

POLICY NUMBER

5.09



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4/22/2013

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2/27/2025

<b>Chapter</b>	Administrative Support Services
<b>Article</b>	Brady Disclosure Requirements

**PURPOSE**

To establish guidelines that reflect the Department’s commitment to professionalism and integrity, to assist the District Attorney’s Office in complying with affirmative constitutional and statutory duties to disclose exculpatory evidence to the defense as mandated by U.S. Supreme Court decisions (*Brady v. Maryland, 373 U.S. 83 (1963) and its progeny*), and Colorado law, including information affecting the credibility of Department employee witnesses.

**POLICY**

Sustained findings of untruthfulness, bias and the commission of crimes can severely impact the effectiveness of an employee to the Department and will not be tolerated. The Loveland Police Department will cooperate with the District Attorney’s Office of the 8<sup>th</sup> Judicial District to provide notification of any exculpatory evidence that may show a lack of credibility on the part of any Department witness involved in a case, including police officers and civilian employees whose duties could reasonably include testimony in court.

**DEFINITIONS**

**Brady Material** is exculpatory evidence that is favorable to the accused, is material to the guilt, innocence or punishment of the accused and that may impact the credibility of a witness. Exculpatory evidence is material if there is a reasonable probability that it would 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.

**Civilian Employee** for purposes of this policy means any civilian employee involved in the investigation of law or ordinance violations.

**Credibility Disclosure Notification** means the notification described in C.R.S. 16-2.5-502(2)(c) and described in this policy.

**Credible Report** is a report that has been reviewed by the Chief and is assigned to the Professional Standards Unit (PSU) for investigation that involved employee misconduct of untruthfulness, an intentional deceptive act, a criminal offense for which the POST board may deny certification (as set forth in C.R.S. 24-31-305), or any offense involving theft, or other issue affecting truthfulness on the part of any police officer or civilian employee.

**Notification List** is the list that the District Attorney’s Office maintains that contains the names of law enforcement employees that have sustained findings of knowing misrepresentation, untruthfulness, an intentional deceptive act, a criminal offense, for which the POST board may deny certification (as set



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forth in C.R.S. 24-31-305), or any offense involving theft, or other issue effecting truthfulness by any police officer or civilian employee.

**Peace Officer**, for purposes of this policy, means a peace officer as defined in C.R.S. 24-31-901(3) and includes an officer, reserve, volunteer, or employee who performs a law enforcement function.

**Pending Investigation List** is a list the District Attorney’s Office maintains, which contains the names of law enforcement employees who are under investigation for untruthfulness, an intentional deceptive act, a criminal offense, for which the POST board may deny certification (as set forth in C.R.S. 24-31-305), or any offense involving theft, or other issue effecting truthfulness by any police officer or civilian employee.

**Sustained Finding** is a final determination that sufficient evidence exists to support allegations contained in a credible report. Such finding is final only after the employee has exhausted all appeal procedures or when the employee has failed to avail themselves of appeal procedures within the time period required for each level of appeal.

**Untruthfulness or Dishonesty** means conduct that involves a knowing misrepresentation, including but not limited to intentionally untruthful statements, knowing omissions of material information, and knowingly providing or withholding information with an intent to deceive or mislead.

**GENERAL GUIDELINES**

**Credibility Disclosure Notification** <CRS § 16-2.5-502> <DA’s Office Memorandum dated 1/20/22>

Support Division Assistant Chief, or designee, shall promptly notify the elected District Attorney or his designee, in writing, of any *sustained* finding where a peace officer has:

- Knowingly made an untruthful statement concerning a material fact;
- Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class;
- Tampered with or fabricated evidence;
- Been convicted of any crime involving dishonesty or has been charged with any felony or any crime involving dishonesty, or any decertifying misdemeanor listed in C.R.S. § 24-31-305; or
- Violated any policy of the Loveland Police Department regarding dishonesty.

In addition to the credibility disclosure notification required by law, the Support Division Assistant Chief, or designee, shall also notify the elected District Attorney or his designee as soon as practicable when a peace officer is under a criminal or administrative investigation that *if sustained*, would require disclosure based on the above actions, and where it also meets both of the following circumstances:

- The peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged; and
- The criminal or administrative investigation of the peace officer involves an allegation related to the peace officer’s involvement in the defendant’s pending criminal case.



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For disclosures made under these circumstances, the Support Division Assistant Chief, or designee, shall promptly notify the elected District Attorney or his designee once the administrative process for investigating and evaluating the allegation on the merits has been completed.

If the PSU determines through the administrative process that the criminal or administrative allegations are *not sustained* based on the merits, the Support Division Assistant Chief, or designee, should promptly notify the elected District Attorney or his designee of the outcome and the Support Division Assistant Chief, or designee, or the involved peace officer may request that the elected District Attorney or his designee remove the credibility disclosure notification from its records. However, nothing shall require the District Attorney to remove any credibility disclosure that was made to a defendant pursuant to Rule 16 in a pending criminal proceeding where the requirements listed above applied at the time of the disclosure. The District Attorney’s Office will only remove the involved officer if it agrees with the conclusion of the Department based on its own independent review of relevant materials presented by the Department or officer.

Prior to making any credibility disclosure notification required under Colorado law, the PSU Lieutenant or designee must give the involved peace officer at least seven (7) calendar days’ notice of the Department’s intent to send a credibility disclosure notification to the District Attorney’s Office. If seven (7) days’ notice is not practicable due to an impending trial date, the Department shall provide as much notice to the involved peace officer as is practicable under the circumstances.

In addition to the credibility disclosure notification as outlined above, the Support Division Assistant Chief, or designee, shall consult with the City Attorney’s Office to determine whether the underlying factual basis for the disclosure would also require the reporting of a “disqualifying incident” with the Colorado Peace Officer Standards and Training (P.O.S.T.) Division.

**Credibility Disclosure Notification Procedure** <CRS § 16-2.5-502>

The Support Division Assistant Chief, or designee, shall include the following information in the credibility disclosure notification to be provided in writing to the District Attorney’s Office:

- The peace officer’s name;
- The name of the Law Enforcement agency that employed the peace officer at the time of the sustained findings or at the time of the criminal or administrative investigation;
- The following statement: “This is to inform you that there is information in the Loveland Police Department’s possession regarding [name of peace officer] that may affect the [name of peace officer]’s credibility in court.”;
- The applicable statutory provision identifying the basis for the credibility disclosure notification, including whether the notification is based on a sustained finding, or whether the notification relates to an open criminal or administrative investigation.

The Support Division Assistant Chief, or designee, shall send the required credibility disclosure notification in writing, either electronically or by mail, to the contact(s) designated by the District Attorney’s Office.

**General Provisions of Disclosure** <MOU 3/8/2016 with DA office> <CRS § 16-2.5-502>



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Pursuant to the procedures set forth in the Credibility Disclosure Notification above, the Office of the District Attorney will place the named employee on a “Notification List.” Placement on the Notification List will trigger the District Attorney’s Office to disclose to all defense attorneys in any case for which the employee is an endorsed witness, that there may be information in the employee’s personnel file which could affect his/her credibility.

If there is a pending criminal case against a defendant and the PSU initiates a concurrent internal administrative investigation directly related to the criminal case, any non-*Garrity* materials relevant to the criminal case obtained as part of the administrative investigation shall be made part of the concurrent criminal case so that discovery of those materials to the Defense can be made. The PSU Lieutenant or designee shall file a supplemental report in the criminal case indicating that additional witness statements were obtained as part of an internal administrative investigation and any recordings of those statements are being maintained as part of the PSU file. Any exculpatory material relevant to the concurrent criminal case discovered by the Department investigator or reviewing command staff must be disclosed, even if the materials were obtained as a result of a *Garrity* advisement. The person who discovers the exculpatory material will create a supplemental report in the case file in the Records Management System identifying the material discovered, notify the Chief of Police, and ensure Records transfers the supplement to the District Attorney’s Office.

If the Department receives a credible report of officer misconduct involving truthfulness, or an intentional deception act, a criminal offense for which the POST board may deny certification (as set forth in C.R.S. 24-31-305), or any offense involving theft, or other issue effecting truthfulness on the part of a police officer or civilian employee, the Department shall notify the District Attorney's Office of the existence of the pending internal administrative investigation. The notification shall be made verbally or in writing by the Support Division Assistant Chief, or designee, to the elected District Attorney or next in command and shall only identify the Department employee involved and indicate that there may be information in the employee’s personnel or internal affairs file that could affect credibility. No other information involving the internal investigation shall be disclosed.

In the event that an agency employee has been charged criminally, any statement obtained from that agency employee pursuant to a *Garrity* advisement, and any fruit of that statement, shall remain in the internal affairs file and shall not be disclosed to the criminal investigators or the District Attorney’s Office.

If the Department has knowledge of a current employee or hires an employee who has a previous criminal conviction for a theft-related offense or an offense involving false reporting, the law enforcement agency shall notify the District Attorney’s Office of the name of the agency employee involved and the date and jurisdiction in which the conviction occurred. Upon receipt of this information, the District Attorney’s Office will place the agency employee’s name on their “Run Criminal History” list. This list identifies agency employees whose criminal history must be disclosed to the defense as required by Colorado law.

### **Department Requirements**

The Department shall exercise due diligence to ensure that Brady material is made available to the District Attorney’s Office of the Eighth Judicial District. It is the obligation of individual employees to



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inform their immediate supervisor of any information known and connected to a criminal case that they reasonably believe may be subject to Brady disclosure. Supervisors are equally responsible for ensuring that they act with due diligence in identifying any potential Brady material connected with any criminal proceedings for which they have oversight and to bring such material to the attention of the District Attorney in a timely manner, through the PSU.

**Pre-Employment**

The Department may immediately terminate any employee who has prior misconduct affecting credibility in their background and said misconduct was not previously disclosed or discovered before their hiring.

**Document Disclosure and Retention**

Documentation of sustained findings of untruthfulness, bias and the commission of crimes, (Brady material), will be retained within the Internal Affairs files. ***However, in no event shall an employee’s administrative or personnel file, nor any information contained therein, be given to the District Attorney’s Office or any other party, without first consulting with the City Attorney’s Office for direction.***

**Disciplinary Action**

A sustained finding of misconduct affecting credibility as set forth in this policy, including facts which indicate an employee lacks the honesty, integrity, trust and faith needed of those serving this department, may result in disciplinary action, up to and including termination for a first offense.

