

Brady Information

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 St. Mary's County Sheriff's Office that is both favorable and material to the current prosecution or defense of a criminal defendant.

605.2 POLICY

The St. Mary's County Sheriff's Office 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 St. Mary's County Sheriff's Office will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Office will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Deputies 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 a deputy learns of potentially incriminating or exculpatory information any time after submission of a case, the deputy or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable.

If information is believed to be privileged or confidential (e.g., informant or protected personnel files), the deputy 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 a deputy is unsure, the deputy should address the issue with a supervisor.

If the Division Commander is satisfied that the evidence or information is in fact "Brady Material" that should potentially be disclosed, the supplemental report shall be forwarded to the Office of the State's Attorney. If the "Brady Material" involves the actions or inactions of an employee of the Sheriff's Office, the Division Commander shall advise the Assistant Sheriff and OPR of the finding and coordinate the disclosure of that evidence or information to the Office of the State's Attorney.

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The Office of the State's Attorney will then determine whether, in his or her opinion, the evidence or information is, in fact, "Brady Material" and, if it is will make the required disclosure to the attorney for the criminal defendant.

605.4 BRADY PROCESS

Division Commanders and the Supervisor of the Office of Professional Responsibilities (OPR) shall make all reasonable efforts to become aware of any employee whose disciplinary record would be "Brady Material" if that employee were to be a material witness in a criminal prosecution and shall promptly report any such circumstances to the Sheriff/Assistant Sheriff.

The Sheriff/Assistant Sheriff will then, by conferral 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 Sheriff may determine the employee to be unfit for duty (because of inability to testify effectively in court) and may take appropriate administrative action, including termination.

605.5 DISCLOSURE OF REQUESTED INFORMATION

If *Brady* information is located, the following procedure shall apply:

- (a) In the event that a motion has not already been filed by the criminal defendant or other party, the prosecuting attorney and employee whose file is related to the motion shall be notified of the potential presence of *Brady* information.
- (b) The prosecuting attorney or Sheriff's Office Attorney 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 for OPR should work with the Sheriff's Office Attorney to determine whether the records should be disclosed to the prosecutor.
- (c) The supervisor for OPR shall accompany all relevant personnel files during any in-camera inspection and address any issues or questions raised by the court in determining whether any information contained in the files is both material and favorable to the criminal defendant.
- (d) If the court determines that there is relevant *Brady* information contained in the files, only that information ordered released will be copied and released to the parties filing the motion.
 1. Prior to the release of any information pursuant to this process, a protective order should be requested from the court limiting the use of such information 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 a member's file in any case, the prosecutor should be notified of that fact in all future cases involving that member.

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605.6 INVESTIGATING BRADY ISSUES

If the Office 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. Any aforementioned allegation which is determined to be credible upon initial review by the Office of Professional Responsibilities (OPR) or; any aforementioned allegation determined to be credible during the course of or at the conclusion of an Administrative Investigation will be reported to the Office of the States Attorney.

605.7 TRAINING

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