

GREELEY POLICE DEPARTMENT

General Order 420.00**Reviewed: 03/23****420.00 PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS****420.01 PURPOSE**

It is the purpose of this policy to provide Greeley Police Officers with the information necessary to properly fulfill the reporting and testimonial requirements mandated under U.S. Supreme Court decisions including Brady v. Maryland 373 U.S. 83 (1963) and Giglio v. U.S. 405 U.S. 150 (1972).

The policy also establishes uniform and consistent standards for the department to disclose specific information to the Office of the District Attorney that may impact the credibility of a peace officer in a criminal prosecution, and to identify uniform procedures for district attorneys to disclose such information to the defense, in a timely manner, under the Colorado Rules of Criminal Procedure and to increase transparency to allow members of the public to access information concerning peace officers who are subject to a credibility disclosure notification, as required by Colorado Senate Bill 21-174 codified in C.R.S 16-2.5-501.

420.02 POLICY

The Brady decision and subsequent rulings have made it a duty of all law enforcement agencies to (1) identify and provide to the prosecution any exculpatory material that would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant and (2) any material relevant to the credibility of government witnesses, including, but not limited to, police officers. It is the policy of this police department to follow Brady disclosure requirements consistent with the law. In addition, the State of Colorado enacted legislation, requiring law enforcement agencies to disclose to the district attorney's office information regarding matters related to peace officer credibility.

420.03 DEFINITIONS

Credibility Disclosure Notification: The notification described in C.R.S. 16-2.5-502(2)(c)

Duty to disclose: The affirmative constitutional duty of the police to notify the prosecutor of any Brady material.

Exculpatory evidence/Brady material: Brady violations are, by definition, violations of an individual's 14th Amendment right to due process of law. Exculpatory evidence is evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and that may impact the credibility of a government witness, including a police officer. Impeachment material is included in the Brady

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disclosure requirements.

Law Enforcement Agency: A state or local agency that employs peace officers

Material evidence: Exculpatory evidence is “material” if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding. A “reasonable probability” is a probability sufficient to undermine confidence in the outcome of the trial or sentencing of a criminal case.

Official Criminal Justice Record: Any handwritten or electronically produced report or documentation that a law enforcement agency requires a peace officer to complete as part of the peace officer’s official duties, for the purpose of serving as the agency’s official documentation of an incident, call for service, response to an alleged or suspected crime, a use of force, or during a custodial arrest or the direct supervision of a person who is in custody. Official criminal justice records also include any other reports or documents that an agency requires a peace officer to complete as part of the peace officer’s official duties where the peace officer knows, or should know the information included may be relevant to an ongoing or future criminal or administrative investigation.

Sustained finding: A final determination by a law enforcement agency, following a law enforcement agency’s administrative procedures for investigating and reviewing alleged misconduct by a peace officer on the merits.

Untruthfulness” or “dishonesty: Conduct that involves a knowing misrepresentation, including but not limited to intentionally untruthful statements, knowing omissions of material information, and knowingly providing or withholding information with an intent to deceive or mislead.

420.04 PROCEDURES

I. Provisions of Disclosure

A. Affirmative Duty to Report – This department shall exercise due diligence to ensure that material of possible Brady relevance or Peace Officer Credibility is made available to the Office of the District Attorney.

II. Law Enforcement Agency’s obligation to provide officer credibility disclosure notification

A. Notification about matters related to Peace Officer Credibility shall be done promptly in writing, of any sustained findings where a peace officer, after January 1, 2022:

1. Knowingly made an untruthful statement concerning a material fact;

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- a. Except as lawfully utilized as part of an investigatory procedure, such as during undercover operations or through the use of subterfuge.
 2. Demonstrated a pattern of bias based on race, religion, ethnicity, gender, sexual orientation, age, disability, national origin, or any other protected class;
 3. Tampered with or fabricated evidence;
 4. Been convicted of any crime involving dishonesty or has been charged with any felony or any crime involving dishonesty;
 5. Violated any policy of the law enforcement agency regarding dishonesty.
- B. The department shall also notify the district attorney's office as soon as practicable when a peace officer is under a criminal or administrative investigation that if sustained, would require credibility disclosure notification and where it also meets both of the following circumstances:
1. The peace officer is a potential witness in a pending criminal prosecution in which a criminal defendant has been formally charged; and
 2. The criminal or administrative investigation of the peace officer involves an allegation related to the peace officer's involvement in the defendant's pending criminal case.
 - a. For disclosures made pursuant to this Section (B), the agency shall promptly notify the district attorney's office once the agency has completed the administrative process for investigating and evaluating the allegations.
- C. If the agency determines through the administrative review process that the criminal or administrative allegations are not sustained based on the merits, the agency should promptly notify the district attorney of the outcome and the agency or involved peace officer may request that the district attorney's office(s) remove the credibility disclosure notification from its records, however, the district attorney's office is not required to remove any credibility disclosure notification that was made to a defendant pursuant to Rule 16 in a pending criminal proceeding where the requirements of Section 2 above applied at the time of the disclosure
1. Prior to making any required credibility disclosure notification, the agency must give the involved peace officer at least seven (7) calendar days' notice of the agency's intent to send a credibility disclosure notification to the district attorney's office.

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- a. If seven (7) days' notice is not practicable due to an impending trial date, the agency shall provide as much notice to the involved peace officer as is practicable under the circumstances.

III. Credibility disclosure notification procedures

1. The agency shall include the following information in the credibility disclosure notification to be provided in writing to the district attorney's office(s):
 - a. The peace officer's name;
 - b. The name of the law enforcement agency that employs or employed the peace officer at the time of the sustained findings or at the time of the criminal or administrative investigation;
 - c. The following statement: ***"This notification is to inform you that there is information in the law enforcement agency's possession regarding [name of peace officer] that may affect the peace officer's credibility in court."***
 - d. The applicable statutory provision identifying the basis for the credibility disclosure notification, including whether the notification is based on a sustained finding pursuant to Section (II) (A) above, or whether the notification relates to an open criminal or administrative investigation pursuant to Section (II) (B) above.
2. The law enforcement agency shall send the required credibility disclosure notification in writing, either electronically or by mail, to the contact(s) designated by the district attorney's office.

IV. District Attorney Obligations

1. Designate the contact(s) to whom law enforcement agencies should send the required credibility disclosure notifications;
2. Establish a process to timely notify defense counsel or a defendant of credibility disclosure notification records pursuant to Rule 16 of the Colorado Rules of Criminal Procedure;
3. Maintain a current record of all credibility disclosure notifications, distinguishing between sustained findings disclosed pursuant to the above Section (II)(A) and open investigations disclosed pursuant to above Section (II)(B);
4. Comply with the procedures set forth below in Section (IV)(A) below for entering credibility disclosure notifications.

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5. Remove any credibility disclosure notifications records as set forth in Section (V)(B) below.
 6. Post on the district attorney's or county's website the procedures for how a member of public can access the database created by the P.O.S.T. Board pursuant to section 24-31-303 (1)(r)(I).
- A. For any credibility disclosure notification made to a district attorney pursuant to Section (II)(A) above, involving a sustained allegation, or where a district attorney receives a notification pursuant to Section (II)(B) above and the district attorney is subsequently notified by the law enforcement agency that the completed criminal or administrative investigation concluded the allegations against the peace officer were sustained, each district attorney shall require members of the district attorney's office to denote in its current record the involved officer as having a credibility disclosure notification.
- B. District attorneys shall remove credibility disclosure notification records under the following circumstances:
- a. When a law enforcement agency made a credibility disclosure notification about an open criminal or administrative investigation pursuant to Section (III)(B), and subsequently notifies the district attorney that the agency concluded through its administrative process that the criminal or administrative allegations are not sustained based on the merits, and the law enforcement agency or peace officer makes a written request that the district attorney's office(s) remove the credibility disclosure notification from the district attorney's records.
 - b. When a district attorney makes an independent determination, based on a review of the underlying records (if access to the underlying records is granted by the agency, officer, or by court order) that removal is appropriate or lawful.
 - c. When a district attorney receives a court order directing the district attorney to remove the credibility notification records.
- C. The district attorney shall review the policies and procedures adopted and implemented under this Section (IV) at least every four (4) years to ensure compliance with controlling federal and state case law interpreting *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitely*, 514 U.S. 419 (1995), and its progeny, as well as the Colorado Rules of Criminal Procedure

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V. Exculpatory Evidence/Brady Material

A. Although the defense is not required to request potential Brady material; it is this department's responsibility to disclose such material as soon as reasonably possible to the district attorney's office, or in time for effective use at trial. Responsibility for disclosing such material extends from indictment through the trial and sentencing process.

1. It is the responsibility of the district attorney's office to establish whether material disclosed by this department must be provided to the defense.
2. Suppression of evidence favorable to an accused violates due process when the evidence is material either to guilt or to punishment, irrespective of good or bad faith. There is no distinction between "impeachment evidence" and "exculpatory evidence" for Brady disclosure purposes.
3. Allegations that cannot be substantiated, are not credible, or have resulted in an individual's exoneration are generally not considered to be potential impeachment information.

B. Examples of Brady material

1. Examples of Brady material that may be subject to disclosure include, but may not be limited to, the following:
 - a. Information that would directly negate the defendant's guilt concerning any count in an indictment.
 - b. Information that would cast doubt on the admissibility of evidence that the government plans to offer that could be subject to a motion to suppress or exclude.
 - c. Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling.
 - d. The failure of any proposed witness to make a positive identification of a defendant.
 - e. Information that casts doubt on the credibility or accuracy of a witness or evidence.
 - f. An inconsistent statement made orally or in writing by any proposed witness.

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- g. Statements made orally or in writing by any person that are inconsistent with any statement of a proposed government witness regarding the alleged criminal conduct of the defendant.
 - h. Information regarding any mental or physical impairment of any governmental witness that would cast doubt on his or her ability to testify accurately and truthfully at trial.
 - i. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines.
 - j. A finding of misconduct by the Department that reflects on the witness's truthfulness, bias, or moral turpitude. This includes employees under suspension.
 - k. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.
 - l. An officer's excessive use of force, untruthfulness, dishonesty, bias, or misconduct in conjunction with his or her service as a law enforcement officer.
 - (1) Except when untruthfulness is lawfully utilized as part of an investigatory procedure, such as during undercover operations or through the use of subterfuge.
2. Officer personnel files that are related to matters stated above may be provided or open to the prosecution or defense as part of a Brady disclosure, as is consistent with the law.
- a. Internal Investigations files initiated after April 12, 2019, that examine the in-uniform or on-duty conduct of a peace officer related to an incident of alleged misconduct involving a member of the public, are open for public inspection upon request; except that requester may be first provided with a summary of the investigation file prior to its full release.
 - (1) When appropriate, the Greeley Police Department may require a court order and/or a protective order prior to disclosure of personnel files and may deny the request due to an ongoing criminal investigation, or rules promulgated by the Colorado Supreme Court, or court orders prohibiting such release. The provisions of open inspection and file release are outlined in C.R.S 24-72-303.
 - b. Officer personnel files related to matters stated above may also be required to be provided to the P.O.S.T. Board consistent with P.O.S.T. rules and regulations, state statutes, and may be reported

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to the district attorney's office under Peace Officer Credibility Notification procedures.

C. Duty to Report

Officer adherence to departmental policy and rules in all matters is an imperative of his or her office. Breaches of such rules and policies related specifically to honesty and veracity may have direct bearing on his or her ability to continue serving as a law enforcement officer.

1. Officers whose history regarding integrity, honesty, credibility, veracity, and related matters has negative bearing on their professional reputation may be subject to Brady disclosure requirements and reporting to the district attorney's office mandated by Peace Officer Credibility legislation.
 - a. Except when honesty or untruthfulness are lawfully utilized as part of an investigatory procedure, such as during undercover operations or through the use of subterfuge.
2. It is the obligation of individual officers to inform their superior officer of any elements of their employment as a police officer, information contained in investigative reports, or evidence connected with a criminal indictment or trial that they reasonably believe may be subject to Brady disclosure.
3. Supervisory officers are equally responsible for ensuring that they act with due diligence in identifying any potential Brady material, or officer credibility matters connected with any criminal proceeding for which they have oversight and for bringing such material to the attention of the prosecutor in a timely manner through established reporting procedures.

D. Departmental Response to Officer Testimonial Impeachment

Officers who are knowingly and intentionally untruthful, are otherwise dishonest in the course of their employment, (except as lawfully utilized as part of an investigatory procedure, such as during undercover operations or through the use of subterfuge), or use excessive force are subject to impeachment of testimony at trial. Such officers shall also be subject to disciplinary action up to and including termination of employment.

E. Training

All sworn law enforcement officers of the Greeley Police Department shall receive training in Brady disclosure requirements.

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F. Process for Notification of the Prosecutor’s Office

1. When a Greeley Police employee becomes aware of Brady material through the process of a criminal investigation, he/she will notify the prosecutor’s office through the normal criminal investigation reporting process and notify his/her supervisor. The supervisor will ensure the officer’s information has been relayed to the prosecutor’s office.
2. When a Greeley Police employee becomes aware of Brady material relating to an employee the following process will be followed:
 - a. The employee will notify his/her direct supervisor,
 - b. The supervisor will notify the Chief of Police, through the chain of command.
 - c. The Chief of Police or designated Deputy Chief will notify the prosecutor’s office.
 - d. Required documentation will be provided through the City Attorney’s Office.

G. Records Retention

All Greeley Police Department criminal justice, police personnel training records, internal affairs and police action reviews, and employee personnel records will be retained in accordance with the Colorado Municipal Records Retention Schedules 90 and 100 related to Personnel and Public Safety Records. Refer to G.O. 403 Appendices A and B for applicable records retention schedules.

This policy has been adapted from the International Association of Chiefs of Police model policy and the Colorado Association of Chief’s of Police. Used with permission.

General Order 420.00	Reviewed: 03/23
<u>PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS</u>	
Authorized by Adam Turk, Chief of Police	
Effective Date: March <u>23</u>, 2023	
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Signature	