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PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

2929 North Front Street, Harrisburg, PA 17110 • Phone (717) 238-5416 • Fax (717) 231-3912 • www.pdaa.org

Giglio Protocols for Law Enforcement Frequently Asked Question and Answers

What is a Giglio issue?

Under the law, prosecutors must disclose any evidence that could call into question the credibility of an individual testifying in trial or impede an investigation. This constitutional requirement applies to all witnesses, including law enforcement officers, in order to ensure a defendant gets a fair trial.

Where does the term “Giglio” come from?

“Giglio” directly refers to the law that addresses the use of impeachable evidence, which is evidence that calls into question the credibility of an individual testifying in a trial. Giglio v. United States, 405 U.S. 150 (1972)

The term also directly relates to the constitutional requirement that prosecutors disclose all potential evidence that is favorable to the defendant in a criminal trial that exonerates or may exonerate the defendant of guilt. Brady v. Maryland, 373 U.S. 83 (1963). The legal term for this kind of evidence is exculpatory evidence.

Prosecutors have the discretion not to call a witness if a prosecutor determines the witness to be lacking in credibility. Commonwealth v. Palermo, 368 Pa 28 (1951).

The important point here is that enforcing Giglio is a Constitutional requirement for prosecutors. It is not optional. Failure to follow the disclosure rules of Giglio endangers the integrity of the criminal justice system and also violates the ethical and Constitutional duties of a District Attorney.

Are only law enforcement officers subject to Giglio disclosure?

No. The rules around Giglio-related disclosures apply to anyone who is a witness in a case. However because the criminal justice system relies so heavily on the integrity of law enforcement officers, these protocols proactively focus on helping prosecutors obtain the most up-to-date information from police departments and agencies.

Why did PDAA develop guidelines for Giglio matters?

Giglio matters are complicated and often misunderstood. At the same time, this is an important issue for the public and there is a need for uniformity for law enforcement.

Before now, there were no standard guidelines related to Giglio matters. In fact, a recent article by a national newspaper revealed that most prosecutors' offices did not have written Giglio policies. Developed as guidelines to assist with clarity, consistency and ensure proper disclosures, the protocol reflects best practices and may be adapted to serve a county's individual needs.

How were these protocols developed?

Over the last two years, the Pennsylvania District Attorneys Association's Best Practices Committee studied the issue, reviewed policies used in various Pennsylvania jurisdictions and other states, conferred with academics and experts in the field of prosecutorial ethics, and met with law enforcement officials to develop the policy and protocols. The law enforcement officials included everybody from working street cops to police unions to police chiefs.

Do other state prosecutor associations have Giglio protocols or policies?

The Pennsylvania District Attorneys Association is believed to be one of the first statewide prosecutors organization to adopt a standard Giglio policy or protocol. Other states with guidelines or protocols include Colorado, Indiana and North Carolina.

Why are protocols on Giglio matters important?

Prosecutors are ethically bound to protect defendants' rights, and consider the integrity of investigations, prosecutions, and convictions to be the highest priority of prosecutors. These guidelines will help prosecutors to uphold the highest standards of integrity and maintain those standards to ensure the people's confidence in the criminal justice system.

Are all of PA's District Attorneys expected to adopt this policy?

This is a model policy. Each elected district attorney has the discretion to determine how to best use the PDAA guidelines and may adapt the protocol to best serve their county's needs. Some of those factors could be the size of the district attorney's office, the number of police departments, and the types of police coverage. For instance, a district attorney's office with only two prosecutors would run the procedures for review differently than a district attorney's office with dozens or hundreds of prosecutors. However, every District Attorney's Office in the nation should have a Giglio policy.

What types of actions could be considered Giglio material?

Giglio material is any impeachment material could include, but is not limited to:

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

Neither the Pennsylvania courts nor the United States Supreme Court have developed a comprehensive check-list of Giglio materials, so there is some uncertainty about everything that might be covered.

Should the public know when an officer has done something to trigger the Giglio protocol?

Pennsylvania law does not currently require public disclosure of Giglio matters, and neither the Pennsylvania courts nor the legislature have addressed the issue. Any changes to the law are a matter for the state legislature to decide.

If a police officer triggers Giglio protocols, should they keep their jobs?

The determination, tracking, and disclosure of constitutionally required Giglio materials are separate from any disciplinary measures taken by police departments.

District attorneys do not make personnel decisions for police departments.

In Pennsylvania, anyone convicted of certain criminal charges is not eligible to hold a position in law enforcement or conduct law enforcement responsibilities.

If a police officer is considered ineligible to testify in cases, can they become eligible at some point in the future?

The guidance provides that once the Office of District Attorney makes a Giglio finding, the officer has 30 days to request reconsideration. An officer may request a review of his or her status once every two years.

Is this a disciplinary measure for police departments and district attorney offices?

No. The determination, tracking and disclosure of constitutionally required Giglio material are separate from any disciplinary measure taken by police departments. District attorneys do not make personnel decisions for police departments.

Why is PDAA taking this step now?

The criminal justice system relies on the honesty and integrity of police officers. The vast majority of law enforcement officers are people of the highest integrity. However, just like any group of people in any organization, there are some dishonest people. PDAA is dedicated to ensuring the integrity of the criminal justice system to maintain the confidence of the public and to protect the honest police officers. The Giglio protocols are part of this ongoing effort by PDAA, which has included in the past few years protocols for eye-witness identifications, officer-involved shootings, and other issues. PDAA always will strive to do the right thing for the right reason.