

Tarrant County Criminal District Attorney's Office Law Enforcement Disclosure Compliance

The United States Supreme Court has long held that evidence that could potentially assist in the defense of an individual accused of a crime *must* be disclosed to the defense. Failure to disclose can result in the reversal of a conviction and, for extreme violations of the rule, prosecution of violators. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

The duty to disclose rests primarily with prosecuting attorneys but information known to law enforcement agencies – even if never disclosed by those agencies to the prosecution -- is still imputed to the prosecution. Timely disclosure of exculpatory, impeachment and mitigating information is also required under the “Michael Morton Act”, TEX. CODE CRIM. PROC. art. 39.14(h). Article 39.14 contains no materiality provision for disclosing exculpatory or impeachment evidence.

The goal of the Criminal District Attorney is to exercise due diligence in light of our responsibility under the Brady doctrine and Article 39.14 and ensure that all defendants receive a fair trial. Therefore, it is a critical inquiry whether an officer's conduct, personnel history or information from a personnel file might constitute exculpatory, impeachment or mitigating information in a particular criminal case.

We confidently rely on the professional policing practices of our partners in law enforcement in notifying us about any conduct of officers which meets our legal obligations.

This procedure applies to “officers,” herein defined as peace officers, jailers, and civilian employees acting in a law enforcement capacity and employed by county or city law enforcement or the Tarrant County Criminal District Attorney's Office (CDA), as well as arson investigators employed by county or city fire agencies within Tarrant County.

Law Enforcement Agency Obligation to Notify

Each respective Law Enforcement Agency (“Agency”) should determine whether there are any such instances listed below about which the Tarrant County Criminal District Attorney's Office (“CDA”) should be made aware. In that regard, the Agency should examine current and future officers' personnel files and current and future officers' conduct and notify the CDA as soon as possible when:

- 1) an officer has a pending criminal complaint or indictment or is the subject of an ongoing criminal investigation for any crime other than a Class C misdemeanor traffic violation;
- 2) an officer has a disposed felony or misdemeanor, other than a Class C misdemeanor traffic violation, committed at any time that resulted in a final conviction, probation, deferred adjudication, or pretrial diversion;
- 3) an officer has a pending formal investigation, sustained finding, or conclusion by the Agency for any of the following:

- a. misrepresentation or failure to disclose a material fact on the officer's application;
 - b. untruthfulness or deception regarding facts in a report, statement, hearing, or official proceeding;
 - c. violation of an individual's constitutional rights;
 - d. bias or prejudice to an individual, class, or group of persons;
 - e. improper use of force against an individual; or
 - f. altering, tampering, concealing, or use of evidence with the exception of legitimate manipulation in the normal scope of law enforcement business;
- 4) an employee resigns, receives a demotion, or disciplinary action when an investigation is imminent or pending involving any matter listed in subsection 1,2, 3 (a) – (f) above or in relation to 5 below;
 - 5) the Agency has information related to an expert witness's performance deficiencies that affect the integrity of the expert's conclusion or opinions.

Compliance Procedure

Agency Process

- Furnish to the CDA discovery compliance attorney the officer's name, TCOLE number, badge number and a brief description of the finding and relevant related information.
- Notify whether the disclosure is classified as a "pending formal investigation" or "sustained finding." Pending formal investigation or sustained finding is defined in a manner consistent with the agency's individual rules and procedures.
- Update the CDA of any changes to classifications or if removal from the database is warranted after the completion of the investigation.
- Contact the CDA if in doubt about whether the conduct requires disclosure.

Criminal District Attorney Process

- Rely on the due process provided by the Agency through disciplinary proceedings and will not re-litigate findings.
- Categorize the disclosure as either "Pending" or "Final" as relayed by the Agency and notify the Agency of inclusion in the database. The Pending category will contain information submitted about pending formal investigations. If Pending allegations are sustained, the inclusion will be re-categorized as Final. If the allegations are not sustained, the case will be removed from the database.

- Update agencies regarding any reclassification or removals.
- Classify any allegations that, if sustained would lead to a “Final” classification, but in which the officer resigns before the investigating body makes formal findings as “Final” and maintain this information in the database unless and until good cause is shown for its removal.
- Notify the Agency of information independently discovered by the CDA, which may warrant inclusion in the database. If a prosecutor initiates a claim of untruthfulness from conduct occurring during judicial proceedings, the individual prosecutor must also immediately report such incident to the prosecutor’s supervisor for the investigation and initiation of a charge of perjury against the officer.
- Each ACDA shall check the database and notify opposing counsel of inclusions. “Pending” notices should be made to the defense but not filed in the records of the court unless done under seal or with the appropriate requests to the trial court for inspection and orders.
- Disclosure information will be used to meet the State’s obligation under the law with respect to cases that we prosecute.
- Sponsorship of an officer in the database will be made on a case by case basis.
- Disclosure does not equal admissibility and, when appropriate, the CDA will object to the admissibility of the disclosed evidence through written motions and argument.
- Disclose upon employee written request his or her own inclusion in the database for any “Final” disclosure.
- Disclose a person’s inclusion in the database to a potential employer agency with an executed waiver by applicant to the Agency.