

PLANNING AND DEPLOYMENT

TRANSMITTAL OF WRITTEN DIRECTIVE

FOR SIGNATURE OF: James E. Craig, Chief of Police 

TYPE OF DIRECTIVE: Manual Directive 102.10

SUBJECT: BRADY/GIGLIO DISCLOSURE REQUIREMENTS


ORIGINATED OR REQUESTED BY: Planning and Deployment

APPROVALS OR COMMENTS:

This is a new directive. The information for this directive was pulled by Planning and Deployment from the Baltimore Police Department and the International Association of Chiefs of Police for reference (attached).

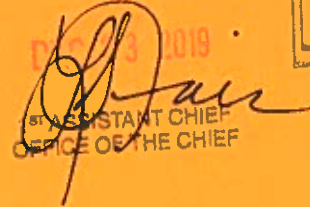
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BOARD OF POLICE COMMISSIONERS

Approved

10/28/19



APPROVED
DEC 3 2019


1ST ASSISTANT CHIEF
OFFICE OF THE CHIEF

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NOV 26 2019


SECOND DEPUTY CHIEF
POLICE LEGAL ADVISOR

APPROVED

ASSISTANT CHIEF
ADMINISTRATIVE OPERATIONS

**AFTER THE DIRECTIVE IS APPROVED AND SIGNED, PLEASE RETURN TO
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1301 Third Avenue, 7th Floor, Detroit MI 48226

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Series 100 Administration	Effective Date	Review Date Three Years	Directive Number 102.10
Chapter 102 – Standard of Conduct			<input checked="" type="checkbox"/> New Directive <input type="checkbox"/> Revised
Reviewing Office Office of Support Operations			
References			

Brady/Giglio Disclosure Requirements

102.10 - 1 PURPOSE

The purpose of this policy is to provide members with the information necessary to properly fulfill the reporting and testimonial requirements mandated under U.S. Supreme Court decisions including *Brady v. Maryland* 373 U.S. 83 (1963) and *Giglio v. U.S.* 405 U.S. 150 (1972).

102.10 - 2 POLICY

1. It is the policy of the Detroit Police Department (DPD) to follow *Brady/Giglio* disclosure requirements consistent with the law. The *Brady/Giglio* decision and subsequent rulings have made it a duty of all law enforcement agencies to (1) identify and provide to the prosecution any Exculpatory Evidence and Brady/Giglio Material that 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.
2. Adherence to Department policy and rules in all matters is imperative. Breaches of such rules and policies related specifically to honesty and veracity may have direct bearing on a member's ability to continue serving as a law enforcement officer.

102.10 - 3 Definitions

102.10 - 3.1 Brady/Giglio Violations

Violations of an individual's 14th Amendment right to due process of law involving the failure to disclose Exculpatory Evidence.

102.10 - 3.2 Duty to Disclose

The affirmative constitutional duty of law enforcement to notify the prosecutor of any Exculpatory Evidence and Brady/Giglio Material.

102.10 - 3.3 Exculpatory Evidence and Brady/Giglio Material

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 government witness, including a law enforcement officer. Impeachment material is included in the *Brady/Giglio* disclosure requirements.

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102.10 - 3.4 Material Evidence

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.

102.10 - 4 General

102.10 - 4.1 General Provisions of Disclosure – Affirmative Duty to Report

1. The Detroit Police Department shall exercise due diligence to ensure that material of possible *Brady/Giglio* material is made available to the Wayne County Prosecutor's Office or other prosecutorial authority.
2. It is the responsibility of the Department to disclose such material as soon as reasonably possible to the Wayne County's Prosecutor's Office or other prosecutorial authority. Responsibility for disclosing such material extends from indictment through the trial and sentencing process.
3. The Department is not responsible for determining the relevancy of the material. Relevancy is solely determined by the prosecutor and the judge.
4. The Professional Standards Bureau has a duty to provide any member with an up to date summary of their disciplinary history, unless providing the information would compromise an ongoing confidential investigation.
5. All members must disclose *Brady/Giglio* material, without a specific request by the trial prosecutor handling a case in which the member is an intended government witness, whether, to the best of the member's knowledge and belief, and Brady material exists.
6. All members have an affirmative duty to maintain knowledge of their personnel history including their disciplinary/internal affairs history.
7. It is the prosecutor's responsibility to establish whether material disclosed by the Department must be provided to the defense.
8. Suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or to punishment, irrespective of good or bad faith. There is no distinction between "impeachment evidence" and Exculpatory Evidence for *Brady/Giglio* disclosure purposes.
9. A member shall not manipulate or alter possible *Brady/Giglio* material.

102.10 - 4.2 Examples of *Brady/Giglio* Material

1. Examples of *Brady/Giglio* material that may be subject to disclosure include, but may not be limited to:
 - a. Information that would directly negate the defendant's guilt concerning any count in an indictment;
 - b. 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;
 - c. Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling;

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- d. Any final Department adjudicated findings of misconduct or pending Departmental charges against a member whom the prosecution anticipates calling;
 - e. The failure of any proposed witness to make a positive identification of a defendant;
 - f. Information that casts doubt on the credibility or accuracy of a witness or evidence;
 - g. An inconsistent statement made orally or in writing by any proposed witness;
 - h. 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;
 - i. Information regarding any mental or physical impairment of any governmental witness that would cast doubt on their ability to testify accurately and truthfully at trial;
 - j. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines;
 - k. A finding of misconduct by the Wayne County Prosecutor's Office or any court of competent jurisdiction that reflects on the witness's truthfulness, bias, or moral turpitude. This includes members under suspension;
 - l. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group; or
 - m. A member's untruthfulness, dishonesty, bias, or misconduct in conjunction with their service as a law enforcement officer.
2. Member's personnel files that are related to matters stated above 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, a member will be notified that their personnel files are being provided.

102.10 - 5 Departmental Response to Member Testimonial Impeachment

Members who are knowingly and intentionally untruthful, are otherwise dishonest in the course of their employment, or use excessive force are subject to impeachment of testimony at trial. Such members are subject to disciplinary action of termination of employment.