

Brady Material Disclosure

612.1 PURPOSE AND SCOPE

Best Practice

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called "*Brady* information") to a prosecuting attorney.

612.1.1 DEFINITIONS

Best Practice

Definitions related to this policy include:

Brady information -Information known or possessed by the Indio Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

612.2 POLICY

Best Practice

The Indio Police Department 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 Indio Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

612.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

Best Practice

Officers 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 an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

If information is believed to be privileged or confidential (e.g., confidential informant or protected personnel files), the officer 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 an officer is unsure whether evidence or facts are material, the officer should address the issue with a supervisor.

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Supervisors who are uncertain about whether evidence or facts are material should address the issue in a written memo to an appropriate prosecutor. A copy of the memo should be retained in the Department case file.

612.4 DISCLOSURE OF PERSONNEL INFORMATION

State **MODIFIED**

Whenever it is determined that *Brady* information is located in the personnel file of a member of this department who is a material witness in a criminal case, the following procedure shall apply:

- (a) In the event that a *Pitchess* motion has not already been filed by the criminal defendant or other party pursuant to Evidence Code § 1043, the prosecuting attorney shall be notified of the potential presence of *Brady* information in the officer's personnel file.
- (b) The prosecuting attorney should then be requested to file a *Pitchess* motion in order to initiate an in camera review by the court.
- (c) Any member who is the subject of such a motion shall be notified in writing that a motion has been filed.
- (d) The Custodian of Records shall accompany all relevant 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.

612.4.1 PITCHESS MOTION COMPLIANCE

- (a) In order to maintain legal compliance with Assembly Bill 1600 ("AB 1600") which as of January 1, 2020 amended California Evidence Code Sections 1043 and 1047, the Chief of Police, Executive staff, Custodian of Records, or designee shall familiarize themselves with the following amended *Pitches* motion requirements;
- (b) California Evidence Code Section 1043(a) prescribes the time frames in which *Pitchess* motions are to be noticed, served and filed, in addition to when papers opposing a motion and reply papers are to be filed.
- (c) Evidence Code Section 1043(a)(2) will provide that *Pitchess* motions must be served and filed at least 10 *court* days before the hearing.
- (d) All opposing papers shall be filed at least 5 *court* days before the hearing.
- (e) All reply papers at least 2 *court* days, before the hearing.
- (f) Evidence Code Section 1047 was amended to allow for supervisory officer records to be sought and disclosed if the supervisor had direct oversight of a peace officer or custodial officer and issued command directives or had command influence over the circumstances at issue.
- (g) If these prerequisites are met, the supervisory officer's records shall be subject to disclosure pursuant to Section 1045 if:(a) the peace officer or custodial officer under supervision was present during the arrest; (b) had contact with the party seeking disclosure from the time of the arrest until the time of booking; or (c) was present at the time the conduct at issue is alleged to have occurred within a jail facility.

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- (h) Failing to meet time lines may result in waiving any opposition to the Pitchess motion if the opposition is not timely filed and the potential unwarranted disclosure of confidential peace officer personnel records.
- (i) Under California Code of Civil Procedure Section 1005, notice and filing requirements for Pitchess motions in civil proceedings will not change.
- (j) Pitchess motions in civil cases will still be required to be filed and served at least 16 court days before the hearing, while oppositions must be filed at least 9 court days before the hearing and replies must be filed at least 5 court days before the hearing.

612.5 INVESTIGATING BRADY ISSUES

Best Practice

If the Department 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.

612.6 TRAINING

Best Practice

Department members should receive periodic training on the requirements of this policy.