

OFFICE OF THE COUNTY ATTORNEY



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POLICIES AND PROCEDURES

Title of Policy: ***Brady* Disclosure Policy**

Date Revised: April 28, 2022

I. POLICY

It is the policy of this office to comply with all constitutional and legal requirements in criminal and juvenile case discovery for the production to the defense of exculpatory material commonly called Brady material, as mandated in *Brady v. Maryland*, 373 U.S. 83 (1983) and subsequent United States and Minnesota Supreme Court decisional law. It is also the policy of this office to recognize and protect the privacy rights of public employees that might be affected by *Brady* disclosures such as those found in Minn. Stat. § 13.43 to the extent that protection is not inconsistent with the *Brady* obligations of the prosecutors of the office.

II. RESPONSIBILITIES

All staff are responsible for compliance with this policy to the extent they perform as or assist in the criminal or juvenile delinquency prosecution function.

III. PROCEDURES

This Policy is the Brown County Attorney's Office disclosure policy regarding witnesses and is intended to assure compliance with the law, to protect witnesses' and defendants' rights, to prosecute criminals effectively and efficiently and to allow for effective investigations. This policy concerns *Brady* obligations. This policy is dependent on law enforcement agencies establishing a separate *Brady* policy/procedure applicable to their agencies.

BRADY REQUIREMENTS

The prosecution must disclose to the defense evidence that is favorable to a defendant as either exculpatory or impeachment and is material to guilt or punishment.

A. Materiality

Evidence is material if there is a reasonable probability that had the evidence been disclosed to the defense the result of the proceeding would have been different.

B. Exculpatory Evidence

Evidence is exculpatory if it tends to negate the defendant's responsibility for the charged crime and is material to guilt or punishment.

C. Impeachment Evidence

Impeachment evidence is governed by the rules of evidence. Impeachment evidence is evidence that demonstrates a witness is biased or prejudiced against a party, has some other motive to fabricate testimony, has a poor reputation for truthfulness or has past specific incidents that are probative of the witness' truthfulness or untruthfulness. Prior inconsistent statements are impeachment evidence.

Impeachment evidence that is favorable to the defendant and material to guilt or punishment must be disclosed unless it is cumulative or impeaches on a collateral issue.

D. Evidence Harmful to Prosecution

"Favorable" evidence is evidence that either helps the defense or hurts the prosecution. Evidence harmful to the prosecution must be disclosed under *Brady*.

CATEGORIES OF POSSIBLE LAW ENFORCEMENT/PUBLIC AGENCY RELATED BRADY MATERIAL

A. Sustained final discipline reflective of the witness' honesty or truthfulness.

B. A criminal conviction involving dishonesty or untruthfulness.

C. Data regarding a resignation, demotion or other action "in-lieu of" discipline.

D. Data regarding an officer's use of force and history of use of excessive force when use of force is pertinent to the criminal prosecution.

PROSECUTOR'S DUTIES

A. Generally

Prosecutors must disclose to the defense evidence that is favorable to a defendant that is either exculpatory or impeachment and is material to guilt or punishment.

B. Identify and Disclose *Brady* Evidence Under Prosecutor's Knowledge or Control

Brady information within the knowledge, control or possession of the prosecutor or law enforcement entity working on behalf of the prosecution must be disclosed.

The Prosecutor is not required to proactively search court, incarceration, or other records possessed by a separate office or agency.

Evidence held by this office, a law enforcement agency or other county agency that is either exculpatory or impeachment and is material to guilt or punishment must be disclosed to the defense. The prosecutor must turn over to the defense such data pursuant to section IV below.

C. Preserve Evidence

Prosecutors must preserve *Brady* evidence. Evidence that is only potentially useful and may not be material should still be preserved. Prosecutors aware of potentially useful evidence in the possession or control of law enforcement or any other entity acting on the State's behalf in the investigation or prosecution of a case should request the potentially exculpatory evidence be preserved.

D. Err on the Side of Disclosure

The United States Supreme Court has urged the "careful prosecutor" to err on the side of disclosure of possible *Brady* material.

E. Protect Witness' Right to Privacy

Pursuant to Minn. Stat. § 13.43, much personnel data about public employees is classified as private data. Wrongful disclosure may violate that employee's right to privacy under the Data Practices Act.

Further, pursuant to Minn. Stat. § 13.393, any and all data related to *Brady* disclosures or lists are used, collected, stored, or disseminated by attorneys acting in their professional capacities for a government entity, and therefore not subject to the provisions of the MGDPA.

Prosecutors shall request disclosure of and disclose *Brady* material contained in public sector personnel records pursuant to section IV below.

IV. **BRADY PROCEDURE REGARDING LAW ENFORCEMENT/PUBLIC SECTOR WITNESSES**

A. **Response to *Brady* Notification**

1. **Sustained Final Discipline Finding or Conviction**

Upon notice there exists *Brady* material the prosecutor has not previously been made aware of the prosecutor shall review the material and shall disclose it to the defense if required by law or at the discretion of the prosecutor request an in-camera review.

2. **Use of Force**

Upon notice that a law enforcement officer witness has a use of force history or is subject to a current use of force investigation, the prosecutor shall review any use of force history information submitted by the law enforcement agency for disclosure as required by law or in the prosecutor's sole discretion may submit the use of force history to the Court for an in camera review.

B. **Disclosure of *Brady* Information**

Nothing in this policy prohibits the prosecution from disclosing any data about a witness the prosecutor determines must be disclosed pursuant to *Brady*.

C. **In-Camera Review of Potential *Brady* Information**

Upon receipt or knowledge of possible *Brady* material the prosecutor has determined should be reviewed by the court for a disclosure determination, the prosecutor shall request a hearing for an in-camera review by the court to determine if the material is *Brady* material and must be disclosed to the defense. The prosecutor shall subpoena the appropriate agency personnel to deliver the possible *Brady* notification or information to the hearing. The prosecutor shall send a copy of the notice of hearing to the employee who is the subject of the possible *Brady* material. The notice will provide sufficient time for the agency and data subject to respond to the potential disclosure or review, but shall be no shorter than five business days prior to the scheduled hearing unless good cause exists.

If after in-camera review the court rules all or some of the material is not subject to disclosure, the prosecutor shall request the material or the portion not subject to disclosure be returned to the agency. A copy of the court's written order(s) regarding the material shall be forwarded to the agency.

If the court determines some or all of the material should be turned over to the prosecutor and/or the defense or is *Brady* material, the prosecutor shall maintain a copy of that material in the file along with the disclosure order.

Prior court rulings regarding *Brady* material shall guide the prosecutor in further disclosure determinations. Agencies' investigation and response, if any and if known to the prosecutor and the similarity and difference in the allegations, facts and criminal charges and those before the disclosing court shall be considered.

Most likely if material was ruled disclosable pursuant to *Brady* in a prior proceeding the material will be disclosed pursuant to *Brady* in subsequent cases. If there is sufficient doubt as to whether the material should be disclosed again, the prosecutor shall submit the previously disclosed material to a court and request an in-camera review and follow the procedures.

D. Continuing Obligation to Disclose

The prosecutor is under a continuing duty to disclose *Brady* material.

Attachment 1 (Only disclosed to Defense Counsel as indicated above)

**BROWN COUNTY LAW ENFORCEMENT OFFICERS
REQUIRING *BRADY*NOTIFICATION TO DEFENSE COUNSEL**

LE Officer Name	Law Enforcement Agency	Required Notification
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****To the best of the Brown County Attorney’s knowledge, no law enforcement officers working in Brown County require a *Brady* notification to defense counsel at this time.**