

**TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.8 BRADY/GIGLIO MATERIAL AND CONSEQUENT MATTERS**

SUBJECT: Brady/Giglio Material and Consequent Matters		
4.8	EFFECTIVE: 4/17/2019	<i>William Cochran</i> William Cochran, Chief of Police
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4.8.1 PURPOSE

This policy is to ensure that the Department and its employees appropriately fulfill the constitutional duty to disclose exculpatory evidence in criminal prosecutions, including any information that would bear negatively on the credibility of material witnesses for the government. This includes police witnesses.

4.8.2 POLICY

The Department and its employees shall disclose to prosecutors in criminal cases any evidence or information that could reasonably be viewed as exculpatory in respect to the criminal defendant.

4.8.3 DISCUSSION

In *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court found that the suppression of evidence favorable to an accused violates due process where the evidence is material to either guilt or punishment. In *United States v. Giglio*, 405 U.S. 150 (1972) the Supreme Court held that this obligation to disclose information was not limited to purely exculpatory evidence, but also included potential impeachment evidence. In 1985 the obligation was expanded in *United States v. Bagley*, 473 U.S. 667 (1985) where it was held that the obligation to disclose *Brady* information exists even in the absence of a request from a defendant for the material. Finally, in *Kyles v. Whitley*, 514 U.S. 419 (1995), the Court expanded this obligation further by stating that the individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police.

4.8.4 TERMINOLOGY

- A. For the purpose of this policy, the terms "*Brady* material" and "exculpatory evidence" shall be given the following meaning:
- B. *Brady* material and exculpatory evidence both refer to evidence or information that is favorable to the defense in a criminal case and material to either the issues of guilt or punishment.

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.8 BRADY/GIGLIO MATERIAL AND CONSEQUENT MATTERS

- C. *Brady* material also includes any information that would bear negatively on the credibility of material government witnesses, including police employees, who may testify in the case. Impeachment information includes:
1. Any findings of misconduct that reflects upon the truthfulness or possible bias of the employee, including a finding of lack of candor during a criminal, civil or administrative inquiry or proceeding;
 2. Any past or pending criminal charges brought against the employee;
 3. Any present allegation of misconduct bearing upon truthfulness, bias or integrity that is the subject of a pending investigation;
 4. Any finding of misconduct or pending allegation of misconduct that either casts a substantial doubt upon the accuracy of any evidence-including witness testimony-that the prosecutor will rely on to prove an element of the crime charged, or that might have a significant bearing on the admissibility of prosecution evidence;
 5. Information that may suggest the employee is biased for or against a defendant; or
 6. Information that may suggest the employee's ability to perceive and recall truth is impaired.
- D. Allegations which are not sustained, unfounded or where the employee is exonerated are generally not considered potential impeachment information and shall not be disclosed. In the case of prior untruthfulness on the part of a police employee, the duty of disclosure extends only to untruthfulness in police business or matters or in any sworn testimony, not to one's entire life history.
- E. Similarly, disclosure of the commission of crimes committed by police employees refers to crimes committed since becoming a police employee, not to every minor transgression perpetrated early in life.

4.8.5 PROCEDURE

- A. Internal Identification of *Brady* Material
1. Any employee working on a criminal case who realizes the existence of exculpatory evidence or information in the case shall report that belief to his or her supervisor, who shall report the matter up the chain of command to the Chief of Police. All members of that chain of command shall endorse the report positively or negatively, with an explanation of a negative endorsement.
 2. If the Chief of Police is satisfied that the evidence or information may in fact be *Brady* material, he or she shall disclose the evidence or information to the prosecutor in charge of the case.
 3. The obligation to disclose exculpatory evidence or information is a continuing duty and applies throughout the entire criminal proceeding. The Department

TOPEKA POLICE DEPARTMENT POLICY AND PROCEDURE MANUAL
4.8 BRADY/GIGLIO MATERIAL AND CONSEQUENT MATTERS

has a duty to update the disclosures made to the prosecutor if new information arises or is discovered.

B. Affected Employees

1. Bureau Commanders and the Commander of the Professional Standards Unit shall make all reasonable efforts to be aware of any employee whose record would be *Brady* material if the employee were to be a material witness in a criminal prosecution and shall promptly report any such circumstances to the Chief of Police.
2. The Chief of Police shall then, upon conferring with prosecutors and legal counsel if necessary, determine whether any potential *Brady* material regarding the employee is so serious that the employee is unable to render credible testimony in a court of law. If so, the Chief of Police shall determine if the employee is unfit for duty (because of his or her inability to offer credible testimony in court) and may take appropriate administrative action, including termination.