
Brady Material Disclosure

604.1 PURPOSE AND SCOPE

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called “Brady information”) to a prosecuting attorney. *Brady v. Maryland* (1963) 373 U.S. 83.

604.1.1 DEFINITIONS

Definitions related to this policy include:

Brady information - Information known or possessed by the California Department of State Hospitals (DSH), Office of Protective Services (OPS) that is both favorable and material to the current prosecution or defense of a criminal defendant.

604.2 POLICY

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

604.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

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.

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 OPS case file.

604.4 DISCLOSURE OF PERSONNEL INFORMATION

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

- (a) In the event that a *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal. 3d 531) has not already been filed by the criminal defendant or other party pursuant to Evidence Code section 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 employee 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.

- (a) If the court determines that there is relevant Brady information contained in the files, only that information ordered released will be copied and released to the parties filing the motion.
 - 1. Prior to the release of any information pursuant to this process, the Custodian of Records should request a protective order from the court limiting the use of such information to the involved case and requiring the return of all copies upon completion of the case.

604.5 INVESTIGATING BRADY ISSUES

If DSH/OPS receives information from any source that an employee 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.

604.6 TRAINING

OPS employees should receive periodic training on the requirements of this policy.