



**JACKIE LACEY**  
**DISTRICT ATTORNEY**

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# **ONE MINUTE BRIEF**

COPYRIGHT © 2019 LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE. ALL RIGHTS RESERVED. MAY BE REPRODUCED FOR NON-COMMERCIAL PROSECUTORIAL, LAW ENFORCEMENT AND EDUCATIONAL PURPOSES ONLY. [1MB@da.lacounty.gov](mailto:1MB@da.lacounty.gov)

**NUMBER:** 2019-19    **DATE:** 08-27-19    **BY:** Heather Borden    **TOPIC:** Discovery Compliance; Brady

**ISSUE:** When a law enforcement agency creates an internal *Brady* list, and a peace officer on that list is a potential witness in a pending criminal prosecution, may the agency disclose to the prosecution: (a) the name and identifying number of the officer and (b) that the officer may have relevant exonerating or impeaching material in that officer's confidential personnel file?

A criminal prosecutor must disclose to the defense exculpatory and impeachment information. *Brady v. Maryland* (1963) 373 U.S. 83 ("*Brady*"); *Giglio v. United States* (1972) 405 U.S. 150, 154-155. Under *Pitchess*, "a criminal defendant may, in some circumstances, compel the discovery of evidence in the arresting law enforcement officer's personnel file that is relevant to the defendant's ability to defend against a criminal charge." *Pitchess v. Superior Court* (1974) 11 Cal.3d 531; see also *People v. Mooc* (2001) 26 Cal.4th 1216, 1219. In looking to *Pitchess*, the Court in *Association for Los Angeles Deputy Sheriffs (ALADS) v. Superior Court*, S243855, found that (1) an internal "*Brady* list is confidential to the extent it was derived from confidential records," and (2) "the Department does not violate that confidentiality by sharing with prosecutors the identity of potential witnesses on the *Brady* list." *ALADS, supra*, S243855 at p. 13.

## **Confidentiality of Underlying Records**

Under Senate Bill 1421, three categories of personnel records are determined to be nonconfidential, thereby permitting voluntary disclosure: (1) Records related to a report, investigation, or finding of an incident in which an officer discharged a firearm at a person or used force resulting in death or great bodily injury; (2) Records related to a sustained finding

that an officer engaged in sexual assault involving a member of the public; and (3) Records related to a sustained finding that an officer made false statements, false reports, concealed evidence, or committed perjury. California Senate Bill 1421; See *ALADS, supra*, S243855 at pp. 17-18. “If the records are not confidential, then the information obtained from those records is also not confidential.” *Id.* at p. 21. However, even confidential records may be disclosed pursuant to *Pitchess*.

### **Pitchess Permits Brady Alerts to Prosecutors in Pending Cases**

Next, the *ALADS* Court considered the term “confidentiality” and discussed that confidentiality from the general public is different than confidentiality from the prosecution. “The text of the *Pitchess* statutes does not clearly indicate that prosecutors are outsiders, forbidden from receiving confidential *Brady* alerts.” *Id.* at p. 24. Prosecutors have a duty under *Brady* to disclose impeachment evidence. Thus, in reconciling *Brady* and *Pitchess*, the Court concluded that agencies may voluntarily provide prosecutors with *Brady* alerts where the officer is a witness in a pending criminal case. “The Department may share this limited information, for the limited purpose of ensuring *Brady* compliance, with the limited class of persons (i.e., prosecutors) with a particularized need to know.” *Id.* at p. 32.

**BOTTOM LINE: Law enforcement agencies may voluntarily disclose to prosecutors a *Brady* list or alert based upon nonconfidential officer personnel information. Further, law enforcement agencies may voluntarily disclose to prosecutors a *Brady* list or alert based upon confidential personnel records, where the listed peace officers are witnesses in pending criminal cases. Ultimately, a law enforcement agency’s use of a *Brady* list or alert system is voluntary and is not mandated by the Court. The Court did not address whether it violates confidentiality requirements for a prosecutor to share a *Brady* alert with the defense.**

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.