



## OFFICE OF THE DISTRICT ATTORNEY

Michael J. Allen, District Attorney

Colorado's 4th Judicial District - Serving El Paso & Teller Counties

March 11, 2022

Law Enforcement Agency Heads  
4th Judicial District of Colorado

Dear Ladies and Gentlemen,

As you know, in 2021 the Colorado General Assembly enacted SB 21-174, now codified as C.R.S. 16-2.5-502. This law created the Peace Officer Credibility Disclosure Notification Committee and empowered it to generate a statewide model policy for peace officer credibility disclosure notifications in Colorado. The law further required each law enforcement agency and district attorney's office in the state to adopt and implement written policies and procedures consistent with the Committee's model policy on or before January 1, 2022.

Consistent with the requirements of C.R.S. 16-2.5-502, the 4th Judicial District Attorney's Office hereby issues its Peace Officer Credibility Disclosure Notifications Policy (attached). This policy supplants all previous Discovery Notification policies governing the duties of law enforcement agencies and the district attorney's office concerning notification to defendants of potential exculpatory or impeachment material required by Brady v. Maryland, 373 U.S. 83 (1963), and Rule 16 of the Colorado Rules of Criminal Procedure. Please implement whatever changes to your own policies and procedures that are necessary to comply with the district attorney's office's Peace Officer Credibility Disclosure Notifications Policy.

Among the changes to our earlier policy that were required by C.R.S. 16-2.5-502 and the need to ensure that Brady and Rule 16 are fully complied with in a consistent and timely manner, please note that the district attorney's office is returning to its original practice of releasing current copies of the Brady List at the commencement of every criminal case. Please feel free to contact me if you have any questions or concerns about the new policy.

Sincerely,

Michael J. Allen  
District Attorney



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Colorado's 4th Judicial District - Serving El Paso & Teller Counties

## PEACE OFFICER CREDIBILITY DISCLOSURE NOTIFICATIONS POLICY

*Effective January 1, 2022*

### I. PURPOSE:

Consistent with the requirements under state law, this policy seeks to establish uniform and consistent standards requiring law enforcement agencies to disclose specific information to the District Attorney that may impact the credibility of a peace officer in a criminal prosecution, and to establish uniform procedures for the District Attorney to timely disclose such information to the defense 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. This policy is based on the model policy created by the Peace Officer Credibility Disclosure Notification Committee pursuant to Senate Bill 21-174, codified as C.R.S. 16-2.5-502. It has been modified to comply more fully with the requirements of *Brady v. Maryland*, 373 U.S. 83 (1963).

### II. DEFINITIONS:

As used in this policy, the below terms shall have the following meaning:

- A. **“Credibility Disclosure Notification”** means the notification described in C.R.S. 16-2.5-502(2)(c) and described in Section (III)(A) and (III)(B) of this policy.
- B. **“District Attorney’s Office”** means the Fourth Judicial District Attorney’s Office.
- C. **“Employee,”** as used in Section (III)(E) of this policy, means any peace officer or civilian employee employed by a law enforcement agency and whose duties could reasonably include testimony in a court of law.
- D. **“Law Enforcement Agency”** means a state or local agency that employs peace officers for purposes of Credibility Disclosure Notifications pursuant to C.R.S. 16-2.5-502. “Law Enforcement Agency” means a federal, military, state or local agency that employs peace officers for purposes of notifications required by *Brady* for any issues listed in Section (III)(A) and (III)(E) of this policy.
- E. **“Official Criminal Justice Record”** means 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.

- F. **"Peace Officer"** means a peace officer as defined in C.R.S. 24-31-901(3) and includes an officer, reserve, volunteer, or employee who performs a law enforcement function.
- G. **"Sustained finding"** means a final determination by a law enforcement agency, following an administrative procedure for investigating and reviewing alleged misconduct by a peace officer on the merits.
- H. **"Untruthfulness"** or **"dishonesty"** means 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 except as lawfully utilized as part of an investigatory procedure.

### **III. LAW ENFORCEMENT AGENCY'S OBLIGATION TO PROVIDE OFFICER CREDIBILITY DISCLOSURE NOTIFICATION:**

Notwithstanding any other procedures or existing legal requirements regarding the disclosure of exculpatory evidence in a criminal proceeding, beginning January 1, 2022, every law enforcement agency shall:

- A. Promptly notify the district attorney's office, in writing, of any sustained finding made on or after January 1, 2022, where a peace officer has:
  - 1. Knowingly made an untruthful statement concerning a material fact, knowingly omitted a material fact in an official criminal justice record, or knowingly omitted a material fact while testifying under oath or during an internal affairs investigation or administrative investigation and disciplinary process;
  - 2. Demonstrated a bias based on race, religion, ethnicity, gender, sexual orientation or preference, age, disability, national origin, or any other protected class;
  - 3. Tampered with or fabricated evidence;
  - 4. Been convicted of a felony or any crime involving dishonesty or has been charged with any felony or any crime involving dishonesty, with or without a sustained finding;
  - 5. Violated any policy of the law enforcement agency regarding dishonesty.

- B. In addition to the credibility disclosure notification required under Section (III)(A), a law enforcement agency 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 disclosure under Section (III)(A), 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.
- C. For disclosures made pursuant to Section (III)(B), the law enforcement agency shall promptly notify the district attorney's office once the law enforcement agency has completed the agency's administrative process for investigating and evaluating the allegations on the merits.
1. If the law enforcement agency determines through its administrative process that the criminal or administrative allegations are not sustained based on the merits, the law enforcement agency should promptly notify the district attorney's office of the outcome and the agency or involved peace officer may request that the district attorney's office remove the credibility disclosure notification from its records as set forth in Section (V)(C) below. However, nothing in this section shall require the district attorney's office to remove any credibility disclosure notification that was made to a defendant pursuant to Rule 16 of the Colorado Rules of Criminal Procedure in a pending criminal proceeding where the requirements of Section (III)(B) applied at the time of the disclosure.
- D. Prior to making any credibility disclosure notification required under Sections (III)(A) or (III)(B), a law enforcement 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.
1. 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.
- E. In addition to the credibility disclosure notifications required by C.R.S. 16-2.5-502, a law enforcement agency must report the following issues to the district attorney's office as potential exculpatory or impeachment material under *Brady* that might contain discovery notification information:



1. If an employee is charged with any misdemeanor traffic offense, petty offense, or criminal misdemeanor not related to dishonesty which is under the jurisdiction of the El Paso or Teller County Courts;
  2. If an employee is charged with a petty offense or misdemeanor not related to dishonesty in any jurisdiction;
  3. If an employee is found by a judge to have testified falsely under oath;
  4. If the law enforcement agency sustains an administrative finding for a criminal offense for which the P.O.S.T. board may deny certification (as set forth in C.R.S. 24-31-305) or excessive use of force;
  5. If an employee has a previous conviction for any misdemeanor traffic offense, petty offense, criminal misdemeanor, or felony offense;
  6. If the law enforcement agency receives a report of misconduct as described in this document, that would otherwise be impeachment or exculpatory information pertaining to a particular pending case, the agency shall notify the district attorney's office of that report or information to determine whether notification needs to be made pursuant to *Brady*.
- F. If there is an internal affairs file dealing with the reason a peace officer or other employee was placed on the Discovery Notification List, the law enforcement agency must retain that file indefinitely. The file should not be provided in whole or in part to the district attorney's office.
- G. To facilitate communication, every law enforcement agency must appoint individuals within the agency who are responsible for notifying the district attorney's office of credibility disclosure notifications and other potential discovery notification issues included in this policy. Notifications concerning material referenced in Section (III)(E) that is not subject to the seven-day notice requirement in Section (III)(D) must be made within two (2) business days of the law enforcement agency becoming aware of the incident or situation. The law enforcement agency is responsible for notifying an employee that they have been placed on the Discovery Notification List.

#### **IV. CREDIBILITY DISCLOSURE NOTIFICATION PROCEDURES:**

- A. A law enforcement agency shall include the following information in the credibility disclosure notification to be provided in writing to the district attorney's office:
1. The peace officer's name;

2. 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;
  3. 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.”
  4. 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 (III)(A), whether the notification relates to an open criminal or administrative investigation pursuant to Section (III)(B), or whether the notification relates to other potential *Brady* material pursuant to Section (III)(E).
- B. The law enforcement agency shall send the required credibility disclosure notification in writing, either electronically or by mail, to the contacts designated by the district attorney’s office. Those contacts are currently:
1. Brien Cecil, Senior Deputy District Attorney  
719-520-6062      [briencecil@elpasoco.com](mailto:briencecil@elpasoco.com)
  2. Jennifer Viehman, Chief Deputy District Attorney  
719-520-6051      [jenniferviehman@elpasoco.com](mailto:jenniferviehman@elpasoco.com)

**V. DISTRICT ATTORNEY’S OFFICE OBLIGATIONS:**


- A. Effective January 1, 2022, the district attorney’s office shall:
1. Designate the contacts to whom law enforcement agencies should send the required credibility disclosure notifications;
  2. Establish a process to timely notify defendants of credibility disclosure notification records pursuant to Rule 16 of the Colorado Rules of Criminal Procedure. It is the intention of the district attorney’s office to comply with Rule 16 by releasing a complete, current copy of the Discovery Notification List in each case;
  3. Maintain a process to discuss close calls about whether a peace officer or other employee should be placed on the Discovery Notification List. This process will involve the meeting of a committee composed of one or more of the contacts from the district attorney’s office, a representative of the law enforcement agency, and counsel for the district attorney’s office and the law enforcement agency. The district attorney’s office will make the final decision about who is placed on the list.

4. Maintain a current record of all credibility disclosure notifications, distinguishing between sustained findings disclosed pursuant to Section (III)(A), open investigations disclosed pursuant to Section (III)(B), and other *Brady* materials disclosed pursuant to Section (III)(E);
  5. Comply with the procedures set forth in Section (V)(B) for entering credibility disclosure notifications;
  6. Remove any credibility disclosure notification records as set forth in Section (V)(C);
  7. Post on the district attorney's office's website the procedures for how a member of the public can access the database created by the P.O.S.T. Board pursuant to C.R.S. 24-31-303(1)(r).
- B. For any credibility disclosure notification made to the district attorney's office pursuant to Section (III)(A) (i.e., involving a sustained allegation), or where the district attorney's office receives a notification pursuant to Section (III)(B) and the district attorney's office is subsequently notified by the law enforcement agency that the completed criminal or administrative investigation concluded that the allegations against the peace officer were sustained, the district attorney's office shall require its members to denote in its current record the involved officer as having a credibility disclosure notification. For any notification made to the district attorney's office pursuant to Section (III)(E), the district attorney's office will notify defense counsel that such information exists.
- C. The district attorney's office shall remove credibility disclosure notification records from the district attorney's office's records and notification procedures under the following circumstances:
1. 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's office that the agency concluded through its administrative process that the criminal or administrative allegations are not sustained on the merits, and the law enforcement agency or peace officer makes a written request that the district attorney's office remove the credibility disclosure notification from the district attorney's offices records.
  2. When the district attorney's office makes an independent determination, based on a review of the underlying records (if access to the underlying records is granted by the law enforcement agency, the peace officer, or by court order) that removal is appropriate or lawful. This includes situations where a peace officer or other employee's name is placed on the list temporarily pursuant to Section (III)(E) due to a pending charge or a deferred judgment and sentence and the district attorney's office is notified that the case is ultimately resolved without a conviction. In the

case of a deferred judgment and sentence such resolution would only be after successful completion of the deferred judgment and sentence.

3. When a peace officer or other employee of a law enforcement agency successfully appeals the internal affairs finding that led to their inclusion on the Discovery Notification List and the district attorney's office is notified that there is no longer a sustained finding.
  4. When the district attorney's office receives a court order directing the district attorney's office to remove the credibility disclosure notification records.
  5. When the district attorney's office is notified that someone on the Discovery Notification List has died.
- D. The district attorney's office shall review the policies and procedures adopted and implemented under this Section V 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 their progeny, as well as the Colorado Rules of Criminal Procedure.

January 1, 2022  
Date

  
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District Attorney  
Michael J. Allen