

## **Interdepartmental Agreement**

### **I. POLICY**

The United States Supreme Court held in *Brady v. Maryland*, 373 U.S. 83(1963), that the prosecution has an affirmative duty to disclose to the defendant evidence, including evidence that may be used to impeach officers and other witnesses, discovered during the investigation which is both favorable and material to the guilt and/or punishment of the defendant. This duty is commonly called "the *Brady* Rule." Therefore, it is the policy of the Hays County Sheriff's Office, the San Marcos Police Department, the Kyle Police Department, the Buda Police Department, and the Texas State University Police Department (hereafter, "the Department") and the Hays County Criminal District Attorney's Office (hereafter, the HCDA) to comply with these rules and to train officers and employees in the legal aspects of the *Brady* Rule.

### **II. PURPOSE**

The purpose of this agreement is to establish recommended training, documentation, and processes for releasing *Brady* material related to criminal and/or internal investigations; establish processes for releasing potentially exculpatory information contained within confidential peace officer personnel files; establish requirements for compliance with *Brady* legal requirements, policies and protocols, and ensure an understanding between the Department and the HCDA as to what constitutes *Brady* material; when and how *Brady* material should be submitted; and when, how, and to whom *Brady* material will be revealed to third parties.

### **III. DEFINITIONS**

1. *Exculpatory evidence* - Any evidence or information that, if disclosed and used effectively by a criminal defendant, may make the difference between conviction and acquittal.
2. *Officer* - Any sworn officer commissioned by the Department.
3. *Brady Rule* - The *Brady* Rule, named for *Brady v. Maryland*, 373 U.S. 83 (1963), requires prosecutors to disclose materially exculpatory evidence in the government's possession to the defense.
4. *Brady material* - Evidence the prosecutor is required to disclose under the *Brady* Rule/evidence favorable to the accused--includes exculpatory evidence, evidence that would reduce a defendant's potential sentence, or evidence going to the credibility of a witness.
5. *In camera hearing/review* - Latin for "in chambers." A legal proceeding is *in camera* when a hearing is held before the judge in private chambers or when the public is excluded from the courtroom.
6. *Internal investigation* - an administrative, internal affairs, or other investigation conducted within the Department for the purpose of substantiating allegations against an officer of violations of the law, professional ethics, or Department policy which could, if true, result in sanctions including disciplinary action, criminal prosecution, or civil liability for the officer or the Department.

7. *Personnel file* - any file maintained by the Department containing information about the qualifications, performance, and conduct of officers in the employ of the Department, including files which contain letters, memoranda, or documents relating to:
  - a. commendations, congratulations, or honors bestowed on the officer by members of the public or by the Department for actions, duties, or activities that relate to the officer's official duties;
  - b. any misconduct by the officer if the letter, memorandum, or document is from the Department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
  - c. periodic evaluations of the officer by a supervisor.

Such files would include any files maintained pursuant to Texas Local Government Code, §143.089(a) or (g), or similar files maintained by the Department if the Department is not subject to Chapter 143 of the Texas Local Government Code.

#### **IV. OBLIGATIONS OF THE DEPARTMENT**

The Department will adopt policies requiring the following:

##### **A. RELEASE OF *BRADY* MATERIAL – Criminal Investigations**

1. Officers are to be required to complete written documentation of material information, including exculpatory evidence that might be used to impeach officers and other witnesses, discovered during an investigation.
2. The written documentation shall be made a part of the criminal investigation case file, including any electronic file with any scanned documents.
3. When there is no Department incident report, the written documentation of the information provided to a prosecutor shall include the name of the prosecutor and the date information was turned over to the prosecutor.
4. Officers are to be required to secure as evidence any recordings (audio and/or visual) made and considered to be material information, including exculpatory evidence that might be used to impeach officers and other witnesses, discovered during an investigation and to complete evidence processing to preserve and maintain custody of any recording(s).
5. Recordings must be preserved as evidence in a retrievable format.
6. The department incident report shall document the existence of the recording, the steps taken to preserve the recording as evidence, the entry of the recording into evidence, and a brief summary of the contents of the recording.

##### **B. RELEASE OF *BRADY* MATERIAL – Internal Investigations**

1. Personnel files, generally
  - a. Absent a specific investigation of an identified officer(s) or a specific investigation of the police department, or the consent of an involved officer, no confidential information from any officer's personnel file shall be released to the prosecuting attorney or Grand Jury without full compliance with the applicable state and federal law and court procedures.

- b. Should an officer's credibility or other issues related to an officer's personnel file arise in the context of an officer acting as a witness for the prosecution, access to that officer's personnel file by either the prosecuting attorney or the criminal defendant shall be limited to that which is authorized by the process set forth in court and evidentiary rules or applicable state and federal laws, including Chapter 143 of the Texas Local Government Code.
- c. A person or persons designated by the Department Chief may examine the subject officer's personnel file to determine whether *Brady* materials are contained therein, including both:
  - i. evidence which is favorable and material to the guilt and/or punishment of the defendant, and
  - ii. evidence which could be used to impeach the subject officer
- d. If *Brady* material is located, the prosecuting attorney shall be notified of the potential presence of *Brady* material in the officer's personnel file by the Department Chief or a designee appointed by the Department Chief.
- e. If the prosecuting attorney files a motion in a case requesting an *in camera* review by the court to determine if an identified personnel file contains *Brady* material, the Department will gather the identified personnel file(s) and, if ordered by the court, provide them to the court.
- f. The Department Chief (or an authorized designee other than an officer whose file is under review) shall at all times accompany all relevant personnel files during an *in camera* review and address any issues or questions raised by the court in determining whether any material contained in the file is both material and favorable to the criminal defendant.
- g. If the court determines there is relevant *Brady* material contained in the files, only the material ordered released will be copied and released to the parties in the case.
- h. Prior to the release of any materials pursuant to this process, the Department Chief or the authorized designee should forward the request to the Department's legal counsel to evaluate the need for a protective order from the court limiting the use of such materials to the involved cases and requiring return of all copies upon completion of the case.

2. Internal Investigation files

- a. The Department will report to the HCDA any *Brady* material upon conclusion of an internal investigation resulting in:
  - i. disciplinary actions of a suspension, a termination, or a letter of instruction or any equivalent sanction, or
  - ii. any substantiated findings of dishonesty.
- b. The Department will release and deliver to the HCDA any internal investigations resulting in formal discipline involving police officers in accordance with local and state employment codes.

- c. The Department Chief or an authorized designee will provide to the HCDA a written summary of the incident or findings and any resulting disciplinary actions.
- d. The Department Chief or an authorized designee shall obtain a signed acknowledgement from the HCDA of the reception of such materials from the Department.

### C. TRAINING ON BRADY RULE

1. The Department shall provide instruction on the *Brady* rule and its requirements for all sworn personnel and personnel in positions affecting the handling of evidence and police records.
2. The instruction shall include the following:
  - a. Explanation of the *Brady* rule and exculpatory evidence.
  - b. Department policy and procedures for handling exculpatory evidence.
  - c. Compliance requirements for the *Brady* rule and employment by the department.
  - d. Legal consequences for failure to comply (termination, criminal charges, civil rights violations, *etc.*)
  - e. Employee misconduct that may affect the employee's ability to testify and result in termination.

### V. OBLIGATIONS OF THE HCDA

The HCDA will adopt policies requiring the following:

1. The HCDA, or an authorized representative, will be responsible for providing any *Brady* information in the possession of the State to the defense as part of the regular discovery process in criminal cases.
2. In the event of an authorized request for information or court order requiring information be turned over to the defense in a criminal case, if the requested material is not in the possession of the HCDA, the HCDA will:
  - a. promptly notify the Department of the request or order and the material involved, and
  - b. coordinate providing the material to the defendant.
3. The HCDA will provide discovery to criminal defendants consistent with the requirements of Code of Criminal Procedure, article 39.14, specifically:
  - a. As soon as practicable after receiving a timely request from the defendant the state shall produce and permit the inspection and the electronic duplication, copying, and photographing, by or on behalf of the defendant, of any offense reports, any designated documents, papers, written or recorded statements of the defendant or a witness, including witness statements of law enforcement officers but not including the work product of counsel for the state in the case and their investigators and their notes or report, or any designated books, accounts, letters, photographs, or objects or other tangible things not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or any person under contract with the state.

- b. This provision does not extend to written communications between the state and an agent, representative, or employee of the state, except insofar as such communications contain or constitute exculpatory, impeachment, or mitigating evidence.
  - c. In accordance with art. 39.14(c): “If only a portion of the applicable document, item, or information is subject to discovery under this article, the state is not required to produce or permit the inspection of the remaining portion that is not subject to discovery and may withhold or redact that portion. The state shall inform the defendant that a portion of the document, item, or information has been withheld or redacted. On request of the defendant, the court shall conduct a hearing to determine whether withholding or redaction is justified under this article or other law.”
  - d. To the degree possible, the HCDA will seek compliance with art. 39.14(e): “the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant may not disclose to a third party [other than a defendant, witness, or prospective witness as provided in art. 39.14(f)] any documents, evidence, materials, or witness statements received from the state under this article unless: (1) a court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or (2) the documents, evidence, materials, or witness statements have already been publicly disclosed.
4. HCDA handling of requests for Department personnel files
- a. If the HCDA receives a demand for information contained exclusively within a personnel file maintained by the Department, the prosecuting attorney will file a motion to seek an *in camera* review by the court to determine if the personnel files contain *Brady* material or are otherwise subject to disclosure to the demanding party.
  - b. The HCDA will not agree to release to a third party any information from a Department personnel file (other than an internal investigation file) without requesting the court to conduct an *in camera* review of the personnel file(s) and receiving notice that the court has ordered the material to be released.
5. HCDA handling of Internal investigation information
- a. The HCDA, or an authorized representative, will provide a written acknowledgement of receipt of any information received that relates to administrative investigations. This acknowledgement may be provided via email or physical document.
  - b. Internal investigation information provided to the HCDA will be maintained by the HCDA separately from criminal investigative files, and provided in discovery as necessary in individual cases.
  - c. The HCDA will keep confidential all material received, except as necessary to comply with the State’s obligations under article 39.14 and the *Brady* rule.
  - d. Administrative investigations revealing potentially exculpatory, mitigating, or impeachment evidence relating to a specific investigation will be provided in discovery to the defendant in the specific case.

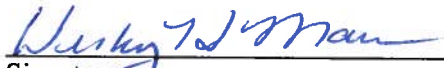
- e. Substantiated internal investigation information that demonstrates dishonesty generally will be produced for the defense in any case in which the officer or Department employee subject to the finding is known to be a witness or potential witness.
- f. Substantiated internal investigation information that demonstrates a personal bias against a specific defendant will be produced for the defense in any case in which the officer or Department employee subject to the finding is known to be a witness or potential witness against that defendant.

**VI. EFFECTIVE DATE**

This Agreement shall become effective on the date it is signed by the last of the Parties to this Agreement. The Agreement shall remain in effect until terminated.

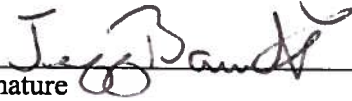
**VII. SIGNATURES**

**Hays Co. Criminal District Attorney**



Signature  
Wes Mau  
Hays County Criminal District Attorney

**Kyle Police Dept.**



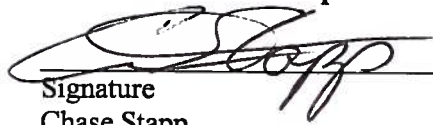
Signature  
Jeff Barnett  
Chief of Police, Kyle, TX

**Hays Co. Sheriff's Office**



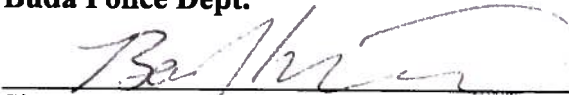
Signature  
Gary Cutler  
Hays County Sheriff

**San Marcos Police Dept.**



Signature  
Chase Stapp  
Chief of Police, San Marcos, TX

**Buda Police Dept.**



Signature  
Bo Kidd  
Chief of Police, Buda, TX

**Texas State University Police Dept.**



Signature  
Ralph Meyer  
Chief of Police, Texas State University