

## WEBER COUNTY ATTORNEY'S OFFICE

### DISCOVERY POLICY: EXCULPATORY/IMPEACHMENT EVIDENCE

#### POLICY 1.0 (Revised June 2025)

The policy set forth here is intended to promote consistency and regularity in disclosure practices for exculpatory and impeachment evidence in criminal cases. The government's duty is to seek a just result in every case and thus its obligation is to disclose exculpatory and impeachment information to criminal defendants. The policy is intended to ensure timely disclosure of exculpatory and impeachment information to ensure that trials are fair.

In accordance with Rule 3.8 of the Utah Rules of Professional Conduct, all prosecutors shall uphold their special responsibilities as ministers of justice. This includes, but is not limited to, the duty to make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused, mitigates the offense, or could impact sentencing. This ethical obligation supplements the constitutional disclosure requirements set forth in *Brady*, *Giglio*, and related authorities, and must be interpreted broadly to ensure fairness, transparency, and accountability in the administration of justice.

#### **Constitutional obligation to ensure a fair trial and disclose material exculpatory and impeachment evidence.**

Government disclosure of material exculpatory and impeachment evidence is part of the constitutional guarantee to a fair trial. *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). The law requires the disclosure of exculpatory and impeachment evidence when such evidence is material to guilt or punishment. *Brady*, 373 U.S. at 87; *Giglio*, 405 U.S. at 154. Because they are Constitutional obligations, *Brady* and *Giglio* evidence must be disclosed regardless of whether the defendant makes a request for exculpatory or impeachment evidence. *Kyles v. Whitley*, 514 U.S. 419, 432-33 (1995). Neither the Constitution nor this policy, however, creates a general discovery right for trial preparation or plea negotiations. *U.S. v. Ruiz*, 536 U.S. 622, 629 (2002); *Weatherford v. Bursey*, 429 U.S. 545, 559 (1977). Nor does it provide defendants with any additional rights or remedies.

**Materiality and Admissibility.** Exculpatory and impeachment evidence is material to a finding of guilt—and thus the Constitution requires disclosure—when there is a reasonable probability that effective use of the evidence will result in an acquittal. *United States v. Bagley*, 475 U.S. 667, 676 (1985). Because pretrial materiality can be difficult to assess, prosecutors are expected to adopt a broad view and favor disclosure. If admissibility is in doubt, disclosure is still encouraged, accompanied by a motion for pretrial judicial determination if necessary.

**The prosecution team.** It is the obligation of prosecutors, in preparing for trial, to seek all exculpatory and impeachment information from all the members of the prosecution team. Members of the prosecution team include federal, state, and local law enforcement officers and other government officials participating in the investigation and prosecution of the criminal case against the defendant. *Kyles*, 514 U.S. at 437.

**Additional exculpatory information that must be disclosed.** A prosecutor must disclose information that is inconsistent with any element of any crime charged against the defendant or that establishes a recognized affirmative defense, regardless of whether the prosecutor believes such information will make the difference between conviction and acquittal of the defendant for a charged crime.

**Additional impeachment information that must be disclosed.** A prosecutor must disclose information that either casts a substantial doubt upon the accuracy of any evidence—including but not limited to witness testimony—the prosecutor intends to rely on to prove an element of any crime charged, or might have a significant bearing on the admissibility of prosecution evidence. This information must be disclosed regardless of whether it is likely to make the difference between conviction and acquittal of the defendant for a charged crime. The exact parameters of potential impeachment information are not easily determined. Potential impeachment information, however, has been generally defined as impeaching information which is material to the defense. This information may include but is not strictly limited to: (a) specific instances of conduct of a witness for the purpose of attacking the witness' credibility or character for truthfulness; (b) evidence in the form of opinion or reputation as to a witness' character for truthfulness; (c) prior inconsistent statements; (d) information that may be used to suggest that a witness is biased, (e) serious policy violations, or (f) perception or memory impairments.

Where it is unclear whether evidence or information should be disclosed, prosecutors are encouraged to reveal such information to defendants or to the court for inspection *in camera* and, where applicable, seek a protective order from the court. By doing so, prosecutors will ensure confidence in fair trials and verdicts.

**Timing of disclosure.** Due process requires that disclosure of exculpatory and impeachment evidence material to guilt or innocence be made in sufficient time to permit the defendant to make effective use of that information at trial. *See, e.g. Weatherford v. Bursey*, 429 U.S. 545, 559 (1997); *United States v. Farley*, 2 F.3d 645, 654 (6th Cir. 1993). In most cases, the disclosures required by the Constitution and this policy will be made in advance of trial. Exculpatory and impeaching information that casts doubt upon proof of an aggravating factor at sentencing, but that does not relate to proof of guilt, must be disclosed no later than the court's initial presentence investigation. This obligation continues post-conviction if any information is discovered after the trial that may affect confidence in the verdict or sentencing.

**Supervisory approval and notice to the defendant.** A prosecutor must obtain supervisory approval not to disclose impeachment information before trial or not to disclose exculpatory information reasonably promptly if the nature of the evidence would present a danger to any witness, party, or significantly impairs other significant governmental interest. Upon such approval, notice must be provided to the defendant of the time and manner by which disclosure of the exculpatory or impeachment information will be made. Attorney notes for such decisions should be made in the case management system.

**Training.** All prosecutors assigned to criminal matters and cases shall complete training on *Brady/Giglio*, and general disclosure obligations and policies.

**Reporting Violations and Whistleblower Protections.** Any employee or member of the prosecution team who becomes aware of a potential violation of this policy—including the improper withholding of exculpatory or impeachment evidence—is strongly encouraged to report the concern to a supervising attorney, the County Attorney, or an authorized designee. Reports may also be submitted anonymously, and all such reports will be treated with appropriate confidentiality. Retaliation against any individual who, in good faith, raises a concern or participates in an investigation is strictly prohibited. The Weber County Attorney's Office is committed to fostering a culture of integrity and transparency, and all reports will be investigated thoroughly and addressed promptly.

**Brady Notification and Procedures.** When a *Brady* concern arises regarding a law enforcement officer, the Weber County Attorney's Office will:

- Notify the officer of the intent to include them in the identification system;
- Provide requested documentation that supports the determination;
- Offer the officer an opportunity to respond or supplement the record.

If further review is requested, the County Attorney will convene the Brady Compliance Committee to make a final determination and notify the officer accordingly.