

Office of the Sheriff  
Somerset County, Maryland

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Revised Date:

Chapter 31

Constitutional Disclosure Requirements

1. Purpose

The purpose of this policy is to assure the Sheriff's Office and its employees meet their constitutional obligations to disclose to criminal defendants exculpatory evidence in criminal prosecutions, including information that would bear negatively on the credibility of material witnesses for the government – including law enforcement witnesses.

In *Brady v. Maryland* (1963) and *Giglio v. United States* (1972), the United States Supreme Court created these disclosure requirements. Originally thought of by some as exclusively a prosecutorial duty, it now appears that the duty may be affirmative, not just responsive, and extends to law enforcement. That is, if law enforcement officials know of evidence or information that would be favorable to the defense in a criminal prosecution, whether or not the defense has requested the information.

Exculpatory or impeachment information includes but is not limited to information that would bear negatively on the credibility of a material government witness, including law enforcement employees who may testify in the case. Specifically, this includes any conclusive information establishing a record of untruthfulness, bias, and/or commission of crimes that would tend to subject the officer to impeachment if he/she were to testify. "Untruthfulness" includes but is not limited to lying, omissions or deceptive acts. It does not include mere allegations, rumors, or other inconclusive information.

In the case of prior untruthfulness on the part of a law enforcement employee, generally the duty of disclosure extends only to untruthfulness in official business or matters, or in any sworn testimony, or certain types of official misconduct. Similarly, disclosure of commission of crimes committed by law enforcement employees refers to crimes committed since becoming a law enforcement employee, not to every minor transgression perpetrated in early life. In short, if the government knows that its material witness is a criminal, a liar, or may be biased against a defendant, the evidence or information supporting that belief must be disclosed by law enforcement to prosecutors, and by prosecutors to the defense.

## 2. Definitions

- A. Duty to Disclose: Constitutional case law and the Maryland Rules imposes an affirmative constitutional duty on a prosecutor to disclose exculpatory evidence to a defendant. This duty had been extended to law enforcement agencies through case law, requiring law enforcement agencies to notify the prosecutor of any potential negative information.
- B. Exculpatory Evidence/Impeachment Material: Evidence or information in the government's possession that is favorable to the accused and that is material to either guilt or punishment, including evidence that may impact the credibility of a witness. This includes information that could cause or contribute to reasonable doubt as to the defendant's guilt – and is consequently subject to the mandatory disclosure requirement stated above. This type of evidence may be referred to as Brady material or Brady information.
- C. Lying, intentional deception and the omission of truth are acts of misconduct prohibited by this and other SCSO policies. Conduct of this type is strictly forbidden and will subject a deputy to discipline up to and including termination of employment. Acts of this type will be considered Brady material.

## 3. Policy

All exculpatory and/or impeachment evidence in a criminal case that is known to the SCSO, including evidence that might be used to impeach a law enforcement witness, will be disclosed to the Office of the State's Attorney as prescribed within this policy and that of the SAO.

#### 4. Procedure

##### A. Internal Identification of Exculpatory or Impeach Evidence:

1. Sworn employees investigating criminal matters shall make all reasonable efforts to identify exculpatory evidence. Any employee working on a criminal case who realizes the existence of exculpatory evidence or information in that case shall report that belief to his or her supervisor, who shall report the matter through the chain of command to the CID supervisor. Deputy sheriffs have a constitutional duty to self-report any past misconduct of their own that may constitute Brady material.
2. If the supervisor of CID is satisfied that the evidence or information constitutes Brady material, he/she shall notify the Chief Deputy who will cause the disclosure of that evidence or information to the Office of the State's Attorney. The Chief Deputy may consult with the SAO or legal counsel for the agency when evaluating the information.
3. The Office of the State's Attorney will then determine whether, in his or her opinion, the evidence or information is exculpatory and, if it is, will make the required disclosure to the attorney for the criminal defendant.

##### B. Affected Personnel

1. All supervisors shall make all reasonable efforts to become aware of any employee whose record would tend to impeach that employee if he were to be a material witness in a criminal prosecution and shall promptly report any such circumstances to the Sheriff.
2. The Sheriff will then, by conferral with prosecutors and legal counsel if necessary, determine whether the impeachment information regarding the employee is so serious that the employee is unable to render credible testimony in a court of law, an essential function of the job. 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 or disciplinary action, including termination.

##### C. Training

The Agency will routinely provide training material personnel on their individual obligations under Brady v. Maryland and Giglio v. United States and State law.

D. Chapter Revisions

Robert N. Jones

Sheriff

Somerset County