

# DOUGLAS COUNTY DISTRICT ATTORNEY

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## BRADY/GIGLIO DISCLOSURE POLICY

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### I. PURPOSE

The purpose of this policy is to ensure that prosecutors in the Douglas County District Attorney's Office comply with their constitutional, ethical, and legal obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972). This duty requires this office to identify and disclose all exculpatory and impeachment evidence relevant to guilt or punishment to the defense while simultaneously protecting the privacy rights of witnesses and fostering integrity in the criminal justice system.

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### II. LEGAL FRAMEWORK

#### 1. Statutory and Case Law Authority

- K.S.A. §§ 22-3212 and 22-3213 define the State's duty to compile and provide complete discovery to a defendant in a criminal case. See *State v. Lewis*, 327 P.3d 1042 (2014).
- Kansas Supreme Court Rule 3.8(d) imposes an ethical duty to timely disclose all known evidence that negates guilt or mitigates punishment. See *In re Jordan*, 278 Kan. 254, 261 (2004).
- The disclosure obligation applies to the entire prosecution team and includes evidence held by law enforcement agencies. See *Kyles v. Whitley*, 514 U.S. 419 (1995)).

#### 2. Affirmative Duty to Disclose

- The Douglas County District Attorney's Office has an obligation to disclose information regardless of whether defense has actively requested discovery. *State v. Nguyen*, 251 Kan. 69, 82 (1992). This office also follows the guidance provided by the United States Supreme Court in *United States v. Agurs*, 427 U.S. 97 (1976) that "[T]he prudent prosecutor will resolve doubtful questions in favor of disclosure."

- The Douglas County District Attorney's Office recognizes that we must actively seek out favorable information, regardless of whether a request is made by the defense. See *State v. Adam*, 257 Kan. 693 (1995). The Douglas County District Attorney's Office open file policy does not absolve this office of this positive duty.
- Prosecutors have an affirmative duty to seek out exculpatory and impeachment evidence in the possession of law enforcement agents. It is no defense to our *Brady/Giglio* responsibilities that the prosecution did not know about the material information that was in the possession of a law enforcement agent. See *State v. Francis*, 282 Kan. 120 (2006). The obligation to disclose is collectively held by law enforcement and prosecution:

"Exculpatory evidence cannot be kept out of the hands of the defense just because the prosecutor does not have it, where the investigating agency does." *United States v. Blanco*, 392 F.2d 382,394 (2004).

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### III. DEFINITIONS

**Brady/Giglio Material** is all exculpatory or impeachment information that is material to a defendant. Information is material if it relates to guilt, punishment, or the credibility of a witness. The two types of evidence covered under this policy are exculpatory evidence and impeachment evidence.

- **Exculpatory evidence.** Material that could assist in proving innocence or reducing punishment.
- **Impeachment evidence.** Material that could call into question a witness's credibility, including witnesses who serve as law enforcement officers.

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### IV. CATEGORIES OF DISCLOSABLE EVIDENCE

The following categories of information must be disclosed, regardless of admissibility, if material:

#### 1. Prior Inconsistent Statements

- Contradictions between a witness's current and past statements (K.S.A. 60-422).

## 2. Bias

- Evidence showing a witness has a bias, motive, or interest in the case. K.S.A. 60-420; *State v. Scott*, 39 Kan.App.2d 49, 58 (2008).

## 3. Promises or Expectations of Benefit

- Includes leniency, monetary or immigration benefits, or any expectation in exchange for testimony. (*Giglio*; *State v. Bowen*, 254 Kan. 618 (1994)).

## 4. Criminal Convictions Involving Dishonesty

- Prior crimes involving deceit, such as theft or fraud, are admissible for impeachment. K.S.A. 60-421; *State v. Thomas*, 220 Kan. 104 (1976).

## 5. Opinion/Reputation for Truthfulness

- A witness's known character for untruthfulness is relevant and must be disclosed to defense. This includes law enforcement witnesses. K.S.A. 60-446; *Lumry v. State*, 49 Kan.App.2d 276, 280 (2013).

## 6. Specific Instances of Misconduct

- Though generally inadmissible under K.S.A. 60-447, such information may still require disclosure if it could lead to admissible evidence. *Wood v. Bartholomew*, 516 U.S. 1 (1995); *Milke v. Ryan*, 711 F.3d 998 (9th Cir. 2013).

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# V. DISCLOSURE REQUIREMENTS

- Disclosure is required whether or not the prosecution has actual knowledge of the *Brady* or *Giglio* material. *State v. Francis*, 282 Kan. 120 (2006); *U.S. v. Blanco*, 392 F.3d 382 (2d Cir. 2004)).
- The obligation extends to all agencies or individuals acting on behalf of the State and must be met proactively, not passively. *State v. Walker*, 221 Kan. 381, 383 (1977)
- The prosecution is not obligated to disclose preliminary, challenged, or speculative information. *Agurs*, 427 U.S. at 109, n. 16.

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# VI. IMPLEMENTATION PROCEDURES

## A. Law Enforcement Obligations

All law enforcement agencies that file cases with the Douglas County District Attorney's Office must:

1. Notify the District Attorney immediately upon any:
    - Sustained allegation of untruthfulness or dishonesty;
    - Finding of lack of candor in an internal investigation;
    - Criminal investigation, charge, diversion, expungement, or conviction involving an officer;
    - Finding of bias or prejudice toward any constitutionally protected group;
    - Development of a general reputation for dishonesty.
  2. Provide timely notification when:
    - An investigation is initiated that may result in *Giglio* impairment;
    - An officer is determined to be *Giglio* impaired;
    - A prior investigation is determined to be unfounded.
  3. Establish a single point of contact for all communications regarding potential *Giglio* inquiries or disclosures.
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## **B. Prosecutor's Office Procedures**

### **1. Disclosure to Defense**

- Impeachment status of law enforcement or government witnesses will be disclosed in discovery with a letter that may direct defense counsel to the employing agency in possession of any *Giglio* material.
- When necessary, the Douglas County District Attorney's Office may request an *in camera* judicial review to determine disclosure requirements given the sensitive nature of *Giglio* material (*State v. Riis*, 39 Kan.App.2d 273 (2008)).

### **2. Charging Decisions**

When an officer is *Giglio* impaired, the Douglas County District Attorney's Office may:

- Decline to file charges;
- Dismiss existing charges;
- Proceed without calling the officer as a witness;

- Proceed with disclosure of impeachment material;
  - Decline to rely on any affidavit or complaint supported solely by the officer (*Franks v. Delaware*, 438 U.S. 154 (1978)).
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## VII. DOCUMENTATION AND CONFIDENTIALITY

- The Douglas County District Attorney's Office does not maintain copies of personnel files or internal investigation records.
  - *Brady/Giglio* materials are not to be submitted to the Douglas County District Attorney's Office and should remain with the originating agency.
  - Protective orders may be sought when disclosure of sensitive personnel records is required.
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## IX. EMPLOYMENT STATUS OF WITNESSES

The Douglas County District Attorney's Office takes no position on hiring, assignment, or disciplinary decisions concerning law enforcement or government employees who are subject to impeachment disclosure. Those decisions rest solely with the employing agency.

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## X. EFFECTIVE DATE AND REVIEW

- This policy shall be reviewed and updated annually.
  - Any new controlling case law will be incorporated upon publication.
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Approved by:



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Dakota T. Loomis  
District Attorney  
Date: 08/01/2025