

East Haven Police Department 	Type of Directive: Policies & Procedures	No. 214.3
	Subject/Title: Brady Disclosures	Issue Date: September 26, 2023
		Effective Date: October 15, 2023
	Issuing Authority: Honorable Board of Police Commissioners	Review Date: Annually
References/Attachments: N/A	Rescinds: 214.2	Amends: N/A

I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding properly fulfilling 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) and their progeny.

II. POLICY

- A. It shall be the policy of the East Haven Police Department to follow Brady disclosure requirements consistent with the law.
- B. Officers who are knowingly and intentionally untruthful, are otherwise dishonest in the course of their employment are subject to impeachment of testimony at trial. Such officers are also subject to disciplinary action up to and including termination of employment.

III. DEFINITIONS

- A. 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.
- B. 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 disclosure requirements.

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

IV. GENERAL GUIDELINES AND CONSIDERATIONS

- A. The Brady decision and subsequent rulings have made it a duty of all law enforcement agencies to identify and provide to the prosecution any exculpatory material that would have a reasonable probability of affecting the following circumstances.
 - 1. Altering the results in a trial.
 - 2. Reasonably mitigating the sentencing of a defendant.
 - 3. Reducing the credibility of government witnesses, including, but not limited to, police officers.

V. PROCEDURES

- A. Affirmative Duty to Report
 - 1. This department shall exercise due diligence to ensure that material of possible Brady relevance is made available to the State's Attorney's Office.
 - 2. The Department shall track and maintain records of all officers who have been determined to have been deceptive or untruthful in any legal proceeding, Internal Affairs investigation, or other investigation. EHPD shall make these records available to prosecutors.
 - 3. 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 State's Attorney's Office, or in time for effective use at trial.
 - 4. Responsibility for disclosing such material extends from the initial investigation through the trial and sentencing process, and into any post-conviction investigation(s).
 - 5. Officer personnel files that are related to matters stated above must be provided or open to the prosecution as part of a Brady disclosure, as is consistent with the law.
 - 6. Officers whose history regarding integrity, honesty, credibility, veracity, and related matters that has negative bearing on their professional reputation may be subject to Brady disclosure requirements.
 - 7. Supervisory officers who know of potential Brady material shall bring such material to the attention of the prosecutor in a timely manner through established reporting procedures.

8. Examples of Brady material that may be subject to disclosure by this Department include, but may not be limited to, the following.
 - a. An officer's untruthfulness and dishonesty.
 - b. Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.
 - c. Any criminal record or criminal case pending against any witness whom the prosecution anticipates calling.
 - d. 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.
 - e. Information that would directly negate the defendant's guilt concerning any count in an indictment.
 - f. 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.
 - g. The failure of any proposed witness to make a positive identification of a defendant.
 - h. Information that casts doubt on the credibility or accuracy of a witness or evidence.
 - i. An inconsistent statement made orally or in writing by any proposed witness.
 - j. 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.
 - k. 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.
 - l. Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under state or federal sentencing guidelines.
9. It is the prosecutor's responsibility to establish whether material disclosed by this department must be provided to the defense.
10. 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.

B. Training

1. All sworn law enforcement officers of this department shall receive training in Brady disclosure requirements.