an administrative investigation that reflects on the witness's truthfulness, bias or moral turpitude. This includes employees under suspension;
 11. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group; and,
 12. An employee's excessive use of force, untruthfulness, dishonesty, bias or misconduct in conjunction with the employee's service as a law enforcement officer in the employ of this or any other agency.
- F. It is the individual employees' responsibility to disclose potential impeachment information to the prosecuting attorney before serving as a witness in any criminal case or matter. This includes the obligation of individual employees to disclose sustained administrative allegations of misconduct and administrative discipline arising from employment with the Little Rock Police Department or any other law enforcement agency to the prosecutor. In addition, employees shall provide the prosecutor a list of all the administrative investigations resulting in the employee's sustained allegations.

V. TRAINING

- A. All sworn personnel shall receive training in Brady disclosure requirements.
- B. Training will include, but not be limited to, the following:
 1. Explanation of the Brady rule and exculpatory evidence;
 2. Department policy and procedures for handling exculpatory evidence;
 3. Legal consequences for failure to comply (termination, criminal charges, civil rights violations, etc.); and,
 4. Employee misconduct that may affect the employee's ability to testify and result in termination.

Additions and revisions are italicized and underlined.

Deletions are denoted with a strikethrough.