



OFFICE OF THE DISTRICT ATTORNEY
CONTRA COSTA COUNTY

Diana Becton
DISTRICT ATTORNEY

MEMORANDUM OF UNDERSTANDING
Law Enforcement Disclosure of Brady Information
June 1, 2024

The Contra Costa County District Attorney's Office (hereinafter "CCCDAO") has a Constitutional and statutory obligation to disclose favorable, material evidence to the defense pursuant to *Brady v. Maryland* (1963) 373 U.S. 83. This can include impeachment information. Law Enforcement Agencies have a corollary duty to disclose such evidence to the prosecution so that the prosecution may meet its obligation. (*Association for Los Angeles Deputy Sheriffs v. Superior Court of Los Angeles* (2019) 8 Cal.5th 28.)

The obligation to disclose *Brady* information exists even if the prosecutor handling the case is personally unaware of the *Brady* information, but nevertheless such information exists in the files of any member of the prosecution team. Knowledge extends to all members of the "prosecution team" which generally consists of the District Attorney's Office, the law enforcement agency that investigated the case, and any agency or person who assists in the investigation or prosecution of the case.

To help ensure the CCCDAO can comply with its *Brady* discovery obligations, the CCCDAO has a "*Brady* Committee" consisting of senior members of the CCCDAO and answerable to the District Attorney. The *Brady* Committee relies on Law Enforcement to alert the CCCDAO to information about an employee of the Law Enforcement Agency that may potentially constitute *Brady* information.

Law Enforcement Agency and the CCCDAO, agree as follows:

1. Law Enforcement Agency will designate an individual to act as liaison with the CCCDAO on *Brady* matters.
2. Law Enforcement Agency is responsible for ensuring that potential *Brady* information known to the agency is conveyed to the CCCDAO's *Brady* Committee. The information that may potentially constitute *Brady* information is listed in the following paragraphs, which apply to *both* officers and Law Enforcement civilian employees.

A. ARREST – MORAL TURPITUDE

If a Law Enforcement agency becomes aware an officer has been arrested for criminal conduct involving "moral turpitude," this information shall be conveyed to the

CCCDAO. A list of crimes that have been held to involve “moral turpitude” is included in Appendix A.

1. To ensure the names of peace officers with potential *Brady* information designated in subparagraphs A-F are disclosed, the Law Enforcement Agency shall ensure that a member of the agency has a designated person to monitor and receive subsequent arrest reports from the Department of Justice pursuant to Penal Code section 11105.2 and/or monitor and review accessible Department of Justice or local criminal history records.

B. ANY FELONY CONVICTIONS

If an officer has a prior felony conviction (whether in Contra Costa County or elsewhere) regardless of whether the conviction involves moral turpitude, this information shall be conveyed to the CCCDAO.

C. PROBATION, PAROLE, PRCS

If an officer is currently (whether in Contra Costa County or elsewhere) on probation, parole, PRCS, mandatory supervision or any other form of court supervision for any crime, this information shall be conveyed to the CCCDAO.

D. PENDING CRIMINAL CHARGES

If an officer has currently pending criminal charges of any nature (whether in Contra Costa County or elsewhere), this information shall be conveyed to the CCCDAO.

E. EVIDENCE OF BIAS

Evidence that an officer has a racial, religious or personal bias against a defendant individually or as a member of a group for a case in which the officer is a witness shall be conveyed to the CCDAO.

F. FINDINGS THAT CONSTITUTE BRADY CONDUCT

If the officer has been the subject of an investigation by the Department, whether or not the investigation is conducted by Internal Affairs, and the investigation results in a finding that the officer engaged in conduct that potentially constitutes *Brady* information (i.e. information bearing on an officer’s credibility or character that could reasonably be deemed favorable, material evidence in a particular case), and the information is maintained in any agency file, including the officer’s personnel file, the agency shall alert the CCCDAO *Brady* Committee to the name of the officer and the date of earliest misconduct. It is not necessary to provide details—just sufficient information to allow the CCCDAO to file a *Brady/Pitchess* motion for release of the information if the officer becomes a witness.

3. Upon receipt of the name of any sworn officer, the *Brady* Committee will place the officer on the *Brady* Alert. No further action will be taken towards moving the officer onto the

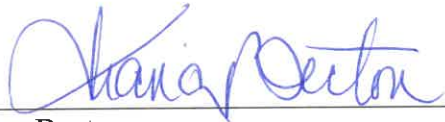
Brady Bank until (i) the officer is actually subpoenaed for a pending case; (ii) once an officer is subpoenaed, the CCCDAO will file a *Brady/Pitchess* motion asking the court to review the officer's personnel file for the existence of *Brady* information; (iii) the *Brady* Committee will then review any materials released from the officer's personnel files to determine whether the information may constitute *Brady* material and should be included in the *Brady* Bank; (iv) if the information determined to be *Brady* material and there is a pending case where the officer is a witness, the People will release the material subject to a protective order.

4. The CCCDAO's *Brady* Bank is subject to attorney work-product privilege. (CCP §2018.030.)
5. Law Enforcement Agency may consult with the *Brady* Committee members regarding potential *Brady* materials.
6. Law Enforcement Agency shall retain any potential *Brady* material according to law.
7. *Brady* information that has not previously been conveyed to the CCCDA shall be conveyed immediately by contacting the *Brady* Committee Chair or his/her designee. This will include information for officers who have been terminated for cause in the past 5 years. The Law Enforcement Agency will review the personnel files to ensure compliance.
8. The name of any officer or Law Enforcement Agency employee who has potential *Brady* information contained in a personnel file shall be disclosed as soon as practical following a sustained finding and issuance of the Notice of Intent to Discipline by the Law Enforcement Agency, but no later than 72 hours following the finding. If the Law Enforcement Agency learns an officer or employee has been arrested or convicted of a crime as described in subparagraphs 2A-D, the agency shall disclose that information to the CCCDAO as soon as practical, but no later than 72 hours after learning of the information. This information shall be disclosed to the CCCDAO even if the officer or employee is subsequently terminated or is separated from the Law Enforcement Agency.
9. The CCCDAO will provide a list of officers and employees to the employing agency identifying officers and employees who are eligible for and/or have been included in the *Brady* Bank on an annual basis. Such notifications will further serve as verification that the names of any officer and/or employee that have potential *Brady* information have been provided by the Law Enforcement Agency to the prosecution. By doing so, when the prosecution states to the defense and the Court that an officer and/or employee has nothing to be disclosed, the declaration of the prosecution will be accurate.
10. Any officer or civilian employee wishing to challenge his or her inclusion on the *Brady* Bank may do so in writing and may also request a meeting with the *Brady* Committee Chair or his/her designee. The officer may bring representation to this meeting and should

provide any documentation in support of his/her position. The CCCDAO Brady Committee will notify the requesting officer or employee and/or his/her representation of its final decision in writing within 60-days of receipt of the appeal notification.

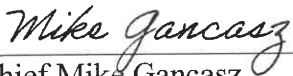
11. If any officer or employee of the Law Enforcement Agency whose name is contained in the *Brady* Bank has subsequently been exonerated by way of administrative or criminal proceedings, of the potential *Brady* conduct that initially resulted in the officer or employee being placed in the Bank, the Law Enforcement Agency and/or the officer or employee shall notify the *Brady* Committee Chair or his/her designed. The *Brady* Committee will review, and where appropriate, remove the officer or employee from the *Brady* Bank for that conduct. The Law Enforcement Agency, Sheriff, Chief or Commander will be notified of the action of the *Brady* Committee.

12. The prosecution's obligation to disclose *Brady* information exists independent of statute. Therefore, notwithstanding any statutorily prescribed timeframe, any *Brady* evidence should be provided in time for the defense to use the information effectively at trial. Additionally, courts have held that there is an obligation to disclose *Brady* information regarding an officer who is going to testify at a preliminary examination before the preliminary examination. (*People v. Bridgforth* (2013) 214 Cal.App.4th 1074.) The Law Enforcement Agency shall cooperate with the prosecution in meeting the legal mandates.



Diana Becton
Contra Costa County District Attorney

DATE: May 29, 2024



Chief Mike Gancasz
Kensington Police Department

DATE: MAY 29, 2024

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APPENDIX A
MORAL TURPITUDE CRIMES AND CONDUCT (This list is not exhaustive)

Accessory – Penal Code section 32

Arson – Penal Code section 451

Assault Weapon – Penal Code section 30605

Assault with a Deadly Weapon/Firearm – Penal Code section 245(a)(1), (2)

Assault By Means of Force Likely to Produce GBI – Penal Code section 245(a)(4)

Auto Theft – Vehicle Code section 10851

Battery on a Peace Officer – Penal Code section 243(b)

Battery, Sexual – Penal Code section 243.4

Battery on a Spouse or Cohabitant – Penal Code sections 243(e) and 273.5

Bigamy – Penal Code section 281

Brandishing a Deadly Weapon – Penal Code section 417

Burglary – Penal Code section 459

Burglary, attempted – Penal Code section 459/664

Carrying a Concealed Firearm – Penal Code section 25400

Carrying a Loaded Firearm on the Person or Vehicle in a Public Place – Penal Code section
25850

Child Endangerment or Corporal Punishment – Penal Code section 273

Child Molestation – Penal Code section 288

Child Pornography – Penal Code section 311.11

Conspiracy to a Moral Turpitude Crime – Penal Code section 182

Controlled substances – Possession for Sale or Manufacturing

Deterring or Delaying a Peace Officer by Threats or Violence – Penal Code section 69

Discharge of Firearm (Negligent) – Penal Code section 246.3

Driving Under the Influence with 3 prior convictions (but not misdemeanor)– Vehicle Code section 23152/23175

Evading a Police Officer – Vehicle Code section 2800.2, 2800.3

Extortion – Penal Code section 518-524

False Imprisonment by Force or Threat of Violence – Penal Code section 237

False Information to a Peace Officer – Penal Code section 148.9

Felon in Possession of a Firearm – Penal Code section 29800

Forgery – Penal Code section 470

Fraud

Hit and Run with Injury – Vehicle Code section 20001

Indecent Exposure – Penal Code section 314 (felony only)

Kidnapping – Penal Code section 207

Manslaughter – Penal Code section 192 (felony only)

Mayhem – Penal Code section 203

Murder – Penal Code section 187

Murder, attempted – Penal Code section 187/664

Pimping and Pandering – Penal Code section 266(h)(i)

Prostitution – Penal Code section 647(b)

Rape, assault with intent, statutory – Penal Code sections 261, 220, 261.5

Receiving Stolen Property – Penal Code section 496

Robbery – Penal Code section 211

Shooting into an Inhabited Dwelling or Car – Penal Code section 246

Sodomy – Penal Code section 286

Theft – Penal Code section 484, 487

Terrorist/Criminal Threats – Penal Code section 422

Threatening a Witness – Penal Code section 136.1

Vandalism – Penal Code section 594 (felony only)