



Northwestern District Attorney's Office *Brady* Disclosure Protocol

I. Overview

In *Brady v. Maryland*, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. 83, 87 (1963). The Massachusetts Supreme Judicial Court instructs that “where a prosecutor is uncertain whether information is exculpatory, the prosecutor should err on the side of caution and disclose it.” *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 650 (2020).

It is the policy of the Northwestern District Attorney's Office (NWDAO) to strictly adhere to our *Brady* obligations of disclosing all such evidence and to resolve questions related to *Brady* in favor of disclosure. This written protocol is designed to achieve this goal and to foster district-wide uniformity in the resolution of *Brady* issues. It addresses how the NWDAO will collect and manage *Brady* material regarding potential government witnesses including, but not limited to, police officers, employees of the Massachusetts State Police Crime Laboratory (MSPCL), and other experts, and what information will be disclosed to defendants and their counsel.

Because this area of law is dynamic, this protocol may be refined as further guidance is received from courts or the legislature.

II. Basics of *Brady*

The United States Supreme Court's decision in *Brady v. Maryland* requires the prosecution to disclose to the defense any evidence that is “favorable to the accused” and “material” on the issue of guilt or punishment. *Brady*, 373 U.S. at 87. Failure to disclose this evidence violates the defendant's right to due process. The prosecutor's duty to disclose applies even if the defense has not requested that piece of information.

Evidence that must be disclosed pursuant to *Brady* includes: (1) “exculpatory evidence,” which is evidence favorable to the defendant and likely to change the result on an issue of a defendant's guilt or eventual punishment if convicted; (2) “favorable evidence,” which includes not only exculpatory evidence but also evidence that may impeach the credibility of a government witness, regardless whether that witness is a law enforcement officer or a civilian; and (3) “impeachment evidence,” which is defined by Rules 607, 608, and 609 of the Massachusetts Rules of Evidence and generally includes any evidence that can be used to impeach the credibility of a witness. As it pertains to government witnesses, *Brady* evidence tends to fall within one of three

categories: evidence of misconduct involving dishonesty; evidence tending to show a bias or some motive to lie; and/or—for expert witnesses—a pattern of confirmed performance errors that could compromise the expert’s conclusions. In 2024, the Massachusetts Supreme Judicial Court added “findings of civil liability related to the performance of a police officer’s duties” to the scope of required disclosures. *Commonwealth v. McFarlane*, 493 Mass. 385, 387 (2024).

The prosecution does not have an obligation to disclose preliminary or speculative information, nor is information that is disclosed necessarily admissible. Even when we disclose *Brady* material, we may nevertheless argue strenuously against its admissibility.

III. Information Submitted to the NWDAO By Law Enforcement and Government Agencies

NWDAO has instructed law enforcement agencies and government agencies such as crime labs to provide the NWDAO with information concerning officer misconduct and involving officer dishonesty, including:

- a. Convictions or Continuations Without a Finding (CWOs) for misdemeanors or felonies;
- b. Current status relative to being on probation, parole, or other form of court supervision for any crime;
- c. Pending criminal charges of any nature;
- d. Findings of liability in civil litigation related to their performance of their duties as a police officer;
- e. Any adverse credibility finding made against the officer by a judge;¹
- f. Terminations or resignations from any law enforcement job while an investigation was pending;
- g. Personnel file includes findings involving any of the following:
 - i. Misconduct involving dishonesty, including false verbal or written statements;
 - ii. Biased Policing;
 - iii. Racial Profiling;
 - iv. Malicious Harassment;
 - v. Other misconduct that suggests bias against a class of people (e.g., race, ethnicity, sexual orientation, gender, disability, economic status, or other personal characteristics)
- h. Has been the subject of an investigation, irrespective of whether the investigation was conducted by Internal Affairs, and the investigation resulted in a finding that the officer engaged in conduct that implicates any of the categories above, and the information is maintained in any agency file, including but not limited to the officer’s personnel file;
- i. Failed to pass job-related proficiency tests, exams, or assessments or any failures to obtain certifications or proficiency testing from third party vendors related to skills that may be the subject of testimony as it pertains to the specific case, their expertise, or their training;
- j. For expert witnesses, confirmed performance errors that would compromise final conclusions;
- k. Has engaged in any other conduct that could be considered impeachable evidence against the officer/expert witness/employee that is not mentioned expressly in the categories above.

¹ An adverse credibility finding is a judge’s ruling that the testimony of a police witness is not credible. *See Graham v. District Attorney for the Hampden District*, 493 Mass. 348 (2024).

If new evidence comes to light or if a finding of misconduct is later dismissed, the NWDAO should be informed so it can determine whether the initial allegation no longer requires disclosure.

The NWDAO should be informed of any new or pending investigations within thirty days of their inception.

The NWDAO will notify the relevant agency whether the information provided requires disclosure.

IV. Disclosure Parameters

The NWDAO will disclose to defense counsel information that falls within the following parameters:²

- 1) all convictions and CWOFS for offenses punishable by incarceration entered during the past ten years;
- 2) all convictions and CWOFS for offenses implicating truthfulness with no time limitation;
- 3) all sustained findings in personnel records of untruthfulness or other misconduct implicating credibility with no time limitation;
- 4) all open criminal cases, including any case in which the witness is currently on probation, parole, or other form of court supervision;
- 5) all adverse credibility findings made against the witness by a judge;
- 6) all findings of liability in civil litigation related to the officer's performance in their duties as a police officer; and
- 7) any other information the Commonwealth learns and believes implicates the credibility and/or truthfulness of a government witness.

If the NWDAO receives a public records request for some or all of the above information, it will apply the public records law accordingly and determine which exemptions to the definition of public records may apply. G.L. c. 4, § 7 (26). The NWDAO's furnishing of information to defense counsel in specific criminal cases in no way waives the NWDAO's ability and responsibility to invoke any and all applicable exemptions when responding to public records requests.

V. Confidentiality

All *Brady* information exchanged between a government agency and the NWDAO shall be considered confidential; shall be protected as confidential, and by any other applicable privilege or legal protection; and shall be maintained securely.

Employees of the NWDAO have been trained to maintain strict confidentiality regarding all information concerning *Brady* material and potential government witnesses. As stated in its personnel policy, the NWDAO will take strong action against any employee making improper

² Consistent with the Peace Officer Standards and Training (POST) Commission Procedural Rules, the NWDAO will not disclose findings related to "minor matters," which includes "discourtesy and basic work rule violations such as tardiness, inattention to detail, equipment violations, grooming violations, or comparable infractions" unless such matters also involve evidence of "bias on the basis of race, ethnicity, sex, gender identity, sexual orientation, age, religion, mental or physical disability, immigration status, or socioeconomic or professional level; excessive, prohibited, or deadly force; or an action which resulted in serious bodily injury or death." 555 CMR 1.01(1)(a).

use of confidential information or contributing to a breach of confidentiality, which will include disciplinary action, up to and including termination.

Defense attorneys will be informed of their legal and ethical duties regarding dissemination of confidential information prior to receipt of *Brady* disclosures. Where appropriate, Assistant District Attorneys will file protective orders with the court to ensure confidentiality on the part of the attorneys.