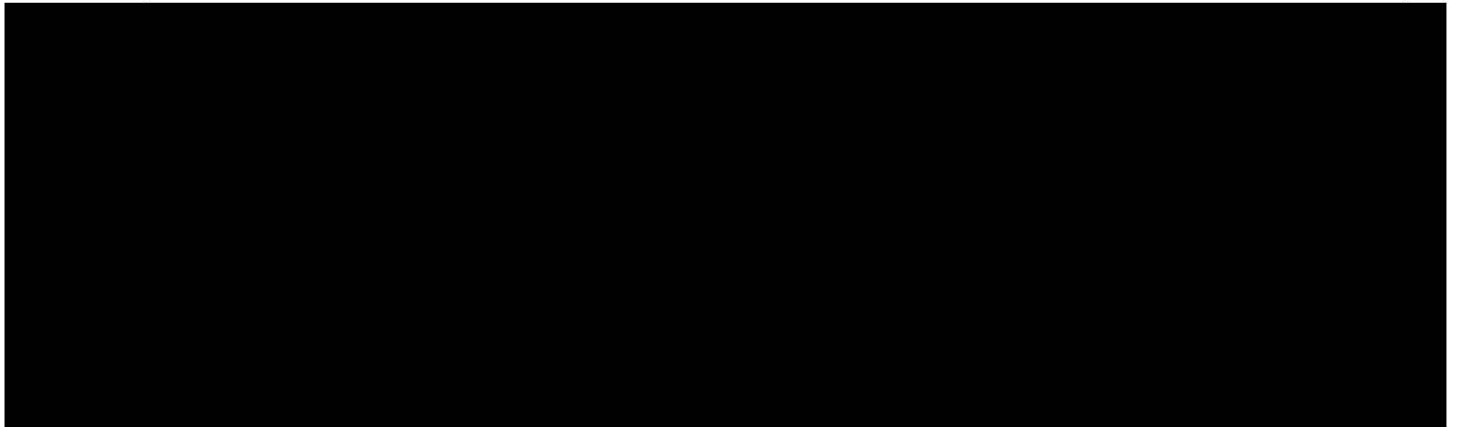
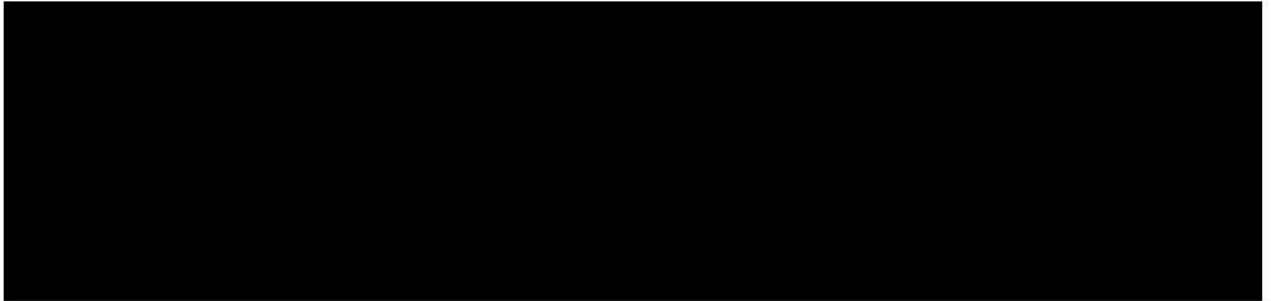


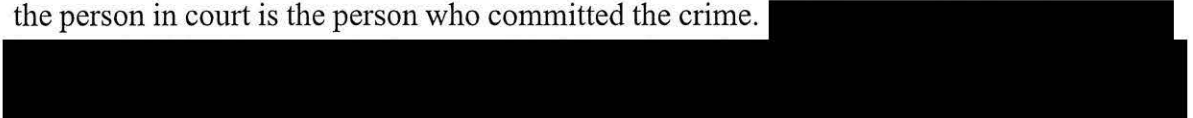
*The following policy was approved by the District Attorney on July 21, 2020 and replaces all previous Policies and Guidelines.*

**STATUS OF DEFENDANT**

- I. **Bail/Own Recognizance:** Bail is to be set at a level sufficient to ensure the defendant's presence in court and to protect the public in cases of violent felonies.



- III. **Identity of Defendant:** When a defendant alleges an identity theft issue, that they are not the person who was arrested/booked and/or are not the person who used the identity at the time of the crime, the assigned DDA shall take all reasonable steps to try to verify whether the person in court is the person who committed the crime.



- IV. **Verifying the Death of a Defendant in a Pending Case:** When a defendant is alleged to have died while a case is pending, the DDA assigned to the case shall take all reasonable steps to verify the death via a certified death certificate or equally convincing evidence.



*The following policy was approved by the District Attorney on January 27, 2020 and replaces all previous Policies and Guidelines.*

## **CRIME CHARGING**

### **I. Specific Charging Standards:**

- A. The primary responsibility of a prosecutor in charging is to determine whether there is sufficient evidence to convict the accused of the particular crime(s) in question and to authorize the filing of appropriate charges.
- B. To protect the innocent and avoid unnecessary waste of court and prosecution resources the Riverside County District Attorney has adopted the “Reasonable Doubt Standard” in determining whether to initiate a criminal case. The standard is as follows:

The prosecutor shall charge only if:

- 1. After a thorough consideration of all pertinent data readily available, the prosecutor is satisfied the evidence proves the accused is guilty of the crime to be charged; and
  - 2. The admissible evidence is of such convincing force that it would warrant the conviction of the crime charged by a reasonable and objective fact-finder after hearing all the evidence and the most plausible, reasonably foreseeable defense that could be raised under the evidence available to the prosecutor at the time of charging.
- C. In extraordinary instances (e.g., if the defendant poses a serious and imminent danger to the public or is likely to evade process), a Deputy District Attorney may be required to deviate from the “Reasonable Doubt Standard” when considering the filing of a criminal charge against a defendant. A Deputy District Attorney may only deviate from the “Reasonable Doubt Standard” and charge a defendant when the current state of the evidence satisfies the “Probable Cause Standard” and the Deputy District Attorney has a good faith belief that sufficient evidence will be present before trial to prove the charge beyond a reasonable doubt. [REDACTED]
- D. Under no circumstances shall charges be filed when they do not meet the “Probable Cause Standard.”

**II. Special Allegations:** The charging prosecutor shall be fully familiar with and should allege in charging documents all appropriate allegations. These include specific enhancements, probation limitations and prohibitions, prior convictions, out on bail allegations, as well as any allegation that affects the nature of a conviction or judgment.

**III. Corrections to Charging Documents:**

- A. The prosecutor assigned to the case should review the defendant's rap sheet and the charging document to determine if the charged crimes and allegations are complete and accurate. If an amendment appears necessary, the prosecutor should either amend the charging document or, depending on their level of discretion, bring it to the attention of their immediate supervisor to amend.

**IV. Improper Basis for Charging:**

The following factors constitute improper bases for charging:

- A. The race, religion, nationality, citizenship, sex, sexual orientation, gender identity, age, occupation, economic class, beliefs, or political association or position of the victim, the witness or the accused;
- B. The mere fact of a request to charge by a police agency, private citizen, or public official;
- C. Public or media pressure to charge;
- D. Solely to facilitate an investigation including obtaining a statement from the accused;
- E. To influence the outcome of an election, or to influence a candidate for, or person seeking, any public office, whether elected or appointed;
- F. To punish the accused for exercising a constitutional or statutory right. (However, see *Bordenkircher v. Hayes* (1978) 434 U.S. 357 for a discussion of permissible charging as part of the plea bargain process.)

**RIVERSIDE COUNTY LAW ENFORCEMENT  
PROSECUTION TEAM  
BRADY COMPLIANCE PROTOCOL**

January 2014

**RIVERSIDE COUNTY LAW ENFORCEMENT AGENCIES**

Alcohol Beverage Control	Federal Bureau of Investigation
Banning Police Department	Hemet Police Department
Beaumont Police Department	Ironwood State Prison
Blythe Police Department	Indio Police Department
California Department of Justice Laboratory Bureau of Narcotics Enforcement United States Attorney's Office	Mt. San Jacinto College Police Department
California Department of Corrections & Rehabilitation	Murrieta Police Department
California Emergency Management Agency (CalEMA)	Palm Springs Police Department
California Highway Patrol	Probation Department
California Youth Authority Inland Parole	Riverside County District Attorney's Office
Chuckawalla Valley State Prison	Riverside County District Attorney's Office Bureau of Investigations
Cathedral City Police Department	Riverside Community College District Police Department
Corona Police Department	Riverside Police Department
Commission on POST	Riverside Sheriff's Department
Department of Public Social Services	United States Border Patrol
Desert Hot Springs Police Department	United States Immigration and Customs Enforcement (ICE)
Drug Enforcement Administration	University of California, Riverside Police Department
	United States Secret Service



## SIGNATORY AGENCIES

*Original document with signatures at DA's Office.*

\_\_\_\_\_/\_\_\_\_\_  
**Richard Twiss, Chief** Date  
Indio Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Paul E. Zellerbach, District Attorney** Date  
Riverside County District Attorney's Office

\_\_\_\_\_/\_\_\_\_\_  
**Sergio Diaz, Chief** Date  
Riverside Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Stan Sniff, Sheriff** Date  
Riverside County Sheriff's Department

\_\_\_\_\_/\_\_\_\_\_  
\_\_\_\_\_, Chief Date  
Banning Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Mark Hake, Chief Probation Officer** Date  
Riverside County Probation

\_\_\_\_\_/\_\_\_\_\_  
**Frank Coe, Chief** Date  
Beaumont Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Daniel Bressler, Chief** Date  
Desert Hot Springs Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Steven Smith, Chief** Date  
Blythe Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Dave Brown, Chief** Date  
Hemet Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Kevin Connor, Chief** Date  
Cathedral City Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Sean Hadden, Chief** Date  
Murrieta Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Mike Abel, Chief** Date  
Corona Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Alberto Franz, Chief** Date  
Palm Springs Police Department

\_\_\_\_\_/\_\_\_\_\_  
**Michael Moriarty, Chief** Date  
Riverside County District Attorney's Office  
Bureau of Investigations

\_\_\_\_\_/\_\_\_\_\_  
**Mike Lane, Chief** Date  
University of California, Riverside  
Police Department

\_\_\_\_\_/\_\_\_\_\_  
**James Miyashiro, Chief** Date  
Mt. San Jacinto Community College P.D.

\_\_\_\_\_/\_\_\_\_\_  
**James Miyashiro, Chief** Date  
R.C.C. District College Safety & Police Dept.

## I. GENERAL POLICY STATEMENT

The District Attorney has a constitutional obligation under *Brady v. Maryland* (1963) 373 U.S. 83, to provide criminal defendants with exculpatory evidence, including substantial evidence bearing on the credibility of material prosecution witnesses. The prosecution's duty of disclosure extends to evidence in possession of the "prosecution team," which includes the investigating law enforcement agency and other agencies and persons which assisted the District Attorney in the particular prosecution. (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305.) One significant aspect of the "prosecution team" concept is that the prosecutor is imputed with the knowledge of any material evidence in a case that is favorable to a defendant which is in fact known to or in the possession of *any* other member of the prosecution team, even if the prosecutor has not been told of the information. (*Kyles v. Whitley* (1995) 514 U.S. 419, 438; *People v. Salazar* (2005) 35 Cal.4th 1031, 1042.) There is also federal authority that holds law enforcement has a due process obligation to disclose exculpatory evidence to the prosecution. (*Jean v. Collins* (4th Cir. 2000) 221 F.3d 656; *Newsome v. McCabe* (7th Cir. 2001) 256 F.3d 747, 752.)

This Protocol addresses the obligations of prosecution team members with respect to the disclosure of *Brady* information pertaining to its employees, and the District Attorney's procedures regarding the handling of *Brady* information pertaining to prosecution team members.

Law enforcement personnel records are protected from disclosure by the statutory procedure for *Pitchess* motions. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531; Evid. Code §§ 1043-1047; Pen. Code § 832.7.) Additionally, important protections regarding personnel records are contained in the Public Safety Officers Procedural Bill of Rights Act (Gov. Code § 3300 et seq.) and in the right to privacy under the California Constitution (Art. I, § 1). However, the prosecution has both a statutory discovery obligation and an affirmative Constitutional obligation to disclose *Brady* information to the defense even absent a request or motion, and the scope of the prosecution's obligations under *Brady* may exceed the information available to the defense under *Pitchess*. (*City of Los Angeles v. Superior Court (Brandon)* (2002) 29 Cal.4th 1, 12, 14; Pen. Code §1054.1(e).)

Effective enforcement and prosecution of crime are jeopardized by the failure to comply with *Brady* obligations. Violations of *Brady* discovery obligations may result in a new preliminary hearing, the striking of charges and allegations, or the reversal of convictions, sometimes years after the trial is concluded. Intentional or bad faith failure to disclose *Brady* material to the prosecutor and thus to the defendant, can result in a civil action for damages against investigating agencies/officers, subsequent criminal state and/or federal prosecution, and for prosecutors, state bar discipline up to and including disbarment. Even an unintentional non-compliance with *Brady* obligations exposes the prosecutor to state bar discipline and subjects the District Attorney's Office, the law enforcement agency and its officers to public reuke, threatens public safety and erodes confidence in local law enforcement and the criminal justice system.

As members of the prosecution team, the Riverside County law enforcement agencies and its officers are committed to full compliance with all constitutional and statutory disclosure obligations to ensure fair criminal trials and to safeguard due process in our criminal justice system, thereby protecting the public through the lawful prosecution of criminal offenders whose convictions withstand appellate scrutiny. To ensure we are meeting our prosecution team statutory and constitutional obligations, the following Protocol was drafted.

For purposes of this Protocol, a "law enforcement officer" includes sworn peace officers and custodial/correctional officers. This Protocol also includes those officers assigned to county wide investigative task forces and/or assigned to PRCS (Post Release Community Supervision) enforcement teams and bearing investigations, including but not limited to, the Regional AB109 Compliance Task Force, Probations Enforcements and Warrant Sweeps, SAFE Team Task Force, Regional Gang Task Forces, and Regional Narcotics Enforcement Task Forces. This Protocol also covers law enforcement agency "employees" whose job duties expose them to regular prosecution team membership and/or possible testimony.

## II. THE LAW

### A. The Prosecution Team:

The prosecutor's *Brady* obligation applies to all members of the prosecution team. The prosecution team includes both law enforcement and nonsworn investigative and prosecutorial agency personnel as well as assisting persons acting on the prosecution's behalf who are or may be called as experts or witnesses, or who are involved in the investigation or prosecution of the criminal case.

The prosecution team for a particular criminal case is defined as those agencies and personnel involved in the underlying investigation and the specific prosecution and includes: The District Attorney's Office; Any Investigating Agencies (Local, State or Federal law enforcement agencies); Any Agencies Closely Tied to the Prosecution (DOJ, Private Labs, DA Bureau of Investigations, Victim/Witness Advocates, etc.) and other Assisting Agencies (Joint Task Force personnel, CAL FIRE, etc.) and Assisting Persons (Interpreters, outside experts, informants, etc.) (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1313-1315; *In re Brown* (1998) 17 Cal.4th 873, 881, 879; *Kyles v. Whitley* (1995) 514 U.S. 419, 437; *In re Steele* (2004) 32 Cal.4th 682, 697; *People v. Zambrano* (2007) 41 Cal.4th 1082, 1133, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn.22.)

The prosecutor has an affirmative duty to search for and disclose exculpatory evidence if the evidence is possessed by a person or agency that has been used by the prosecutor or the investigating agency to assist the prosecution or the investigating agency in its work in that case. Conversely, information possessed by an agency that has no connection to the instant investigation or prosecution of the criminal charge against the defendant is not possessed by the prosecution team, and the prosecutor does not have the duty to search for or to disclose such material. (*People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1315.)

### B. The Brady Obligation:

The District Attorney is obligated to provide the defense in criminal cases with exculpatory evidence that is material to either guilt or punishment. (*Brady v. Maryland* (1963) 373 U.S. at pp. 83, 87.) Reviewing courts define "material" as follows: "The evidence is

material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” A “reasonable probability” is a probability sufficient to undermine confidence in the outcome. (*United States v. Bagley* (1985) 473 U.S. 667; *People v. Roberts* (1992) 2 Cal.4th 271, 330.) “Exculpatory” means favorable to the accused.

This obligation includes impeachment evidence that discloses more than “minor inaccuracies” and consists of “substantial material evidence bearing on the credibility of a key prosecution witness, and evidence which the defense could use “to impeach the Government’s witnesses by showing bias or interest,” or to assail the quality and integrity of the investigation. (*U.S. v. Bagley* (1985) 473 U.S. 667, 676; *People v. Ballard* (1991) 1 Cal.App.4th 752, 758; *People v. Padilla* (1995) 11 Cal.4th 891, 929, overruled on other grounds, *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1; *Kyles v. Whitley* (1995) 514 U.S. 419, 446, fn. 15.) The government has no *Brady* obligation to “communicate preliminary, challenged, or speculative information.” (*U.S. v. Agurs* (1976) 427 U.S. 97, 109 fn. 16.) However, “the prudent prosecutor will resolve doubtful questions in favor of disclosure.” (*Id.* at 108; See also, *Kyles v. Whitley* (1995) 514 U.S. 419, 439, which warns against “tacking too close to the wind” in withholding evidence.)

*Brady* is the duty to *disclose* the favorable information to the defense regardless of whether the defense asks for it. Disclosure however, does not necessarily mean admissibility in trial. Courts have broad discretion to admit or exclude acts of dishonesty or moral turpitude relevant to impeachment. (*People v. Wheeler* (1992) 4 Cal.4th 284, 288; Evidence Code §352.)

A *Brady* violation occurs when the prosecution either willfully or inadvertently fails to disclose favorable evidence (either because it is exculpatory or because it is impeaching) in the possession of any member of the prosecution team and prejudice resulted. (*Strickler v. Greene* (1999) 527 U.S. 263.) A finding of prejudice is based on the cumulative effect of all suppressed favorable information and includes a consideration of tangible issues in the case and the effect of nondisclosure on defense investigations and trial strategies. (*US v. Bagley* (1985) 473 U.S. at 682-683; see *In re Brown* (1998) 17 Cal.4th at 887.) Prejudice ensues when the cumulative effect of all the suppressed favorable evidence could reasonably be taken to put the whole case in such a different light that confidence in the outcome of the proceeding is undermined. (See *Kyles v. Whitley*, *supra*.)

The *Brady* obligation exists to protect a defendant's right to a fair trial as required by the federal due process clause. However, recent case authority has held that both state and federal due process require the prosecution to disclose, prior to preliminary hearing, evidence in possession of the prosecution team that is both favorable to the defense and material to the probable cause determination at the preliminary hearing. (*Bridgeforth v. Superior Court* (2013) 214 Cal.App.4th 1074; *People v. Gutierrez* (2013) 214 Cal.App.4th 343.)

In addition, if the prosecution team has or knows of evidence which if true would show that the defendant is innocent, the prosecution must discover that evidence to the defendant before a plea is entered. (*U.S. v. Ruiz* (2002) 536 U.S. 622, [unlike evidence of innocence, the Constitution does not require the Government to disclose impeachment evidence prior to entering a plea agreement with a criminal defendant].) Accordingly, if the *Brady* information consists of evidence of *actual innocence*, the obligation for disclosure is pre-plea and immediate throughout the pendency of the prosecution.

C. Impeachment Evidence:

Impeachment evidence is defined in case law and in Evidence Code section 780, CALCRIM 105, and CALJIC 2.20. Examples of favorable impeachment evidence of prosecution team members (law enforcement sworn and unsworn personnel) that may come within our *Brady* disclosure duty include but are not limited to:

1. *Evidence of Contrary or Conflicting Statements about the Crime:*

- a) A statement by the witness that is inconsistent with the witness's testimony. (Evid. Code § 780 (h); *Paradis v. Arave* (9th Cir. 2001) 240 F.3d 1169, 1179; *Strickler v. Greene* (1999) 527 U.S. 263, 282, fn. 21; *In re Sodersten* (2007) 146 Cal.App.4th 1163, 1233.)
- b) Minor inconsistencies do not constitute evidence favorable to the accused. (*People v. Cook* (2006) 39 Cal.4th 566, 589.)

2. *Evidence of False Reports in Other Cases:*

- a) The existence or nonexistence of any fact testified to by the witness. (Evid. Code § 780 (i).)
- b) An admission of untruthfulness. (Evid. Code § 780 (k); *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244.)

3. *Evidence of Untruthfulness:*

- a) The character of the witness for honesty or veracity or their opposites. (Evid. Code § 780 (e); *U.S. v. Calise* (9<sup>th</sup> Cir. 1993) 996 F.2d 1019, 1021 [law enforcement officer gave testimony the federal magistrate characterized as “absolutely incredible”].)
- b) An admission of untruthfulness. (Evid. Code § 780 (k); *People v. Hayes* (1992) 3 Cal.App.4th 1238, 1244.)
- c) Dishonesty necessarily involves moral turpitude and is favorable impeachment evidence. (*People v. Wheeler* (1992) 4 Cal.4th 284, 289; *People v. Castro* (1985) 38 Cal.3d 301, 314; *U.S. v. Strifler* (9th Cir. 1988) 851 F.2d 1197, 120, [lies told by prosecution witness to authorities]; *People v. Steele* (2000) 83 Cal.App.4th 212, [giving false information to a peace officer].)

4. *Evidence of Misconduct Involving Moral Turpitude:*

- a) Facts establishing moral turpitude misconduct, whether or not it constitutes a criminal offense or results in the filing of a criminal charge or a conviction, can be used to impeach a witness and is therefore evidence favorable to the defendant.
  - (*People v. Wheeler* (1992) 4 Cal.4th 284, 292-297, and fn.7; *People v. Rivera* (2003) 107 Cal.App.4th 1374, 1380; *People v. Leopolo* (1997) 55 Cal.App.4th 85, 89-90; *People v. Castro* (1985) 38 Cal.3d 301, 316; *U.S. v. Childs* (7th Cir. 2006) 447 F.3d 541, 543-545; *U.S. v. Price* (9th Cir. 2009) 566 F.3d 900, 903; *CHP v. Superior Court (Luna)* (2000) 84 Cal.App.4th 1010, 1023-1025.)
- b) Moral turpitude *conduct* is that which indicates dishonesty, bad character, a general readiness to do evil or moral depravity of any kind. (*People v. Maestas* (2005) 132 Cal.App.4th 1552, 1556.)
- c) Moral turpitude *conduct* involves dishonesty, deceit, breach of trust, intent to corrupt others or stealth. (*People v. Lang* (1989) 49 Cal.3d 991, 1010; *People v. Wheeler* (1992) 4 Cal.4th 284, 289; *People v. Castro* (1985) 38 Cal.3d 301, 314.)
- d) Moral turpitude *crimes* involve violent, menacing, or threatening conduct. (*People v. Williams* (1999) 72 Cal.App.4th 1460, 1464.) Case law has defined many moral turpitude crimes. (See attached list.)

5. *Felony Conviction:*

- a) Discovery of all felony convictions is required regarding any material witness whose credibility is likely to be critical to the outcome of the trial, even if conviction has been expunged under Penal Code section 1203.4.
  - (Evid. Code § 788; *People v. Castro* (1985) 38 Cal.3d 301, 314; Pen. Code § 1054.1(d); *People v. Santos* (1994) 30 Cal.App.4th 169, 177; *People v. Martinez* (2002) 103 Cal.App.4th 1071, 1079, [“Irrespective of the expungement’s effect on the convictions’ admissibility at trial, the prosecution still bore the burden of investigating and divulging the existence of such convictions.”].)



6. *Misdemeanor Conviction Involving Moral Turpitude:*

- (*People v. Wheeler* (1992) 4 Cal.4th 284, 292-297; *People v. Castro* (1985) 38 Cal.3d 301, 316; *People v. Santos* (1994) 30 Cal.App.4th 169, 178-179; Evid. Code §452.5.)

7. *Evidence Undermining Expertise or Competence:*

- a) The existence or nonexistence of any fact testified to by the witness.  
(Evid. Code § 780 (i); *People v. Filson* (1994) 22 Cal.App.4th 1841, 1848.)
- b) Inaccurate statements in reports or investigatory errors made by prosecution witness involved in the investigation can impeach both witness credibility and the thoroughness or good faith of the underlying investigation.  
(*U.S. v. Howell* (9th Cir. 2000) 231 F.3d 615, 625-6; *People v. Garcia* (1993) 17 Cal.App.4th 1169, 1179-80, 1185 [errors made by material expert prosecution witness in present or past cases].)

8. *Evidence of Witness Impairment:*

- a) Evidence of alcohol or drug addiction is admissible to impeach only when there is evidence that the witness was under the influence of alcohol or drug at the time the events occurred about which the witness will testify, or when the witness's mental faculties are actually impaired by addiction.  
(*People v. Hernandez* (1976) 63 Cal.App.3d 393, 405; *People v. Smith* (1970) 4 Cal.App.3d 403, 412; *U.S. v. Fisher* (4th Cir. 2004) 109 Fed.Appx. 569, 2004 WL 2165820.)
- b) Evidence witness is not competent to testify.  
(*Silva v. Brown* (9th Cir. 2005) 416 F.3d 980.)

9. *Evidence of Racial, Religious, or Personal Bias:*

- a) Evidence that a witness has a racial, religious or personal bias against the defendant individually or as a member of a group. (*In re Anthony P.* (1985) 167 Cal.App.3d 502, 507-510.)

10. *Evidence of a Bias, Interest or Other Motive:*

- a) A defendant is entitled to explore whether a prosecution witness has been expressly or impliedly offered any monetary or other inducement to testify, or subjectively expects any benefits for their testimony, as such evidence is suggestive of bias.  
(Evid. Code, § 780, subd. (f); *People v. Brown* (2003) 31 Cal.4th 518, 544; *Banks v. Dretke* (2004) 540 U.S. 668; *U.S. v. Bagley* (1972) 473 U.S. 667,676; *People v. Morris* (1988) 46 Cal.3d 1, 30; *People v. Phillips* (1985) 41 Cal.3d 29, 46.)
- b) This includes evidence that the prosecution team member:



1. *Has Pending Criminal Charges;*

- *People v. Coyer* (1983) 142 Cal.App.3d 839, 842-844 [pendency of criminal charges anywhere in the state is material to a witness' motivation to testify even where there are no express promises of leniency or immunity].)
- *People v. Martinez* (2002) 103 Cal.App.4th 1071, 1080-1; *Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 379.

2. *Is on Parole or Probation;*

- *Davis v. Alaska* (1974) 415 U.S. 308, 319; *People v. Price* (1991) 1 Cal.4th 324, 486.

3. *Is the Subject of a Known Criminal Investigation;*

- A known active or ongoing criminal investigation (whether conducted internally by the employing agency or externally by an outside law enforcement agency) is potentially relevant to witness credibility because the witness may have a bias, interest or motive to testify in a certain manner or in favor of one party or the other.
- *U.S. v. Kohring* (9th Cir. 2011) 637 F.3d 895, 903 - 906 [Known ongoing criminal investigation of key government witness involving unrelated allegations of past misconduct materially impeached witness's credibility and provided possible motive to testify for government in instant case]

4. *Is the Subject of an Internal Investigation;*

- Materials from active or ongoing internal investigations may be favorable under *Brady* (*U.S. v. Olsen* (9th Cir. 2013) 704 F.3d 1172, 1181-1184, [State laboratory's ongoing internal investigation of forensic scientist was favorable to defendant]) and may impeach witness credibility by providing a bias, interest or motive on the part of the target witness to testify in a certain manner or in favor of one party or the other.

5. *Has an Immediate Family Member Who is a Target of A Criminal Investigation or Prosecution by The Same Agency;*

- If the prosecution team member has an immediate family member (i.e., spouse/child) who is presently being investigated by the same agency or prosecuted in Riverside County, that this creates a potential motive to embellish testimony favorably for the prosecution in order to garner potential leniency for that family member.) (*People v. Lankford* (11th Cir. 1992) 955 F.2d 1545, 1549; *People v. Price* (1991) 1 Cal.4th 324, 486.)

### III.

## OVERVIEW OF BRADY DETERMINATION, RECONSIDERATION AND DISCLOSURE PROCESS

#### A. Initial Evaluation:

1. Potential *Brady* information comes to the attention of the Riverside County District Attorney's Office in a variety of ways, including but not limited to, criminal filing submissions, media reports, court hearing testimony, transcripts, citizens, judicial officers, the defense bar, defendants, DDAs, law enforcement, outside agencies, prosecution team members, *Pitchess* motions or SDT in camera proceedings. When such information is received, it is routed to the Supervising Deputy District Attorney (SDDA) of the Writs & Appeals Unit for initial evaluation.
2. Upon learning of information that may be subject to defense disclosure under *Brady* that involves a law enforcement officer or law enforcement agency employee, the Supervising Deputy District Attorney (SDDA) of the Writs & Appeals Unit will create a confidential *Brady* intake. The SDDA assigns an appellate prosecutor to complete a confidential evaluation, which analyzes the known facts within the context of the law, creates arguments both for and against a *Brady* determination, offers a legal conclusion and provides any disclosure recommendations.
3. The *Brady* evaluation is then reviewed by the SDDA, who notifies the employing agency's designated contact that a confidential *Brady* evaluation is in process. The SDDA offers the agency the opportunity to provide any information the agency may lawfully provide for consideration by the District Attorney's Office.
4. The SDDA may seek confirmation and clarification of the officer or employees' status and effective dates from the agency's designated contact person. In order to evaluate potential prosecution team membership and constitutional materiality in pending or future criminal prosecutions, the employee status inquiry may involve clarification of the employees' availability for subpoena service, existing peace officer powers, relevant incident dates, whether the employee is the subject of a pending internal investigation involving a non-frivolous allegation of moral turpitude conduct, untruthfulness, bias or misconduct relating to the subject matter of the witness's prosecution team membership and/or testimony, whether the subject has been arrested or has criminal charges pending against them, and current duties/assignment and/or areas of expertise.
5. The SDDA will then complete the evaluation and forward it to the Assistant District Attorney (ADA) of the Administrative Division. The final determination whether *Brady* information exists will be made by the countywide Administrative ADA in consultation with the corresponding regional ADA in Riverside, Indio or Southwest.

6. The agency head or designee will be notified in writing by the Administrative ADA whenever a determination is made that *Brady* information exists. The letter will set forth the specific language of any *Brady* disclosure to be made and will provide any anticipated contingency disclosures or removals (i.e., should criminal charges be filed, should the subject be acquitted at trial, or should the subject successfully complete summary probation for a non-moral turpitude conviction) and the length of any intended disclosures. A copy of the agency notification letter will be sent to the subject officer or employee at the same address.
7. *Pitchess*/SDT Invitation Process: When potential *Brady* information is contained in the personnel files of a law enforcement officer or agency employee, the law enforcement agency will provide generic notification to the SDDA of Writs & Appeals that it believes potential *Brady* information may exist as of a certain date, without disclosing details or the specific nature of that information. The prosecution will invite the defense to run a *Pitchess* motion (law enforcement officer) or to file an SDT (agency employee) if it desires to seek additional information.

B. *Brady* Entry:

1. The approved *Brady* disclosure language is entered into the Riverside County District Attorney's Office case management system, DAMION. The Writs & Appeals Unit has sole rights to and responsibility for inputting, modifying or removing in DAMION the *Brady* disclosure language approved by the Countywide and Regional ADAs. The sole purpose of the entry in the case management system is to support the District Attorney's Office in meeting its *Brady* obligations. These records are exempt from disclosure in response to any California Public Records Act Request. (Govt. Code §§6254, subds. (a), (b), (c), (f), and (k); 6254.5, subd. (e) and 6255; *Fagan v. Superior Court* (2003) 111 Cal.App.4th 607, 615.)
2. It is the responsibility of each individual prosecutor to check the appropriate location in DAMION to ensure that a potential or subpoenaed witness or expert in their assigned case does not have disclosable *Brady* information associated with his or her testimony or involvement in each assigned criminal prosecution.

C. *Brady* Disclosure:

1. The inclusion of potential *Brady* disclosure language in the DAMION case management system does not necessarily mean the information or records leading to the *Brady* determination will be disclosed in a given case. The question of disclosure will be reviewed on a case by case basis by the assigned trial prosecutor and his or her SDDA, with advice from the Writs & Appeals Unit as needed, in light of the facts of the pending prosecution, the law enforcement employee's role within the investigation or prosecution, and controlling case authority.
2. For emergent *Brady* matters that arise during trial or in other criminal hearings, the Writs & Appeals Unit will provide triage legal advice to DDAs and SDDAs until a formal *Brady* evaluation can be completed.

D. Reconsideration of *Brady* Determination:

1. Any law enforcement officer or employee who is the subject of a current *Brady* disclosure may, at any time after the decision to disclose has been made, submit a written request to the SDDA of Writs & Appeals for reconsideration of the *Brady* determination based upon changed circumstances, new or additional information, or the passage of time. The SDDA will first confirm receipt of the *Reconsideration Request*, and will then initiate the same evaluation process as set forth above in III(A)(2)-(6).
2. The officer or employee may submit materials for reconsideration or request to meet with the District Attorney's Office (either individually or through a representative) during the reconsideration process. All written materials, documents and evidence the officer or employee submits shall be deemed relevant in the *Brady* reconsideration process.
3. The officer or employee may elect to waive their privacy rights and attendant confidentiality and statutory privileges (as identified by this Protocol on page 3), in order to allow the District Attorney's Office to conduct an independent review of his or her personnel records and files for purposes of reconsideration of a prior *Brady* determination. The individual officer or employee must execute a notarized waiver of rights acceptable to both the District Attorney's Office and the employing agency. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1046, fn.7; *Becerrada v. Superior Court* (2005) 131 Cal.App.4th 409, 414-6; Govt. Code §3306.5; *Armenta v. Superior Court* (2002) 101 Cal.App.4th 525, 533.)
4. The officer or employee shall be notified of the re-consideration findings and decision by the District Attorney's Office.
5. If the re-consideration results in the reversal of the initial *Brady* determination, the Administrative ADA shall immediately send written notification to the agency head and/or designee with a cc to the subject officer or employee at the same address, and the *Brady* disclosure language shall immediately be removed from the District Attorney's case management system.
6. The officer or employee shall be advised that any submitted items, including statements made, may be deemed discoverable pursuant to *Brady* and Penal Code section 1054 et. seq. However, no communication from the witness's attorney will be deemed discoverable, except that evidence submitted to the District Attorney's Office for *Brady* review by an attorney may be discoverable under *Brady* or Penal Code section 1054 et seq. Additionally, the District Attorney may investigate any information obtained from an attorney communication, and fruits of that investigation may also be discoverable.

E. *Brady* Training:

1. The Writs & Appeals unit shall serve as a countywide training resource for law enforcement agencies on *Brady* disclosure obligations. Upon request, the District Attorney's Office will conduct training for law enforcement agencies in Riverside County pertaining to *Brady* obligations and the procedures adopted in this Protocol.

## IV. LAW ENFORCEMENT AGENCY RESPONSIBILITIES

### A. Definitions

1. For purposes of this Protocol, a "*law enforcement officer*" includes sworn peace officers and custodial/correctional officers.
2. For purposes of this Protocol, a law enforcement agency "*employee*" includes Community Service Officers, evidence technicians, criminologists, dispatchers, 911 operators, and other civilian employees whose job duties include handling evidence, documenting incidents in criminal cases or which are likely to expose them to prosecution team membership and/or testimony.
3. For purposes of this Protocol, "*Brady material in the personnel files*" of law enforcement agency employees is defined to include:
  - a) Any sustained finding of misconduct evincing moral turpitude, or involving dishonesty or bias of the witness or involving misconduct related to the subject matter of the witness's regular prosecution team involvement and/or testimony. (*People v. Jordan* (2003) 108 Cal.App.4th 349, 362.)
  - b) A complaint is considered sustained for purposes of this policy when it has been approved by the agency head after a hearing pursuant to *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, if applicable, or when the discipline has been imposed, whichever occurs first.
  - c) If a sustained complaint is later overturned by a reviewing body or court based on lack of evidence of misconduct, the incident will not be considered *Brady* material. If only the degree of discipline imposed is reduced but the complaint is sustained, it will be considered *Brady* material.
4. For purposes of this Protocol, a "*Pending Complaint*" is defined to include:
  - a) complaints against a law enforcement agency employee received by the agency through official channels from a citizen or public source, or from an outside law enforcement or internal agency source, that may be subject to subsequent administrative or criminal investigation, either internally by the employing agency or externally by an outside law enforcement agency, pursuant to established agency policy.
5. For purposes of this Protocol, a "*frivolous complaint*" is defined as:
  - a) a complaint that is totally and completely without merit or for the sole purpose of harassment as defined in Code of Civil Procedure section 128.5.

6. For purposes of this Protocol, an “*Active Internal Investigation*” is defined to include:
  - a) any initiated or ongoing internal investigation of a law enforcement agency employee by the employing agency, pursuant to established agency policy.
7. For purposes of this Protocol, “*Pending Complaints*” and “*Active Internal Investigations*” are limited to those complaints and internal investigations which:
  - a) involve non-frivolous allegations ( as determined by the employing agency); and
  - b) are not based merely on rumor, speculation, unverifiable hearsay or a simple and irresolvable conflict in testimony about an event; and
  - c) raise potentially credible allegations of dishonesty, or bias, or moral turpitude or misconduct relating to the subject matter of the witness’s prosecution team involvement and/or testimony; and
  - d) are such that if the underlying allegations are ultimately sustained, they:
    - 1) may constitute evidence favorable to a defendant because it is either exculpatory or impeaching; and
    - 2) may be deemed to reasonably undermine confidence in the outcome of a later court proceeding or trial in which the law enforcement employee was a material prosecution team member or witness.

B. Pitchess/SDT Materials:

- a) To ensure the legitimacy of the *Pitchess/SDT* Invitation Procedure utilized by the District Attorney’s Office when potential *Brady* material is in a law enforcement officers’ or agency employee’s personnel file:
  1. The agency will ensure that materials contained in a law enforcement officer’s general “personnel file” as well as relevant materials detailing pending complaints and active internal investigations will be made available for judicial inspection upon the filing of a properly supported *Pitchess* motion. (See Evid. Code §1045; Pen.Code §832.5, subds.(b) and (c); *City of Los Angeles v. Superior Court (Brandon)*(2002) 29 Cal.4th 1, 13 [“when the proper showing is made, citizen complaints are discoverable even if the investigation of those complaints is still incomplete.”]; *CHP v. Superior Court (Luna)* (2000) 84 Cal.App.4th 1010, 1023-1025; *People v. Gutierrez* (2003) 112 Cal.App.4th 1463, 1473-75.); and
  2. The agency will ensure that materials contained in a nonsworn employees’ personnel file, including materials detailing pending complaints and active internal investigations as defined in this Protocol, will be made available for judicial inspection upon the filing of a properly articulated subpoena duces tecum. (Pen. Code §§1326, 1327; Evid. Code §§1560, 1561, 1564.)



C. Notification to District Attorney's Office of Known Potential *Brady* Information:

1. When the agency learns of the existence of potential exculpatory evidence relating to the case or potential impeachment information as to a particular law enforcement employee or prosecution witness, the designated agency representative shall within 7-days contact the Supervising Deputy District Attorney (SDDA) of the Writs & Appeals Unit by telephone or via email with "CONFIDENTIAL BRADY" noted in the subject line. As to law enforcement officers, this will include any impeachment evidence contained in the DOJ criminal history database.
2. If the known potential *Brady* material is in the personnel records of a sworn or non-sworn employee, the agency shall not disclose the content of the potential *Brady* material contained therein, nor will any actual materials from the personnel file be provided to the District Attorney's Office. Examples of appropriate notification in this instance would include:
  - i. Personnel File Review: *On (Date), an internal review of (Officer/Deputy's) personnel file was conducted and the (Agency) believes it contains potential Brady material as of (Date).*
  - ii. Administrative leave: *On (Date), (Officer/Deputy/Employee) was placed on paid administrative leave pending a criminal and internal affairs investigation involving potential moral turpitude misconduct.*
  - iii. Return to duty: *On (Date), (Officer/Deputy) was removed from administrative leave status and returned to full duty status.*
3. If the law enforcement agency has potential *Brady* exculpatory or impeachment evidence pertaining to an officer or employee that is known outside of the personnel file, that agency should within 7-days provide to the SDDA of the Writs & Appeals Unit the employee's name and the impeachment evidence known outside of the personnel file.
4. The agency's notification duties are on-going as new or additional potential *Brady* information is learned by the agency, and includes alerting the District Attorney's Office to known changes in the subject employee's status which may modify, create or rescind existing *Brady* disclosures.
  - a) Such updates shall include but are not limited to: the reversal of a sustained complaint by a reviewing body or court, placement on administrative leave pending an internal or criminal investigation for reasons involving potential *Brady* evidence (truthfulness, bias, moral turpitude misconduct or misconduct relating to the subject matter of the witness's prosecution team membership and/or testimony), return to full duty, early termination of active criminal probationary periods, resignation, termination, reinstatement, or transfer to another agency.

5. If a law enforcement agency has notified the District Attorney's Office of potential *Brady* information and the sustained complaint is later overturned by a reviewing body or court, the affected employee or agency should provide to the District Attorney's Office a copy of the decision on appeal so that the District Attorney's Office may reevaluate the propriety or content of any existing disclosure.

D. Internal Search for Potential *Brady* Material Upon Request of District Attorney:

1. The District Attorney's Office may receive credible information and/or reports of potential *Brady* material involving the agency's law enforcement officer or employee from outside sources. The District Attorney's Office may then send an email inquiry to the designated agency contact inquiring whether the agency has knowledge of any potential *Brady* material associated with the subject.
2. This will trigger an agency's internal *Brady* review of an employee's personnel file. The agency in response shall not disclose the content of any potential *Brady* material contained in a law enforcement officer or employees' personnel file, nor will any actual materials from the personnel file be provided to the District Attorney's Office.

- a) Example of law enforcement agency's email response to an outside agency inquiry:

*Pursuant to your email inquiry, the (Agency) has completed a review of (Officer/Deputy/Employee) personnel file. Upon review of the file, we believe that there (is/is no) potential Brady material contained therein as of (date). In general, Penal Code section 832.7 prohibits an employer from disclosing the content of a peace officer's personnel file. Should you require further information contained within the personnel file, you may seek a court order pursuant to section 1043 of the California Evidence Code, or in this case, seek a request pursuant to Penal Code section 832.7.*

- b) The law enforcement agency shall provide the same written notification of its findings to the involved officer or employee.
3. Should the law enforcement agency learn of potential *Brady* exculpatory or impeachment evidence pertaining to that officer or employee that is known outside of the personnel file, that agency should within 7-days provide to the SDDA of the Writs & Appeals Unit the employee's name and the impeachment evidence known outside of the personnel file.
  - a) The law enforcement agency shall provide the same written notification of its findings to the involved officer or employee, or his or her legal representative, unless such notification will compromise an ongoing criminal investigation.



## V. DISTRICT ATTORNEY RESPONSIBILITIES

### A. *Brady* Determination Standard:

The *Brady* determination shall be guided by whether the information is potentially credible, of solid value and reasonable in nature, such that it may be deemed to constitute evidence favorable to a defendant either because it is impeaching or exculpatory and material to guilt or punishment. The standard for materiality is that there exists a reasonable probability that, if the evidence were disclosed to the defense, the result of the proceeding would be different. (*Strickler v. Greene* (1999) 527 U.S. 263, 289; *Kyles v. Whitley* (1995) 514 U.S. 419, 434-435; *In re Sassuonian* (1995) 9 Cal.4th 535, 543-544, fn. 5.) Evidence which is not based on mere rumor, unverifiable hearsay or a simple irresolvable conflict in testimony, that might reasonably be deemed to undermine confidence in the outcome of a later court proceeding or trial in which the law enforcement officer or employee was a material prosecution team member or witness will be deemed *Brady* material. Rumors or allegations that cannot be substantiated, or do not evince a pattern of potential incompetence or misconduct, or are not credible, or are deemed unfounded, will not be deemed *Brady* material.

### B. Pitchess Invitation Procedure For Potential *Brady* Material in Personnel Records<sup>1</sup>:

1. When in response to a subpoena for the law enforcement employee, or a formal request for an agency review by the District Attorney's Office, or as the result of a sustained complaint or an active or ongoing internal or criminal investigation, a law enforcement agency provides generic notification to the Supervising District Attorney (SDDA) of the Writs & Appeals Unit that potential *Brady* material exists:
  - a) In the Personnel Files of a Law Enforcement Officer, the SDDA will:
    - i) Initiate a *Brady* evaluation as set forth in Section III(A) above, and
    - ii) Create a *Brady* entry in the DAMION case management system advising that potential *Brady* material may exist and inviting the defense to run a *Pitchess* motion should they wish to seek additional information; and
    - iii) Notify the employing agency head or designee in writing whenever a determination is made that *Brady* information exists setting forth the specific language of any *Brady* disclosure to be made. A copy of the agency notification letter will be sent to the subject officer or employee at the same address.

---

<sup>1</sup> The District Attorney's Office may continue to use its authority under Penal Code section 832.7(a), to inspect personnel records when the peace officer is a suspect in a criminal investigation and not merely a witness in a criminal case.

- iv) When that officer is a member of the prosecution team in a future criminal prosecution, the prosecutor will check DAMION for a *Brady* entry in order to evaluate our *Brady* disclosure duties pursuant to III(B)(2) above.
- b) In the Personnel Files of a Law Enforcement Agency Employee, the SDDA will:
- i) Initiate a *Brady* evaluation as set forth in Section III(A) above, and
  - ii) Create a *Brady* entry in the DAMION case management system advising that potential *Brady* material may exist and invite the defense to issue a subpoena decus tecum (SDT) for the records should they wish to seek additional information. The Court will make the determination as to release of any records pursuant to the in camera review procedures applicable to SDTs.
  - ii) When that non-sworn employee is a member of the prosecution team in a future criminal prosecution, the prosecutor will check DAMION for a *Brady* entry in order to evaluate our *Brady* disclosure duties pursuant to III(B)(2) above.

C. Potential *Brady* Material From Outside of Personnel Records:

1. When the District Attorney's Office learns of potential *Brady* exculpatory or impeachment evidence pertaining to a law enforcement officer or agency employee based on sources other than personnel records, the SDDA:
  - a) Will initiate a *Brady* evaluation as set forth in Section III(A) above, and
  - b) May coordinate follow up investigation as needed; and
  - c) May contact the employing agency's designated *Brady* contact to verify the employee's identification (by name, badge number or other available identifying information), current employment status, assignment, and any areas of expertise or multijurisdictional task force involvement that may subject the employee to past or future Riverside County prosecution team membership for consideration in the *Brady* evaluation process, or
  - d) May send an email inquiry to the employing agency's designated *Brady* contact inquiring whether the agency has knowledge of any potential *Brady* material associated with the subject so as to trigger an agency review of the law enforcement officer or agency employees' personnel file; and
  - e) Will send written notification of the intended defense disclosure to the employing agency head or designee, with a cc to the subject officer or employee at the same address, whenever a determination is made that *Brady* information exists, unless such notification would interfere with an active or ongoing criminal investigation.

D. Pitchess/SDT Court Ordered Disclosures:

1. If following an in-camera review (pursuant to a defense initiated *Pitchess* motion or a defense SDT), the court orders disclosure of documents or information under *Pitchess* and/or *Brady*:
  - a) Disclosure is made only to the defendant's attorney of record (or to defendant if not represented by counsel) pursuant to the *Pitchess* and SDT processes. (Evid. Code §§1043, 1045; *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1046; Pen. Code §§1326, 1327; Evid. Code §§1560, 1561, 1564.)
  - b) Disclosure does not mean the information will necessarily be admissible in a subsequent hearing or trial.
  - c) Actual knowledge of potential *Brady* information will allow the prosecutor to assert viable objections to the admissibility of the purported favorable evidence under Evidence Code section 352 and/or avoid unnecessary disclosures of impeachment evidence.
  - d) The prosecutor may ask the agency and the involved officer, or employee, to personally waive their privacy rights and attendant confidentiality and statutory privileges in order to allow the District Attorney's Office to receive the same information and/or documents released to the defense.
    - *Becerrada v. Superior Court* (2005) 131 Cal.App.4th 409, 415, fn. 4 [officer may disclose information in his or her *Pitchess* file voluntarily to the prosecutor]; *Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1046, fn.7 [prosecution has ability to interview the officer concerning any possible impeachment material]; *Abatti v. Superior Court* (2003) 112 Cal.App.4th 39, 57 [privilege against disclosure of peace officer personnel records held by both the officer and the employing agency]; Govt. Code §3306.5; *Armenta v. Superior Court* (2002) 101 Cal.App.4th 525, 533.) The prosecutor has a *Brady* duty to disclose material, favorable evidence which he or she actually or constructively possesses. (*Giglio v. U.S.* (1972) 405 U.S. 150, 154; *People v. Kasim* (1997) 56 Cal.App.4th 1360.)
2. If, following an in-camera review pursuant to a defense initiated *Pitchess* motion, the court orders disclosure under *Pitchess* and/or *Brady* with a protective order:
  - a) The prosecutor may run a People's *Pitchess/Brady* motion in the instant case; or
  - b) The prosecutor may ask the agency and involved officer to waive applicable privileges and rights to allow disclosure to be made to those members of the District Attorney's Office as needed for the handling of the instant case.

- c) The District Attorney's office will not maintain a depository of the *Brady* information obtained from law enforcement personnel files pursuant to an in camera hearing under the *Pitchess* process, which is subject to a protective order:
  1. Instead, an entry will be made in the DAMION case management system noting the law enforcement officer's name and the case number in which *Brady* information was disclosed.
  2. Either the defense will be advised that potential *Brady* information exists and be invited to run a *Pitchess/Brady* motion, or a People's *Brady/Pitchess* motion will be made in each future case where the law enforcement officer is a material prosecution witness.
  3. Alternatively, the officer and agency may execute a waiver to allow the District Attorney's Office to conduct an independent review of the material in the personnel records and files for purposes of making a *Brady* determination for future disclosures in other prosecutions.

## VI. Training and Compliance

1. All Riverside County law enforcement agencies are strongly encouraged to provide training to their employees regarding this Protocol and to develop additional internal guidelines to ensure *Brady* compliance.
2. Each law enforcement agency shall designate a point of contact for *Brady* issues and for correspondence with the Supervisor of the Writs & Appeals Unit.
3. Because this Protocol relies on law enforcement agencies and non-attorney prosecution team members to assist in fulfilling the prosecutor's affirmative duty to seek out impeachment material subject to the *Brady* rule, it is essential that the responsibility be carried out by a qualified and well-trained representative of the law enforcement agency.
4. Upon request, the Riverside County District Attorney's Office will conduct training for Riverside County law enforcement agencies pertaining to our prosecution team *Brady* obligations and the procedures adopted in this Protocol.
5. It is anticipated that changes in this Protocol will be necessary as developments occur in the case law interpreting *Brady*. Also, our experiences with the Protocol may lead to the need to make modifications. Prosecutors, law enforcement agencies and peace officer associations will be consulted and kept apprised of any changes that are made.

*The following policy was approved by the District Attorney on April 30, 2019 and replaces all previous Policies and Guidelines*

## **JUVENILE CRIME CHARGING: PETITIONS AND MOTIONS FOR TRANSFER**

### **I. General Standards: Juvenile Petitions**

The Juvenile Unit follows the overall charging policies of the District Attorney's Office and the Uniform Crime Charging Manual except where they are inapplicable or inconsistent with the Welfare and Institutions Code. The denomination of an offense as a felony or misdemeanor in a juvenile petition has a different purpose and consequence than in adult criminal proceedings. The nature of the offense affects only the juvenile court during the continuing wardship of the minor and does not affect the type of custody.

All subsequent criminal offenses of a ward are filed in a continuing manner under subsequent W&IC 602 petitions. There is no need to plead, prove or negotiate priors. Aggregation of periods of physical confinement on multiple counts or multiple petitions, including previously sustained petitions, for purposes of "maximum periods of imprisonment" follows PC 1170.1(a).

Adult law as to joinder of offenses in complaints does not apply to juvenile petitions or trials.

### **II. Specific Standards: Juvenile Petitions**

If the minor has not previously been involved in delinquent activity, and the offense does not involve aggravating circumstances, the matter may be referred to the appropriate Youth Accountability Team or back to the juvenile probation department for discretionary handling. Public safety, as well as the best interests of the minor, should be considered in making charging decisions.

### **III. Motions for Transfer: W&IC Section 707**

Pursuant to Section 707(a)(1) of the Welfare and Institutions Code, the District Attorney may make a motion to have a minor transferred from the juvenile court to a court of criminal jurisdiction under the following circumstances:

- a. Minor 16 years of age or older is alleged to have committed a violation listed in 707(b) or any other felony criminal statute;
- b. Minor 14 or 15 years of age or older is alleged to have committed one or more of the serious or violent offenses enumerated in W&IC Section 707(b) but is not apprehended before the termination of juvenile court jurisdiction.

[REDACTED] Due consideration must be given to the gravity and severity of the crime, the minor's history of criminal conduct, the likelihood of conviction by jury trial, the probable sentence, and which court system will best enable the protection of public safety.

---

*The following policy was approved by the District Attorney on January 11, 2021 and replaces all previous Policies and Guidelines.*

**PAROLE HEARING POLICY**

**II. THE PAROLE LETTER:** The DDA assigned to write the letter to the Board of Parole Hearings (BPH) shall draft a letter containing the following topics, if applicable:

- A summary of the commitment offense.
- A summary of the inmate's criminal history.
- A summary of the inmate's substance abuse history.
- A summary of the inmate's institutional conduct, including serious rule violations and programming.
- A summary of the most current Comprehensive Risk Assessment (CRA), and any other relevant forensic psychological evaluations.
- Concluding statement.


**III. THE PAROLE HEARING:** BPH conducts parole suitability hearings to determine whether an inmate is suitable for parole. The question to be answered is whether the inmate *"poses a current unreasonable risk of danger to society if released from prison."*<sup>1</sup> If the panel of commissioners at the hearing conclude such is the case, the inmate will be denied parole. If the inmate does not *"pose a current unreasonable risk of danger to society if released from prison,"* then the inmate will be "found suitable for parole," and a grant of parole will issue.

- A. The Panel considers all relevant and reliable information to determine if the inmate is suitable for release. Factors the Panel may consider are enumerated in California Code of Regulations, title 15, sections 2281, 2402, 2422, 2432 and 2466.
- B. The DDA assigned to a parole hearing shall attend via digital conference (video or audio), phone, or in person.

---

<sup>1</sup> Cal. Code Regs., title 15, division 2, chapter 3: section 2281- Lifer Prisoners; section 2042 - Murders Committed on or After November 8, 1978, and Specified Attempted Murders; section 2422 - Habitual Offenders Sentenced to Life Terms Under Penal Code Section 667.7; section 2432 - Sex Offenders Sentenced to Life Terms Under Penal Code Section 667.51; and, section 2446 – Youth Offender Factors.



- IV. HEARING PREPARATION:** In preparation for writing the parole letter and/or attending the parole hearing, the assigned DDA must be familiar with the materials provided by BPH contained in a digital file: "*Master File*."
- 


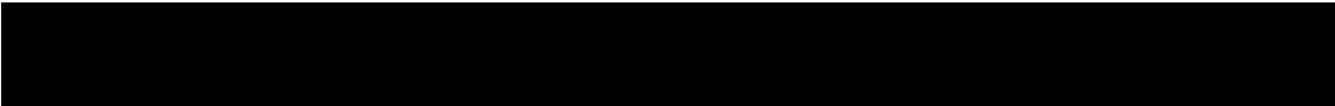
**A. The *Master File* provided by BPH:**

1. Comprehensive Risk Assessment (CRA) for an overall view of the inmate's background, criminal history, mental status, institutional programming and parole plans.
2. The Appellate Opinion and other related court documents.
3. The inmate's history of institutional conduct including serious rule violations (serious or administrative). BPH refers to rule violations as Rule Violation Reports (RVRs). In previous years, serious rule violations were referred to as "115s", and administrative violations were referred to as "128As".
4. Transcripts from any prior parole hearings.
5. The "10-day packet" which BPH provides approximately 10 days before the hearing will include information that was submitted in the previous couple of weeks before the hearing date.

**B. The probation officer's report and related police reports.**

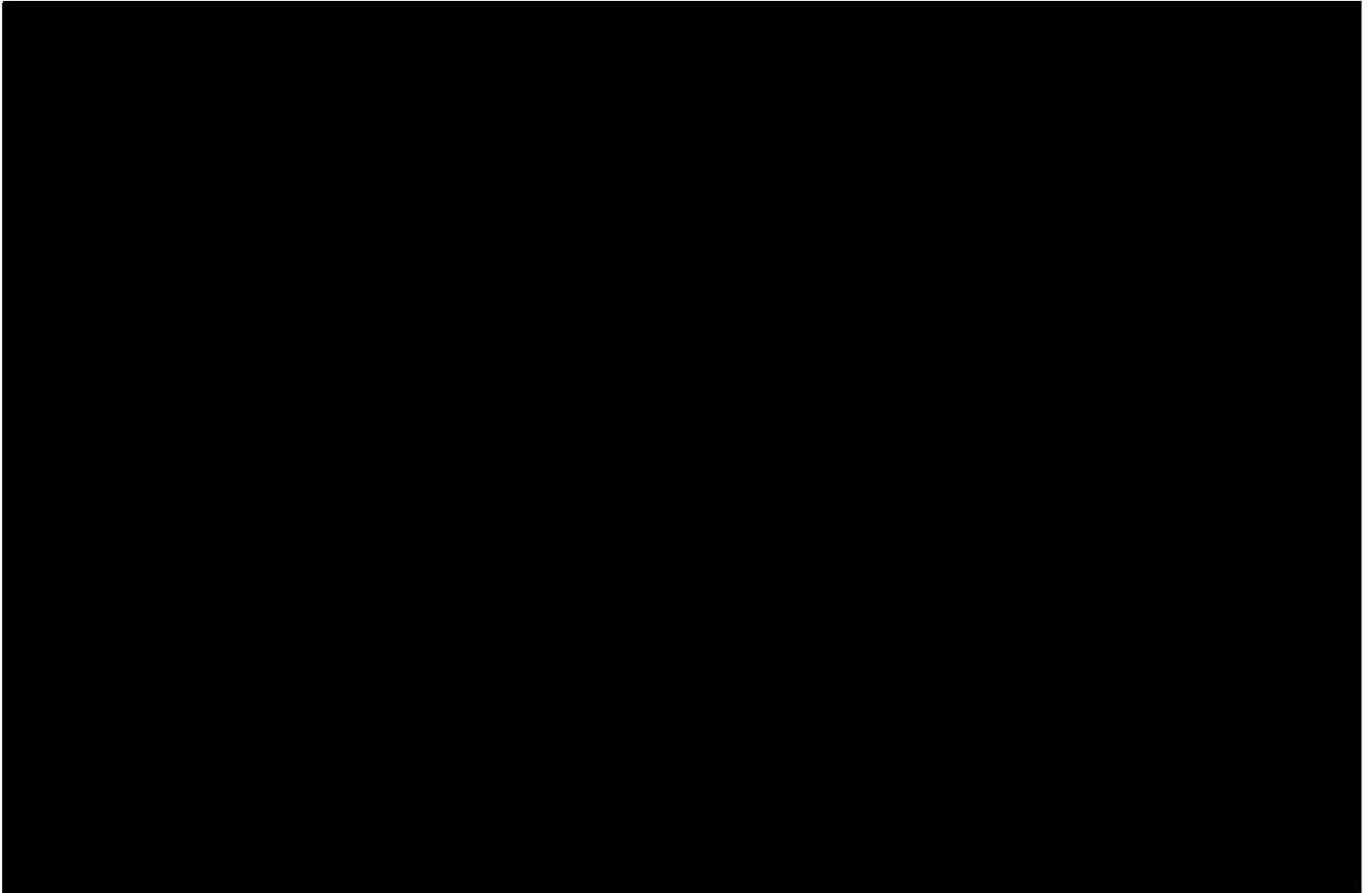
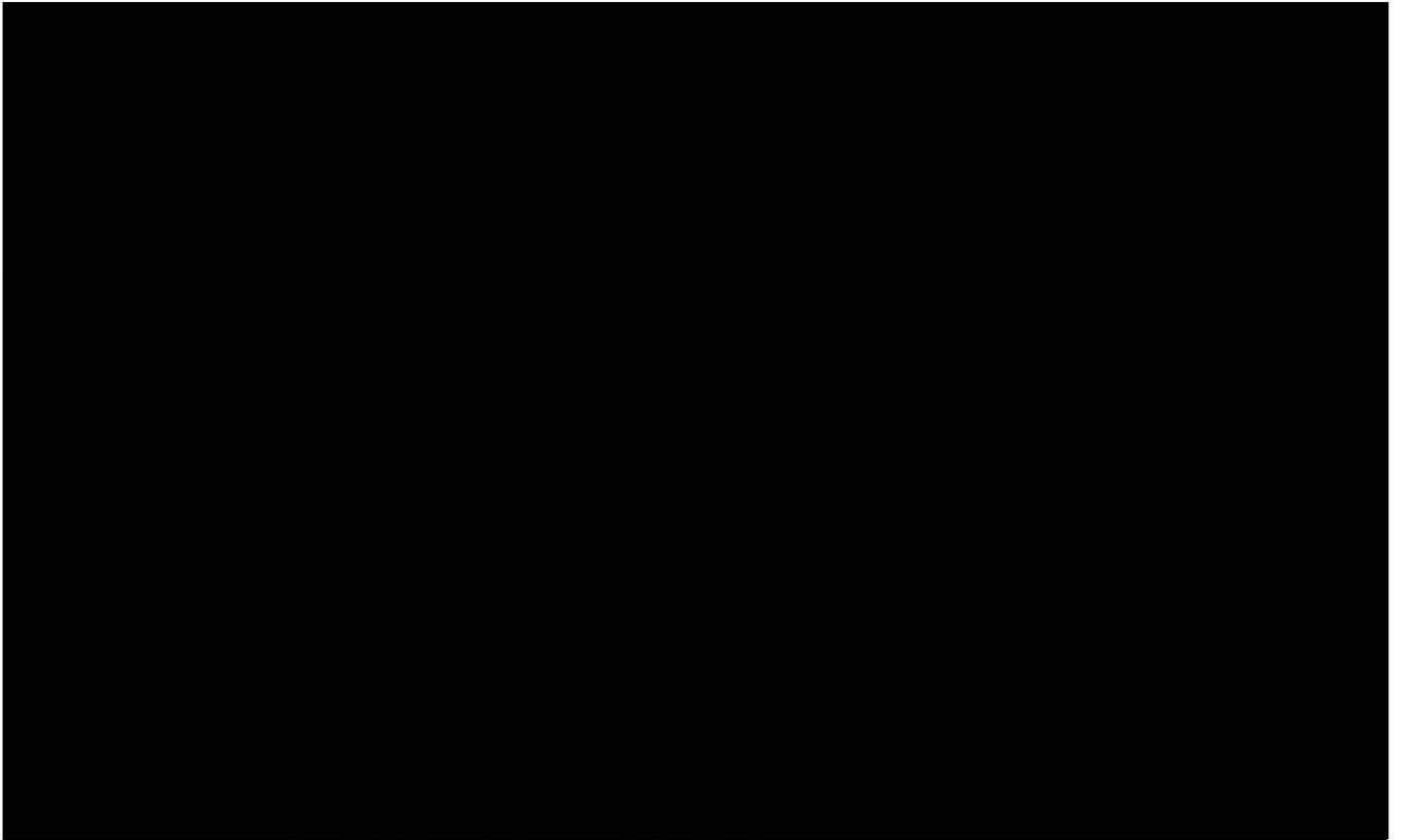
**C. Written statements provided by the surviving victim, or Victims-Next-of-Kin (VNOK).**



- V. **ARGUMENT:** The DDA's argument is based upon applicable factors that tend to show the inmate's suitability and unsuitability for parole. Mitigating factors will favor suitability and aggravating factors will favor unsuitability. The source of the information for the arguments may be the CRA, the inmate's testimony during the parole hearing, the inmate's answers to clarifying questions, inconsistencies in the inmate's statements and versions of the crime as viewed in transcripts from past hearings, the police reports, and the probation officer's report.
- 
- 

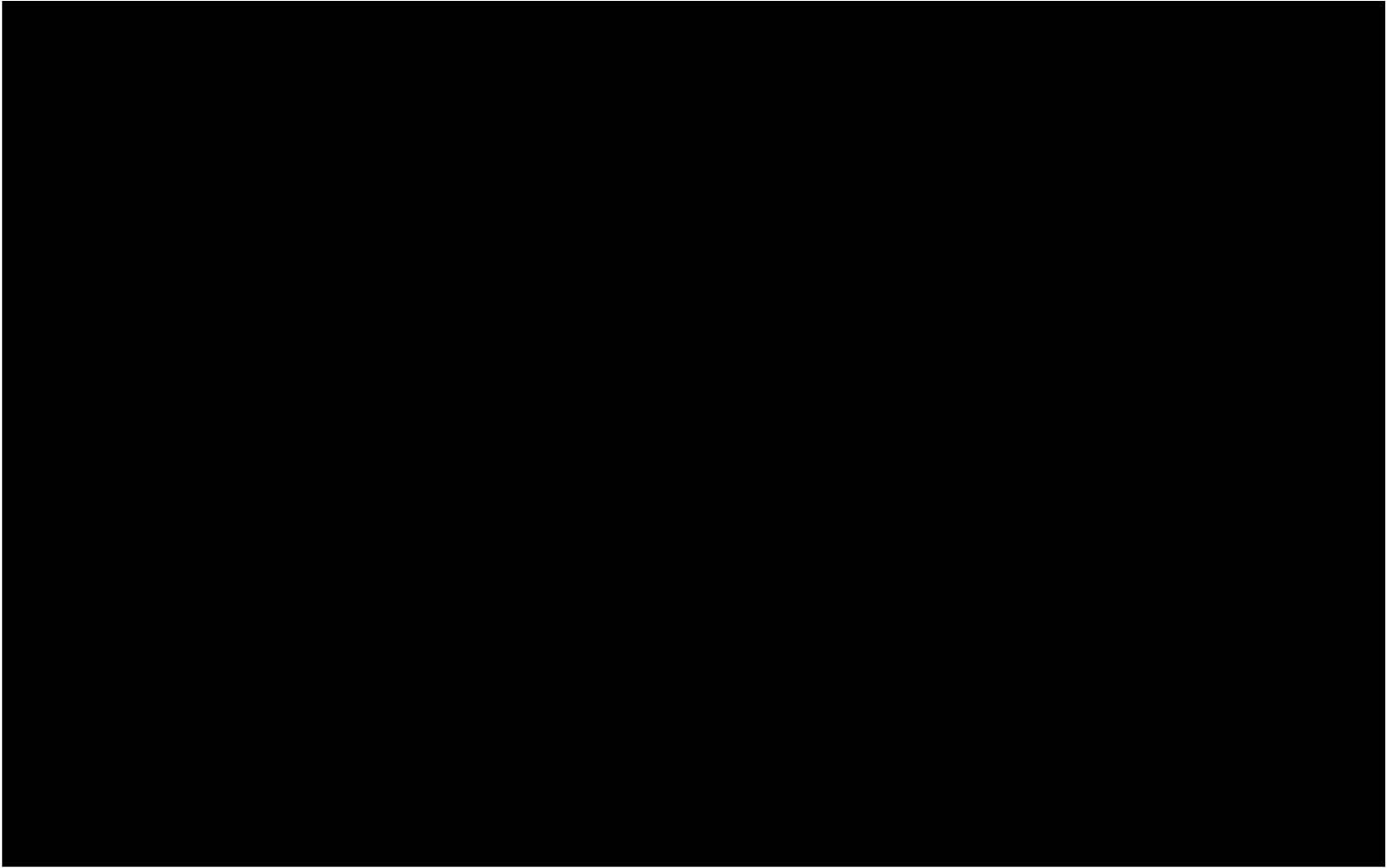
## CASE RELATED POLICIES

---



## CASE RELATED POLICIES

---



---

*The following policy was approved by the District Attorney on June 25, 2021 and replaces all previous Policies and Protocols*

**APPELLATE AND STATE BAR RELATED POLICIES**

- I. Reversals Due to Incompetency of Counsel:** Whenever a conviction or judgment is reversed in whole or in part due to incompetency of defense counsel, such information must be reported to the State Bar by the court and that attorney, and can be reported to the State Bar by the District Attorney. (See Bus. & Prof. Code, §§ 6068, subd. (o)(7), 6086.7, subd. (a)(2).) [REDACTED]
- II. Reversals due to Prosecutorial Misconduct:** Whenever a conviction or judgment is reversed in whole or in part due to prosecutorial misconduct, the offending DDA is required to report the incident to the State Bar. (See Bus. & Prof. Code, § 6068, subd. (o)(7).) [REDACTED]
- III. Judicial Sanctions Against a Prosecutor:** Whenever judicial sanctions are imposed against a DDA (other than sanctions for failure to make discovery or monetary sanctions of less than \$1,000), the DDA must report such judicial sanctions to the State Bar. (See Bus. & Prof. Code, § 6068, subd. (o)(3).) [REDACTED]
- IV. State Bar Inquiries or Requests for Information:** DDAs will occasionally receive inquiries from the State Bar regarding actions or inactions in specific matters handled while employed at the District Attorney's Office. The prosecutor shall cooperate and participate in any such investigation but is not required to waive constitutional or statutory privileges in doing so. (See Bus. & Prof. Code, §§ 6068, subd. (i), 6079.4.) [REDACTED]

## GENERAL OFFICE POLICIES

---

