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PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

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XXXXXX COUNTY DISTRICT ATTORNEY GIGLIO PROTOCOLS FOR LAW ENFORCEMENT

I. Introduction

The following protocol addresses the handling of potential impeachment information for law enforcement officers in XXXXXX County, which is called “Giglio material” or “Giglio issues.”

The criminal justice system relies upon the integrity of law enforcement officers. XXXXXX County law enforcement has a long and proud history of upholding the highest standards of integrity, and intends to maintain those standards.

In addressing Giglio issues, certain constitutional mandates govern prosecutors. The Commonwealth must disclose all potential exculpatory material to the defense under Brady v. Maryland, 373 U.S. 83 (1963). The Brady rule also applies to any impeachment evidence under Giglio v. United States, 405 U.S. 150 (1972). Exculpatory and impeachment evidence is material relevant to a finding of guilt – and thus must be disclosed – where there is a reasonable probability that the evidence would result in acquittal. United States v. Bagley, 475 U.S. 667 (1985). Regarding impeachment materials associated with a witness, a prosecutor has the discretion not to call a witness if the prosecutor deems the witness to be lacking in credibility. Commonwealth v. Palermo, 368 Pa. 28 (1951). All of these rules apply equally to civilian and law enforcement witnesses. Because the tracking and disclosure of Giglio material is constitutionally required, Giglio protocols must be followed by prosecutors.

Based on these constitutional mandates and to uphold the integrity of the criminal justice process, the XXXXXX County District Attorney’s Office (the “DAO”) has worked with XXXXXX County law enforcement to develop the following protocols for dealing with Giglio issues in XXXXXX County. This protocol is not a disciplinary measure for police departments. The determination, tracking, and disclosure of constitutionally required Giglio material are separate from any disciplinary measures taken by police departments.

II. Protocols

A. Giglio Material

Giglio material is any impeachment material as defined by Giglio and related cases, including but not limited to:

1. Dishonesty in the line of duty;
2. Misconduct that is relevant to a prosecution or investigation and negatively affects the integrity of a prosecution or investigation;
3. Pending criminal charges or a conviction that would result in loss of law enforcement privileges in Pennsylvania; and
4. Bias or prejudice toward any constitutionally protected group.

B. Reporting of Giglio Issues

1. Law enforcement agencies: Each law enforcement agency in XXXXXX County shall report to the DAO if they discover any potential Giglio issues for a law enforcement officer. The agencies should have an internal policy to address Giglio issues. Such reports should be made to the First Assistant District Attorney or other designee of the District Attorney.
2. Potential Giglio issues may also be directly observed by DAO prosecutors and/or detectives. DAO prosecutors and detectives shall report such issues to the First Assistant District Attorney or other designee of the District Attorney.

C. Review by DAO and Notice of Review

The DAO will review any potential Giglio material. Depending on the nature of the information, this may involve an independent investigation by the DAO. The law enforcement officer who is being reviewed will be notified, absent exceptional circumstances. The officer who is being reviewed may be requested to submit to an interview, depending on the nature of the potential Giglio material. The officer may be accompanied by an attorney and/or union representative during that presentation. The officer's command supervisors (*e.g.*, Chief and/or Captain) also will be notified of the review by the DAO.

D. Results of Giglio Review

After the DAO reviews the potential Giglio material, the DAO will make a determination regarding whether the information qualifies as Giglio material.

If the material does not constitute Giglio material, the investigation will be closed. If the material constitutes Giglio material, the DAO will use its discretion to exercise two possible options.

First, where there is an affirmative finding of Giglio material regarding a law enforcement officer, that officer may be placed on the DAO “Do Not Use List.” This applies particularly to on-duty findings of dishonesty. An officer on the Do Not Use List will not be called by the DAO as a witness in any case and will not be permitted to be the affiant on any search warrant or criminal complaint prosecuted by the DAO. In the DAO’s discretion and judgment, allowing such officers to testify would irrevocably taint the criminal justice process, leading to a loss of public trust, potential acquittals of guilty defendants, and endangering the safety and welfare of victims.

Second, in a limited number of instances where there is an affirmative finding of Giglio material regarding an officer, that officer may be placed on the DAO “Disclosures List.” An officer on the Disclosures List will be reviewed on a case-by-case basis to determine if the Giglio material applicable to that officer will still allow the officer to testify and/or be the affiant on search warrants or criminal complaints.

If an officer on either the Do Not Use List or Disclosures List is called as a witness by either the prosecution or the defense, the DAO will disclose the Giglio material regarding that officer to the defense.

E. Notification of Status

Where the DAO finds that there is Giglio material regarding a law enforcement officer, the DAO will notify in writing: (a) the officer; and (b) the officer’s command supervisors (*e.g.*, Chief and/or Captain) so that the supervisors may take appropriate action regarding the officer’s duties. The notification will include the status of the officer (*i.e.*, on the Do Not Use List or Disclosures List) and the procedures for reconsideration (see below). Background checks of any prospective police employees should include inquiries on the application forms regarding potential Giglio issues or prior determinations of Giglio materials. Any follow-up questions may be directed to the First Assistant District Attorney.

F. Internal Affairs

Any conclusions reached by the DAO regarding Giglio issues are separate and distinct from the internal affairs decisions of a law enforcement agency employing an officer. The DAO will not issue a final Giglio determination based on an administrative investigation or matter (e.g., a grievance or arbitration) until after the final adjudication of that matter, although the DAO may make interim determinations pending the final administrative review. The DAO is not bound by any administrative findings, but may consider those findings in reaching an independent Giglio determination.

G. Reconsideration

1. Where the DAO notifies an officer that there has been an affirmative finding regarding Giglio material, that officer has thirty (30) days to request reconsideration by the District Attorney. The officer may make an oral or written presentation to the District Attorney. The officer may be accompanied by an attorney and/or union representative during that presentation.
2. Where an officer is on the Do Not Use List or Disclosures List, that officer may request a review of his or her status once every two years.
3. The investigations regarding all officers on the Do Not Use List and Disclosures List are maintained as ongoing investigations by the DAO as long as the officer is employed in any law enforcement capacity.