



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

## **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**

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 require 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.

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 14<sup>th</sup> 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 Disciplinary Administration Unit shall provide a member with an up-to-date summary of their disciplinary history if needed for purposes of testimony or production to a prosecuting attorney in accordance with this directive, unless providing the information compromises an ongoing confidential investigation.*
5. *If a member’s disciplinary history is being subpoenaed, any request for production for disciplinary history shall include a copy of the subpoena.*
6. *All requests for disciplinary history shall be via email.*
7. 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.
8. All members have an affirmative duty to maintain knowledge of their personnel history including their disciplinary/internal affairs history.
9. It is the prosecutor’s responsibility to establish whether material disclosed by the Department must be provided to the defense.
10. *Any member that becomes aware of a Brady/Giglio violation shall immediately report the matter to the member’s supervisor, who will be responsible for notifying the Professional Standards Bureau.*
11. 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.
12. A member shall not manipulate or alter possible *Brady/Giglio* material. *Members shall take reasonable steps to preserve such material.*

**102.10 - 4.2 Examples of *Brady/Giglio* Material**

Examples of *Brady/Giglio* material that may be subject to disclosure include, but may not be limited to:

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- 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;
- 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.

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 *that* use excessive force are subject to impeachment of testimony at trial. Such members are subject to disciplinary action *up to and including* termination of employment. *The Professional Standards Bureau shall conduct an investigation on all Brady/Giglio violations and notify the Board of Police Commissioners of any confirmed Brady/Giglio violations.*

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***102.10 – 6 Non-Retaliation for Good-Faith Disclosure***

*No member shall be subject to discipline, retaliation, or adverse employment action solely for making a good-faith Brady/Giglio disclosure in accordance with this directive. Retaliation against a member for making a good-faith disclosure is prohibited and may result in disciplinary action.*

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