

Brady Material Disclosure

605.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called “*Brady* information”) to a prosecuting attorney.

605.1.1 DEFINITIONS

Definitions related to this policy include:

***Brady* information** - Information known or possessed by the Louisville Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

605.2 POLICY

The Louisville Police Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Louisville Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor’s office.

If information is believed to be privileged or confidential (e.g., confidential informant or attorney-client information, attorney work product), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the department case file.

Brady Material Disclosure

605.4 BRADY PROCESS

The Chief of Police shall select a member of the Department to coordinate requests for *Brady* information. This person shall be directly responsible to the Deputy Chief or the authorized designee.

The responsibilities of the coordinator include, but are not limited to:

1. Working with the appropriate prosecutors' offices and the City Attorney's office to establish systems and processes to determine what constitutes *Brady* information and the method for notification and disclosure.
2. Maintaining a current list of members who have *Brady* information in their files or backgrounds.
 1. Updating this list whenever potential *Brady* information concerning any department member becomes known to the Department or is placed into a personnel or internal affairs file.

605.4.1 CREDIBILITY DISCLOSURE NOTIFICATION

The coordinator shall establish, in consultation with the appropriate prosecutors' offices, procedures necessary to comply with the requirements of CRS § 16-2.5-501 et seq., including prompt notification in writing of:

- a. Any sustained finding made on or after Jan. 1, 2022, where an officer:
 1. Knowingly made an untruthful statement concerning a material fact.
 2. Demonstrated a pattern of bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class under federal and state law.
 3. Tampered with or fabricated evidence.
 4. Was convicted of any crime involving dishonesty.
 5. Violated any Louisville Police Department policy involving dishonesty.
- b. Criminal charges filed against an officer for any felony or any crime involving dishonesty.
- c. Any criminal or administrative investigation involving an officer that, if sustained, would require disclosure under (a); and
 1. The officer is a potential witness in a pending criminal case; and
 2. The concurrent investigation relates to the officer's involvement in the pending criminal case.

The coordinator shall provide notice of the intent to make a credibility disclosure notification to the involved officer at least seven days prior to contacting the prosecutor's office (CRS § 16-2.5-502).

605.5 DISCLOSURE OF PERSONNEL INFORMATION

If a member of this department is a material witness in a criminal case, a person or persons designated by the Chief of Police shall examine the personnel file and/or internal affairs file of the officer to determine whether they contain *Brady* information. If *Brady* information is located, the following procedure shall apply:

Brady Material Disclosure

- a. In the event that a motion has not already been filed by the criminal defendant or other party, the prosecuting attorney and department member shall be notified of the potential presence of *Brady* material in the member's personnel file.
- b. The prosecuting attorney or department counsel should be requested to file a motion in order to initiate an in-camera review by the court.
 1. If no motion is filed, the supervisor should work with counsel to determine whether the records should be disclosed to the prosecutor.
- c. The Custodian of Records shall accompany all relevant personnel files during any in-camera inspection to address any issues or questions raised by the court.
- d. If the court determines that there is relevant *Brady* material contained in the files, only that material ordered released will be copied and released to the parties filing the motion.
 1. Prior to the release of any materials pursuant to this process, the Custodian of Records should request a protective order from the court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.
- e. If a court has determined that relevant *Brady* information is contained in the member's file in any case, the prosecutor should be notified of that fact in all future cases involving that member.

The person or persons designated by the Chief of Police should periodically examine the personnel files and/or internal affairs files of all officers who may be material witnesses in criminal cases to determine whether they contain *Brady* information. The obligation to provide *Brady* information is ongoing. If any new *Brady* information is identified, the prosecuting attorney should be notified.

605.5.1 DISCLOSURE OF MISREPRESENTATIONS

The Chief of Police or the authorized designee shall notify the local district attorney within seven days of any sustained finding that an officer has made a knowing misrepresentation in any of the following (CRS § 24-33.5-114; CRS § 30-10-525; CRS § 31-30-107; CRS § 33-9-111):

- a. Testimony or an affidavit provided in the scope of the officer's employment.
- b. During the course of any internal investigation of the officer that relates to alleged criminal conduct, official misconduct or the excessive use of force.

605.6 INVESTIGATING BRADY ISSUES

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

Brady Material Disclosure

605.7 SUBPOENA PROCESSING

The individual processing subpoenas (or the supervisor of the subpoenaed member) shall check the subpoenaed member's name against the current list of those who are known to have *Brady* information in their files or background, and shall alert the coordinator if a person on the list is subpoenaed.

605.8 TRAINING

Department personnel should receive periodic training on the requirements of this policy.

