



CITY OF PORTLAND, OREGON



Bureau of Police

Ted Wheeler, Mayor
Charles Lovell, Chief of Police

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Integrity • Compassion • Accountability • Respect • Excellence • Service

Executive Summary

Directive 0320.00, Bureau Reporting of Potential Exculpatory and Impeachment Information

Introduction

The Portland Police Bureau developed Directive 0320.00, Bureau Reporting of Potential Exculpatory and Impeachment Information, in response to a 2017 Independent Police Review report highlighting the Bureau's lack of a written policy outlining the duties and expectations relating to the United States Supreme Court case, *Brady v. Maryland*, 373 U.S. 83 (1963). That case, and related cases that followed, discuss the constitutional right of the criminally accused to know about all exculpatory and impeachment information possessed by the government that is material to their case.

The Bureau posted the directive for the First Universal Review and Public Comment Period in August of 2020 and posted the directive for the Second Universal Review and Public Comment Period in November of 2020. In developing and reviewing the directive, the Bureau worked with a number of stakeholders, including the United States Department of Justice, the City Auditor's Independent Police Review, the Multnomah County District Attorney's Office, and the applicable police collective bargaining units.

Directive Highlights

Directive 0320.00, Bureau Reporting of Potential Exculpatory and Impeachment Information, covers both police duty to provide *Brady* material to the prosecutor in the course of criminal investigations they work on, and the police duty to report member misconduct that amounts to *Brady* material.

The directive defines "Potential *Brady* Material," offers examples, and outlines both individual member and Bureau departmental responsibilities for reporting to the prosecutor.

Perhaps most significantly, the directive ensures that prosecutors have access to all Bureau investigations of members in order to identify Potential *Brady* Material.

Public Comments

The Bureau received many comments during both of the universal review and public comment periods for the directive. Several comments were outside the scope of the policy and were directed at general police reform topics of qualified immunity, excessive force, and criminal justice systemic issues. Some of these comments were not actionable for the purpose of the directive. However, the Bureau acknowledges the common theme of police accountability among the comments, and agrees

that accountability is both essential for Bureau legitimacy and highly relevant to the development of this directive.

Several commenters mentioned that the directive was difficult to understand and contained too much legalese, which they said prevented them from providing meaningful input. The Bureau revised the directive to use clear and plain language as often as possible. However, the policy exists to explain the Bureau's responsibilities to comply with the constitutional principles of *Brady* and related caselaw. Therefore, using legal terms and references is necessary to ensure consistency with those principles.

The Bureau received several comments expressing concern and confusion around how "*Brady* lists" work, who controls them, and how officers are put on and removed from the lists. The directive clarifies that "*Brady* lists" are controlled by the prosecutor's office, which in Portland is primarily the Multnomah County District Attorney's Office (MCDA). The MCDA has the sole discretion to manage their records and prosecutions, and has their own policy addressing government witness impeachment and exculpatory information.

Relatedly, many commenters highlighted the importance of erring on the side of caution when it comes to exculpatory and impeachment information, and urged the Bureau to broadly share information with the MCDA. For example, commenters asked the Bureau to ensure that it reports relevant pending administrative cases against members and to allow the MCDA to make all decisions about materiality.

The Bureau is committed to sharing information with the MCDA. In an effort to ensure that both the MCDA and the Bureau comply with their constitutional obligations related to *Brady* and related cases, the directive explains that the Bureau both 1) affirmatively reports all potential impeachment and exculpatory information to MCDA, and 2) makes all investigations, including pending cases, available for MCDA review upon request.

Finally, several commenters asked for clear direction on what happens when a member is placed on a *Brady* list or violates the directive. Some asked for specific consequences, such as termination or specific type of work assignments. The Bureau acknowledges the importance of accountability, particularly in the context of conduct that implicates truthfulness and harms public trust. The prosecutor/MCDA determines their "*Brady* List" and, as the directive explains, a member's inclusion on any such list is not independent grounds for discipline or termination. Generally, the prosecutor's "*Brady* List" determinations are not subject to judicial review. Therefore, discipline or termination based solely on a member's inclusion on a "*Brady* List" could present outcomes that may violate collective bargaining agreements.

The Bureau welcomes further feedback on this policy during its next review.

This directive goes into effect on June 2, 2022. Published on May 3, 2022.

0320.00, Portland Police Bureau Reporting of Potential Exculpatory or Impeachment Information

Refer:

- *Brady v. Maryland*, 173 U.S. 83 (1963)
- *Giglio v. United States*, 405 U.S. 150 (1972)
- ORS 135.815, Disclosure to defendant
- ORS 181A.830, Disclosure of information about certain public safety employees
- ORS 192.345, Public records conditionally exempt from disclosure
- ORS 192.355, Public records exempt from disclosure
- HB 4205 (2020), Relating to duties of police officers regarding prohibited behavior
- Human Resources Administrative Rule 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation
- DIR 0300.00, Statement of Ethical Conduct
- DIR 0310.00, Professional Conduct and Courtesy
- DIR 0310.50, Truthfulness
- DIR 0310.20, Discrimination, Harassment, and Retaliation Prohibited
- DIR 0330.00, Internal Affairs, Complaint Intake, and Processing
- DIR 0331.00, Supervisory Investigations
- DIR 0332.00, Administrative Investigations
- DIR 0333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees
- DIR 0335.00, Discipline Process
- DIR 0900.00, General Reporting Guidelines
- Professional Standards Division Standard Operating Procedure #14, Case File Confidentiality and Access Control.
- Multnomah County District Attorney's Office Policy 3.071: Government Witness Impeachment Index

Definitions:

- Duty to Report: The affirmative constitutional duty of law enforcement to notify the prosecutor of any exculpatory or impeachment information.
- Potential *Brady* Material:
 - any information or material that tends to:
 - (1) favor the defendant;
 - (2) exculpate the defendant;
 - (3) negate or mitigate the defendant's guilt or punishment; or to
 - (4) impeach the credibility of any government witness, including but not limited to, police officers.
 - For this Directive, potential exculpatory or impeachment information is encompassed in the term "Potential *Brady* Material."
 - Examples of Potential *Brady* Material *include, but are not limited to*:
 - Criminal convictions or criminal charges against any government witness.

- Failure of any proposed witness to make a positive identification of a defendant.
 - Any inconsistent statement made orally or in writing by any proposed witness.
 - Information regarding mental or physical impairment of any government witness that would cast doubt on their ability to testify accurately and truthfully.
 - Evidence that a proposed witness has a racial, religious, or personal bias against a defendant individually or as a member of a group.
 - A sustained finding of misconduct regarding a member's dishonesty, bias, or excessive use of force in conjunction with their service as a member.
 - Altering, tampering, concealing, or misusing evidence in any investigation.
- Prosecutor: For this Directive, the applicable prosecutorial entity for the case at issue, i.e., U.S. Attorney, County District Attorney, or Oregon Attorney General.

Policy:

1. This policy exists to ensure timely disclosure of an appropriate scope of exculpatory and impeachment information to ensure that trials are fair and to ensure that prosecutors receive sufficient information to meet their disclosure obligations relating to the credibility of government witnesses.
2. This policy provides Portland Police Bureau members with the information necessary to comply with the requirements of *Brady v. Maryland*, 173 U.S. 83 (1963), and *Giglio v. U.S.*, 405 U.S. 150 (1972), and subsequent rulings regarding the disclosure of exculpatory and impeachment evidence to criminal defendants, and establishes the procedures for reporting Potential *Brady* Material to the Prosecutor.
3. *Brady* and subsequent rulings require the Prosecutor to disclose to the defendant any evidence that is both favorable to the defendant, and material to the defendant's guilt and/or punishment, including evidence that impeaches the credibility of a government witness.
4. The Bureau recognizes that materiality is a legal issue to be decided in court, and courts decide whether something is *Brady* material retrospectively. Therefore, the Bureau shall err on the side of disclosure and allow Prosecutors to make decisions about materiality.
5. The Bureau further recognizes that it is the Prosecutor's responsibility to determine whether to disclose material provided by the Bureau to the criminal defendant.
6. Both general criminal investigations, and internal investigations regarding member misconduct (as found in criminal, administrative, and supervisory investigations), can yield Potential *Brady* Material. This policy establishes the procedures for reporting all Potential *Brady* Material to the Prosecutor, as required by law.

Procedure:

1. Duty to Report and Identify Potential *Brady* Material.

- 1.1. The Bureau and its members have a duty to report Potential *Brady* Material to the Prosecutor. That obligation extends from the time of arrest through trial and sentencing.
- 1.2. The Bureau and its members shall exercise due diligence to identify and provide Potential *Brady* Material in the Bureau's possession to the Prosecutor as soon as practicable.
- 1.3. Allegations that cannot be substantiated; are not credible; or have resulted in exonerated, not sustained, or unfounded findings are generally not Potential *Brady* Material.

2. Member Reporting and Investigating Responsibilities.

- 2.1. Member Responsibilities When Investigating a Criminal Case.
 - 2.1.1. Members shall exercise due diligence to identify and provide Potential *Brady* Material they possess regarding criminal cases they are working, or have worked, to the Prosecutor as soon as practicable, on an on-going basis.
 - 2.1.2. Members shall document in their investigative reports all information they reasonably believe is Potential *Brady* Material (e.g., the failure of any proposed witness to make a positive identification of a defendant).
 - 2.1.3. Members report Potential *Brady* Material to the Prosecutor by submitting their reports electronically through the normal reporting process.
- 2.2. Reporting Member Misconduct.
 - 2.2.1. Members should be aware that member misconduct may constitute Potential *Brady* Material. Therefore:
 - 2.2.1.1. Members shall report alleged member misconduct in accordance with Directive 0310.00, Professional Conduct and Courtesy, and Directive 0330.00, Internal Affairs, Complaint Intake, and Processing, and as required by state law.
 - 2.2.1.2. Members shall report alleged member criminal conduct in accordance with Directive 0333.00, Criminal Investigations of Police Bureau Employees and Other Law Enforcement Agency Sworn Employees, and as required by state law.
 - 2.2.1.3. When a supervising member becomes aware of Potential *Brady* Material regarding alleged member misconduct, the supervising member shall immediately forward the information directly to Internal Affairs.

3. Potential *Brady* Material in Internal Affairs Investigations.

- 3.1. The Professional Standards Division (PSD) Commander or designee shall affirmatively report the following to the Multnomah County District Attorney's Office (MCDA), or any Prosecutor who submits a written request for Potential *Brady* Material:
 - 3.1.1. All allegations of member misconduct regarding a member's dishonesty, bias, evidence mishandling, or excessive force, regardless of the outcome.

- 3.1.2. All allegations of member misconduct that the Prosecutor specifically requests, consistent with ORS 135.815(2)(b).
 - 3.1.3. Such allegations shall be reported via a confidential submission per ORS 192.355(4) and may contain the following: case number, complainant name, incident date, reported date, status, status date, allegation type, allegation statement, applicable directive, and finding.
 - 3.2. The PSD Commander or designee shall affirmatively report to the MCDA, or any prosecutor who submits a written request for Potential *Brady* Material, all criminal convictions and charges against any member, and any criminal investigation of any member that amounts to Potential *Brady* Material.
 - 3.3. Prosecutorial Review.
 - 3.3.1. The PSD Commander shall allow a mutually agreed upon Prosecutor designee from the relevant Prosecutor's office to review, on-site at the Portland Police Bureau, all criminal, administrative, and supervisory investigations against members to identify Potential *Brady* Material, upon request.
 - 3.3.1.1. Prosecutors must sign a confidentiality agreement before reviewing files in accordance with PSD Standard Operating Procedure #14, Case File Confidentiality and Access Control, and Independent Police Review (IPR) procedures.
 - 3.4. Prosecutorial Responsibilities.
 - 3.4.1. It is the Prosecutor's decision how to evaluate Potential *Brady* Material. This decision includes whether or not Potential *Brady* Material is material to a specific case and whether or not to include members on any list or in any database, such as the MCDA's Potential Impeachment Disclosure Index (PID Index). The PID Index is the database used by the MCDA to track impeachment evidence regarding state witnesses (sometimes informally referred to as a "*Brady* list").
 - 3.4.2. The Prosecutor is responsible for managing its own list or database related to impeachment evidence, including any procedures for including members and for appeals.
 - 3.5. Professional Standards Division and Detective Division Responsibilities and Member Notification.
 - 3.5.1. The PSD is responsible for monitoring all criminal, administrative, and supervisory investigations of members.
 - 3.5.2. The PSD Commander or designee is responsible for the Bureau's affirmative reporting of Potential *Brady* Material in Internal Affairs Investigation files, IPR investigation files, and criminal investigation files of members.
 - 3.5.3. The Detective Division Commander or designee is responsible for identifying Potential *Brady* Material in criminal investigation files of members and reporting to the PSD Commander.
 - 3.5.4. On a weekly basis, the PSD Commander or designee shall review allegations provided by IPR for Potential *Brady* Material. The PSD Commander shall

coordinate with IPR to obtain all IPR investigation files that either the PSD Commander or IPR Director reasonably believe contain Potential *Brady* Material.

3.5.5. The PSD Commander or designee shall notify members in writing when the Bureau affirmatively reports information about the member to the Prosecutor regarding the member's internal investigation file(s), unless doing so would jeopardize an ongoing investigation of the member.

3.5.6. The PSD Commander or designee shall request a copy of MCDA's PID Index quarterly and shall attempt to remain informed of Bureau members listed therein.

3.6. Member Privacy and Rights.

3.6.1. This Directive does not change the confidential nature of member personnel files.

3.6.2. This Directive does not change the requirements of public records law exemptions imposed on the City, the Bureau, and the Prosecutor regarding member personnel files.

3.6.3. A member's inclusion on the PID Index or any "Brady list" is not independent grounds for member discipline or termination.

3.6.4. The PSD Commander or designee shall provide members with information regarding the MCDA review process and the member's rights upon request.

History

- Originating Directive Date: 5/27/2022
- Last Revision Signed: 4/27/2022
 - Effective Date: 5/27/2022
- Next Review Date: 5/27/2023

#1

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, November 17, 2020 12:44:25 AM
Last Modified: Tuesday, November 17, 2020 1:03:29 AM
Time Spent: 00:19:03

Page 1

Q1

Please provide feedback for this directive

320.00 Directive Feedback (2UR)

This is such an acute response to constant civil unrest about foundational systemic issues. Yes this is good and yes it's Important and shouldnt even need legislation to be procedure. Only in the case of an officer or person in power would this even come up as an issue, for obvious reasons.

We need to address the systemic issues that brought this conversation to the forefront. Our justice system is a huge proponent, especially when talking about the inequities that are so engrained in our laws and culture. We need to address all the things that encompass the injustice and corruption in situations where officers are the defendant if that's what were talking about.

Hiring a criminal, fired police officer, or a person dishonorably discharged from military service, into the legal system is a criminal act, as well as applying as one. (Bad cops can't be allowed to bounce around under the radar)

- Police must continue to train, and undergo education throughout the entirety of their career. (Officers must be fit, informed on any major issues within their jurisdiction, trained extensively in communication and verbal de-escalation, must learn the intricacies of morality and ethics in relation to working with a diverse public, extensively trained in hand to hand with frequent skill assessments, and disarming attackers verbally and physically, and must undergo a cultural sensitivity training for the cultural demographic within their jurisdiction)

- Psych evaluations every 6-12 months as a preventative measure (the job is very stressful, and we want officers to have best possible mental health)

- Complaints to police must be made public within 24 hours, even if made anonymously, unless the complaint is incoherent (police can be writers of their own press release, but not the filter of what they've been accused of.)

- 5 separate complaints in a day, 15 complaints a week, 40 complaints a month, 100 a quarter, 150 in 6 months 365 in a year 1200 in 5 year, 2000 in ten years termination (no one should receive complaints every day, or abuse the system by holding this position to harass the public)

- Misuse tampering or forgetting body cam is mandatory termination on 3rd offense (mistakes are made, but when repeated can not be tolerated)

- Officers are to be charged properly, and receive the maximum sentence unless making a plea deal to turn in other officers as they should be held to a higher standard than civilians, Judges and DA's found to be aiding officers defense must be held accountable by fines equal to their pension or tax funded retirement plan and face termination. Maybe charged with abuse of power in extreme cases. (We can not allow our justice system act like a fraternity)

- Any officer convicted of a crime must also be convicted of abuse of power (officers must be held to a higher standard)

- Any officer who knew of a crime committed by a fellow officer that did not hold them accountable to the full extent of the law must also be held accountable for abetting and abusing their power (to encourage plea deals)

- Officers must immediately be arrested when they are known to have or are suspected of committing an arrestable offense. Failure to turn themselves in once ordered, or arrest a fellow officer once suspected of a crime and or having witnessed a fellow officer commit a crime, must be looked at as evading arrest, or aiding and abetting a fugitive.

- Officers are not to draw their gun first. Officers are only permitted to pull a gun when a suspect is clearly armed with a gun and is only to fire if clearly aimed upon. (rules of engagement must not allow police to escalate any conflict)

- The family of any human or pet killed by police that is not in the act of a deadly crime is due restitution. Minimum enough for a respectable funeral. If convicted with malice the wronged party is due the entirety of the pension, if the pension is in contention through divorce, the wrong party due whatever isn't awarded to the divorcee minimum 50% of the total pension. If the divorced party does contest for the pension they must also sign a no contact order with the murderer. If the death is ruled accidental but cause by an officer, the funds should come from precinct funding (If police pay people when they cause an accident, they should pay for the funeral of anyone they kill, police are not executioner's besides the fact if killing people doesn't lower the funding of those sworn to protect we're in a tyrannical police state)

This is informal but we need legislation that tackles whole issues top to bottom, whether its systemic issues like police injustice, or racial disparities, or turn of the millennium issues like automation of jobs, and climate change. I get the point of respecting the process but we're in unprecedented times in more ways than Covid-19, and if we continue to pussy foot around the issues we've inherited one if not all will become catastrophic.

Q2

Contact Information (optional - your name will be visible on PPB's website)

Email Address

bobgreen230@gmail.com

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, November 17, 2020 9:41:54 AM
Last Modified: Tuesday, November 17, 2020 10:06:50 AM
Time Spent: 00:24:55

Page 1

Q1

Please provide feedback for this directive

It would be helpful to make an overarching statement: The purpose of criminal investigation is to seek the truth, not conviction.

The leeway for police bias during investigation, interrogations, and witness identification by police line up, can still lead to wrongful convictions.

I would suggest:

- 1) All interrogations to be video taped from beginning to end.
 - 2) During interrogations suspects will not be held in an interrogation room nor interrogated for more than four hours in a day.
 - 3) Suspects will not be subjected to "stress" positions including subject to physical or psychological enhanced interrogations.
 - 4) Police interrogators are prohibited from lying to the suspect.
 - 5) Suspect lineups by photo or physical line up be conducted impartially by a neutral third party.
 - 6) Individuals in the lineup must share physical similarity to the described suspect.
 - 7) All lineups to consist of at least three sets of individuals, with the suspect only present in only one set.
-

Q2

Contact Information (optional - your name will be visible on PPB's website)

Name **Martin Heltai**
Email Address **martin@heltai.net**
Phone Number **5036800415**

#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, November 17, 2020 2:03:02 PM
Last Modified: Tuesday, November 17, 2020 2:11:36 PM
Time Spent: 00:08:34

Page 1

Q1

Please provide feedback for this directive

After three years, it is clear that the Portland Police have no intention of obeying this Directive, nor any legally constituted restraint. Their noncompliance comes in the context of national slow-walking and foot-dragging in service of the people, combined with a swaggering comraderie with illegally constituted militias. The result is that the police rule this society; they have no compunction toward Order, nor is any resolute force currently arrayed against them. That, then, is the real impact of this Directive: it has made the situation visible and undeniable. Who, then, shall stand for the people, and answer to them?

Q2

Contact Information (optional - your name will be visible on PPB's website)

Name	Clarity
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#4

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, November 17, 2020 6:53:55 PM
Last Modified: Tuesday, November 17, 2020 7:04:35 PM
Time Spent: 00:10:39

Page 1

Q1

Please provide feedback for this directive

Obviously, as a regular Joe, I know much more about Police Department policy and use of force than any officer who has dedicated their life to service and the betterment of their community. My opinion should over rule any police expert no matter their qualifications or personal professional experience. It gives me warm fuzzy feelings when I can tell a police officer how to do their job even though I have no clue what they really do day to day. My feelings should trump any truth and experience of any Police expert. Thanks so much! Please insert a super woke catchy political phrase here.

Q2

Contact Information (optional - your name will be visible on PPB's website)

Name	Danny Taylor
Email Address	theblueblessing@gmail.com
Phone Number	2523409941

#5

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, November 17, 2020 8:24:39 PM
Last Modified: Tuesday, November 17, 2020 8:26:41 PM
Time Spent: 00:02:02

Page 1

Q1

Please provide feedback for this directive

Will police now run every witness in LEDs? At what point does due diligence apply?

Q2

Respondent skipped this question

Contact Information (optional - your name will be visible on PPB's website)

#6

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, November 18, 2020 4:09:21 PM
Last Modified: Wednesday, November 18, 2020 4:11:54 PM
Time Spent: 00:02:32

Page 1

Q1

Please provide feedback for this directive

3.1.1. Final sustained findings by the Chief of Police regarding a member's dishonesty, bias, evidence mishandling, or excessive force (force that violates the Constitutional Force Standard).

This paragraph specifically excludes any pending cases (of use of force for example). If the arresting officer is accused of hundreds of cases of excessive force that have not made their way through the courts or review boards, as is often the case, that information should be made available.

Q2

Respondent skipped this question

Contact Information (optional - your name will be visible on PPB's website)

#7

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, November 29, 2020 10:38:01 PM
Last Modified: Sunday, November 29, 2020 11:31:50 PM
Time Spent: 00:53:49

Page 1

Q1

Please provide feedback for this directive

320.00 Directive Feedback (2UR)

- 1.2 Remove "strive". It should be required that ALL searches be conducted with dignity and courtesy. No exceptions.
- 1.4 Remove "when safe and feasible". Search or seizure without stating the reasonable suspicion is illegal. Eliminate this loophole.
- 1.8.3 Remove "if safe and feasible" once again. Searches should only be conducted by the gender identity the citizen feels comfortable with. "Safe and feasible" allow for far too much wiggle room to abuse.
- 1.9 The probable cause for said search should also be required to be recorded. If the member is incapable of recording one, the search should not have happened.
- 2.2.2. Verbal denial of property ownership does not make that property abandoned. For example, saying my neighbors home is not mine does not make it abandoned. Revise accordingly.
- 2.2.3 "is possessed for the purpose of being used, to commit, or conceal the commission of an offense" This statement gives members far too much latitude. A
- 2.3.1.3 Replace broad language of "reasonably related to the crime for which the person is arrested". This allows for far too many exceptions. This broad language destroys trust.
- 2.4.1.2 Unclear as to why this would be an exception. Delete. This is an unlawful search.
- 2.4.1.3 Unclear as to why this would be an exception. Delete. This is an unlawful search.
- 2.5.1.1.1 Remove "or property". Property cannot be harmed and does not warrant an unlawful search.
- 2.5.2.1.1 Term "an emergency" is subjective. Provide concrete requirements.
- 2.6.3.2 Include requirement that "Member shall clearly ask for consent prior to performing search and shall communicate that the search is voluntary".
- 2.6.3.3.3 Wording shall be revised to include notification prior to ALL recording (ie. video).
- 2.8.3.2. This once again appears far too broad, allowing members the ability to search first and think of a reasonable suspicion second. Include wording that the member's reasonable suspicion for arrest cannot be reliant upon the search of a subject.
- 2.9.2.2.1 What is a "justifiable intrusion"? Very broad word choice (a common theme throughout this document). Clarify with concrete parameters or delete altogether.
- 3.1.5. Include the following: "The member shall not seize of anything not meeting the above requirements."
- 3.2.1 Permitting members to "stop and frisk" citizens is extremely alarming. "Stop and frisk" policies have historically driven colossal divides between police and communities. Delete this clause.
- 3.2.2 "Take action" is too broad. What are you permitting the member to do? Very unclear.
- 4.2 This section only acknowledge (2) genders. Revise to address the entire spectrum of gender.
- 4.2 Members of the LGBTQ+ communities should have the right to have a LGBTQ+ officer perform their search. If this is seen as a "restrictive" requirement, I advise the bureau to reflect on what about their organization led to having an overwhelmingly heterosexual staff rather than stripping this right from Portland citizens.

Q2

Respondent skipped this question

Contact Information (optional - your name will be visible on
PPB's website)

#8

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, November 29, 2020 11:33:31 PM
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Time Spent: 00:32:44

Page 1

Q1

Please provide feedback for this directive

2.1.1. This policy leaves it up to the officers to not only understand what material qualifies as Brady, but also truthfully submit it. There is no system of oversight or accountability provided. Simply the word of the member. This gives far too much power to an organization who has historically abused it.

In short, the DA should determine if the material qualifies as Brady. All evidence should be sent through the DA without allowing officers to be selective about what they do or do not include.

Additionally, provide following statement: "Selectively submitting or omitting Brady material is grounds for member termination."

3.2.2. Clarify the requirement that all officer misconduct witnessed by the member must be reported.

3.3.1. This states that the Bureau is in charge of its own oversight. This does not make any sense. It is rife with ethical problems. All oversight functions should be independent and separate from the bureau.

3.3.2.1 Delete "sustained". All findings are relevant and should be included. The DA can filter out at a later date if they find them not applicable.

3.4.1 Remove "mutually agreed upon". The DA decides the prosecutor, the bureau should not have any input on this item.

Q2

Respondent skipped this question

Contact Information (optional - your name will be visible on PPB's website)

#9

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, December 07, 2020 9:10:57 PM
Last Modified: Monday, December 07, 2020 9:11:40 PM
Time Spent: 00:00:43

Page 1

Q1

Please provide feedback for this directive

I want to see a termination of qualified immunity. PPB has no accountability to the citizens of Portland.

Q2

Respondent skipped this question

Contact Information (optional - your name will be visible on PPB's website)

#10

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, December 14, 2020 9:17:18 AM
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Time Spent: 00:31:50

Page 1

Q1

Please provide feedback for this directive

The following language should be added to the Directive:

Policy:

6. Bureau member on duty and off duty conduct in criminal and civil court proceedings can yield potential Brady material. This policy covers bureau members whether on duty or off duty and covers member conduct in their own civil and criminal litigation.

"Procedure:"

1.3 should be eliminated as it contradicts "Policy" 1.3. The police bureau shall turn over any and all potential Brady material to the District Attorney for their consideration. The bureau should not be the entity deciding what items are subject to Brady and if those items are material or not. Only the district attorney can make that determination.

Under "Procedure:" Add a new subject number

4. Potential Brady Material Regarding Civil Litigation and Administrative Investigations

4.1 Brady material includes any inconsistent statement made orally or in writing by any proposed witness.

4.2. Inconsistent statements which occur in any civil court proceeding whether on behalf of the City of Portland or occurring in private Bureau member civil litigation shall be turned over to the District Attorney for review.

4.3 The bureau has an obligation to turn over any inconsistent statement made on behalf of the city even if witnessed in civil deposition, court proceedings or the like, on behalf of the city.

5. Duty to Investigate

The bureau has a duty and obligation to investigate all allegations of untruthfulness by bureau members. The Bureau shall fully, and completely investigate any allegation of Brady material. The Bureau shall conduct enough witness interviews to properly investigate the allegations.

Policy 3.4 Prosecutorial Review and Member Notification

Add:

3.4.5 Members placed on the Brady list shall not work in any reporting unit or bureau position which requires them to testify in court proceedings.

3.5 Member Privacy and Rights

eliminate item 3.5.3 " A member's inclusion on the PID or any "Brady list" is not independent grounds for member discipline or termination."

This language does not make any sense. In order to be placed on the PID or Brady list, a member likely engaged in conduct which violated bureau policy. As such the member is subject to discipline or termination.

Q2

Contact Information (optional - your name will be visible on PPB's website)

Name

Liani Reyna (Retired PPB Sergeant)

#11

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Tuesday, December 15, 2020 6:30:34 PM
Last Modified: Tuesday, December 15, 2020 6:31:12 PM
Time Spent: 00:00:37

Page 1

Q1

Please provide feedback for this directive

COMMENTS ON SEARCH, "BRADY LIST" AND SUBSTANCE USE DIRECTIVES, DECEMBER 2020

To Chief Lovell, Capt. Parman, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Search, "Brady List," and substance use Directives posted for review in November/December . Portland Copwatch (PCW) sent in comments on previous drafts of the Search policy (650.00) in October, the "Brady List" (320.00) in August and the Alcohol Use policy (316.00) in February. The other substance use Directives (316.10 Drug/Controlled Substance Use, 316.20 Tobacco Use, and 316.30 Drug and Alcohol Testing) were not previously posted. The PPB says it is considering consolidating all four substance policies; PCW has no objection to this so long as the content is clear. We have no comments on 316.20.

As with our previous comments on the Brady List policy, (now called "Police Bureau Reporting of Potential Exculpatory or Impeachment Information"), we used the term "Brady List" as it is the common term for the roster of officers subject to disclosure for their possible lack of credibility in court proceedings in reference to a Supreme Court case.

We continue to urge the Bureau to add letters to identify section headings (Definitions, Policy, Procedure) so that there are not multiple sections with the same numbers, and to enumerate the Definitions. Our comments below refer to the Procedure Section unless otherwise noted.

DIRECTIVE 320.00 POLICE BUREAU REPORTING OF POTENTIAL EXCULPATORY OR IMPEACHMENT INFORMATION

The complete overhaul of this proposed new Directive has made many improvements, beginning with the title being changed from "Disclosure of" to "Police Bureau Reporting of" Potential Exculpatory or Impeachment Information. This sets the tone for the entire policy, which is now geared toward sending more information to the District Attorney and letting them decide what needs to be disclosed to defendants (Policy Sections 3 & 4, Procedure Section 1.1).

One notable addition is that aside from criminal charges (Section 1.4.1), tampering with evidence (now better defined in Section 1.4.7), dishonesty and bias, use of force has been added to things that bring an officer's credibility into question (Sections 1.4.6 , 3.1.1 and 3.3.2.1). However, the actions of harassment, discrimination and retaliation are no longer on the list.

Here are other comments on the new draft.

--The definitions of "exculpatory" and "impeachment" have been cut and replaced by an overall definition of "Potential Brady Material." All three are probably worth including.

--While the earlier draft required investigations that were in progress to be turned over to the DA, the new draft says that allegations which have not been proven "will usually not be reported to the prosecutor" (Section 1.3). This seems to create a loophole. Perhaps it is better to report the allegations and then the outcomes to the DA so they can strike the information from their database, rather than risking a judgment call about what is "usual."

--It is unclear whether the requirement for officers to enter potential Brady material into the crime database* means officers have to admit their own shortcomings or if they are being encouraged to report other officers' potential misconduct (Section 2.1). Presumably it is the latter based on the reporting requirements in Section 3.2.

320.00 Directive Feedback (2UR)

--We continue to wonder whether the "final Sustained findings by the Chief," now in Sections 3.1.1 and 3.3.2.1, mean before or after an officer's "mitigation hearing." We noted that Chief Outlaw agreed with the Citizen Review Committee to find an officer out of policy for lying to a community member (claiming he could be arrested for recording the officer) but ultimately changed the allegation to be a "performance issue." We asked whether that Sustained finding on performance counted toward the Brady list since it's not a violation of the Truthfulness Directive.

--The content of Section 3.5 on officer privacy and rights appears to be included to reassure officers that the records will not necessarily be released to the public. It is good to reassure officers of their rights, but there also needs to be appropriate transparency around those given the authority to use violence to enforce state power.

--The word "timely" that we noted appeared several times has been removed; the words "as soon as practicable" now appear.

We continue to believe that the Bureau should create a "Brady List Matrix," similar to the Discipline Matrix, which outlines what kinds of violations of what policies and laws would lead to an officer's name being submitted to the District Attorney.

*-Since the database, perhaps, may not be called RegJIN in the future, a more generic term should probably be used so the Directive doesn't have to be rewritten when software changes.

CONCLUSION

We continue to appreciate that the community has an opportunity to give input into Bureau policy as long as Portland continues to have police. While the Bureau has made efforts to create a more user-friendly process for commenting on these policies, the redline versions, particularly of both nearly fully-rewritten Directives posted in November, leaves a lot to be desired. The automated redlining resulted in renumbering of existing Sections, sentences strung out among several pages, and enough confusion that we had to re-print the original and compare it line by line to figure out what was changed.

We thank the Directives project administrator for recognizing that our August comments on the Brady list Directive had been left out of the review packet, and adding them in to a revised packet. It's likely that the omission may have been in part because we sent those comments by email and not via the website's online submission process, but we hope the PPB will compile comments regardless of how they arrive. It's not clear, for instance, whether the Portland Committee on Community Engaged Policing (PCCEP) is being required to post their recommendations using that web portal. (To be clear, we do not think that should be necessary.)

We continue to urge that all response periods last at least 30 days to allow groups like the PCCEP-- which only meets once a month-- to be able to adequately discuss and respond to the policy proposals, especially when they are as important and complex as the Brady and Search Directives.

Thank you for your time

--dan handelman
--Portland Copwatch

Q2

Contact Information (optional - your name will be visible on PPB's website)

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#12

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1

Q1

Please provide feedback for this directive

There are several issues in this draft of 320.00 that need to be addressed.

In section 1.3 at the end of the sentence; “ ... are generally not “ and “will usually not be ...” need to be definitive. If the allegations are not substantiated or are not credible or have been exonerated, not sustained or unfounded, then they should be not available to the MCDA review. These should be set out from the other material that PSD has for review.

In section 3.2.3, there needs to be a clarification for the supervising member. If the potential Brady material has already been forwarded and PSD has done its job, the supervisor is aware of it for potentially the history of that offending officer. Language specific to once reported means it is up to PSD to keep it and not have a different supervisor bring up “past sins” again and again. The time line language needs to be clarified throughout the directive. Supervisors are put under shall immediately in this section. In 3.3.2 , the shall notify the MCDA as soon as practicable and later in 3.3.3 the language changes again to shall notify members in writing, as soon as practicable.

There needs to be a consistent time line, similar to BHR 2.02 rules; “ notification will be as soon as possible but no later than 2 days.” The notification timeline needs to be consistent for all parties, MCDA, PSD, Supervisors and to include notification to the PPA and affected member. The methods of notification need to be spelled out (specific notification form, email, letter, phone call) to protect the member and assure all interested parties get the same information at the same time.

What tracking system will be used in PSD to document who from the MCDA office was there and what officer’s files are being monitored. There needs to be clarification on the prosecutor designee and if the pending administrative review in 3.4.1 will trigger the mandatory notification discussed above. If there is a “log” will that be an internal PPB document that is discoverable?

Q2

Contact Information (optional - your name will be visible on PPB's website)

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#1

COMPLETE

Collector: Web Link 1 (Web Link)
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IP Address: 74.120.152.145

Page 1

Q1

Please provide feedback for this directive

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Q2

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#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Sunday, August 02, 2020 11:19:12 AM
Last Modified: Sunday, August 02, 2020 11:19:36 AM
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Page 1

Q1

Please provide feedback for this directive

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Q2

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#3

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Monday, August 03, 2020 4:44:45 PM
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Page 1

Q1

Please provide feedback for this directive

An officer who has been found to make untruthful or dishonest statements and that cannot be trusted should never again be in a position of having the power to arrest or issue citations.

Q2

Respondent skipped this question

Contact Information (optional)

#4

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

I am opposed to this directive on the following grounds:

That it is a unilateral policy which affects only government witnesses and does also establish the responsibility of the DA in criminal trials where this applies to provide the same elaboration for defense witnesses in the discovery provided to the Portland Police Bureau. For me to support this new directive I would need to see the same policy affect both the prosecution and defense in these cases where government witnesses and members of the Portland Police Bureau may be testifying as witnesses. In other words, if the PPB is to be required to provide this additional aspect of information in their case discovery to the DA then the DA must also do the same for any of their defense witnesses.

I support the PPB. I am grateful for your dedication to serve and protect. You are indeed the 'thin blue line' that preserves freedom and justice in our city and our nation.
I back the Blue.

Q2

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#5

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1

Q1

Please provide feedback for this directive

This document is too obtuse for the public to be able to comment on it meaningfully. A better system for explaining directives and gathering meaningful input that can actually help the police department serve the community is needed. I have a huge appreciation for the work PPB does, and also believe that improvements can and need to be made. It is very difficult as a member of the public who cares about our policing policies to know what kind of feedback would actually be useful on this directive.

Q2

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#6

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1

Q1

Please provide feedback for this directive

There is a need for the accused to have due process and an opportunity to confront their accuser and to be made aware what the allegation is . In this case,

(now retired) Judge Gillespie placed a Peace Officer on the Brady List (lowest level). Judge Gillespie would NOT and did NOT have to provide a reason.The officer was not able to confront the Judge nor would anybody do so on his behalf . The officer was denied Due Process -the very thing that our legal system is based on. The presiding judge was said to be powerless over this rouge Judge 's decision (this is hear say but I have it on good authority that this is true)

Secondary , there is a need for a formal system that mandates and clearly states the process for removal of one off the Brady List (lowest levels) .It is my understanding that there is some relief after an officer whom is on the lower level Brady List is allowed to testify in court

however there appears to be no formal requirement for paperwork to be generated for removal from this list . To make the officer whole.

If you doubt this happened , it did in Coos County . (The above did not address the secondary safeguard failure set in motion by the accused employer (county) solely based on this Judge's unsubstantiated opinion. Request public record information from Coos for a great case study.

Thank -you for your time.

Q2

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#7

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1

Q1

Please provide feedback for this directive

Oyez Oyez Oyez

Do as the Court has said to do, give the information to the lawyer for the accused, when asked.

The Decision in *Brady v. Maryland* states at,

a) Suppression by the prosecution of evidence favorable to an accused who has requested it violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Pp. 86-88.

[86]

We agree with the Court of Appeals that suppression of this confession was a violation of the Due Process Clause of the Fourteenth Amendment. The Court of Appeals relied, in the main, on two decisions from the Third Circuit Court of Appeals *United States ex rel. Almeida v. Baldi*, 195 F.2d 815, 33 A.L.R.2d 1407, and *United States ex rel. Thompson v. Dye*, 221 F.2d 763 which, we agree, state the correct constitutional rule.

This ruling is an extension of *Mooney v. Holohan*, 294 U. S. 103, 112, where the Court ruled on what nondisclosure by a prosecutor violates due process:

"It is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which, in truth, is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Such a contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation."

In *Pyle v. Kansas*, 317 U. S. 213, 215-216, we phrased the rule in broader terms:

"Petitioner's papers are inexpertly drawn, but they do set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution, and, if proven, would entitle petitioner to release from his present custody. *Mooney v. Holohan*, 294 U. S. 103. "

[87]

The Third Circuit, in the *Baldi* case, construed that statement in *Pyle v. Kansas* to mean that the "suppression of evidence favorable" to the accused was itself sufficient to amount to a denial of due process. 195 F.2d at 820.

In *Napue v. Illinois*, 360 U. S. 264, 269, we extended the test formulated in *Mooney v. Holohan* when we said: "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." And see *Alcorta v. Texas*, 355 U. S. 28; *Wilde v. Wyoming*,. Cf. *Durley v. Mayo*, 351 U. S. 277, 285 (dissenting opinion).

We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

The principle of *Mooney v. Holohan* is not punishment of society for misdeeds of a prosecutor, but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain: "The United States wins its point whenever justice is done its citizens in the courts." [Footnote 2] A prosecution that withholds evidence on demand of an accused which, if made avail-

[88]

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able, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not "the result of guile," to use the words of the Court of Appeals. 226 Md. at 427, 174 A.2d at 169.

The question remains whether petitioner was denied a constitutional right when the Court of Appeals restricted his new trial to the question of punishment. In justification of that ruling, the Court of Appeals stated:

"There is considerable doubt as to how much good Boblit's undisclosed confession would have done Brady if it had been before the jury. It clearly implicated Brady as being the one who wanted to strangle the victim, Brooks. Boblit, according to this statement, also favored killing him, but he wanted to do it by shooting. We cannot put ourselves in the place of the jury, and assume what their views would have been as to whether it did or did not matter whether it was Brady's hands or Boblit's hands that twisted the shirt about the victim's neck. . . . [I]t would be 'too dogmatic' for us to say that the jury would not have attached any significance to this evidence in considering the punishment of the defendant Brady."

"Not without some doubt, we conclude that the withholding of this particular confession of Boblit's was prejudicial to the defendant Brady. . . . "

"The appellant's sole claim of prejudice goes to the punishment imposed. If Boblit's withheld confession had been before the jury, nothing in it could have reduced the appellant Brady's offense below murder in the first degree. We therefore see no occasion to retry that issue." 226 Md. at 429 430, 174 A.2d at 171. (Italics added.)

- - -

There are pieces of due process which in their absence can, in and of themselves, represent violations of an individual's Constitutional Rights. The 14th Amendment to the United States Constitution is a very large idea. Disclosure in all of Oregon's Counties should be uniform and not left to an ad-hoc evaluation by some Municipal Corporation.

Oyez Oyez Oyez

Do as the Court has said to do, give the information to the lawyer for the accused, when asked.

-matt klug

Q2

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#8

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

Section 2.1 says any member who becomes aware of criminal charges against another member. Does this mean criminal allegations, a criminal investigation, a criminal arrest or a criminal indictment?

Section 2.1.1 says a shift supervisor shall notify the PSD Commander as soon as practical. Shouldn't the shift supervisor notify the shift Lt or the RU manager prior to notifying the PSD Commander? The officer's RU Manager should know about the allegations too.

Q2

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#9

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

This should have been implemented a long time ago. It seems to be missing the termination of Qualified Immunity.

Q2

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#10

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1

Q1

Please provide feedback for this directive

After the Chief makes a finding, I believe the officer still has a possible option through the PPA to take the matter to arbitration. If the officer is cleared in arbitration, there should be a process in place for clearing their name off this list through the DA's office.

This also doesn't take into account that the officer has the right to sue civilly if they are wrongly accused and the Chief sustains the finding.

"Timely" is used too much. Many of these should be specified. Sections 2.2 and 3.1 should have a definite timeline.

The whole IA process should have a timeline set from start to finish from when the officer is first notified that they are accused to when there is a finding by the Chief delivered to the officer.

Q2**Respondent skipped this question**Contact Information (optional)

#11

COMPLETE

Collector: Web Link 1 (Web Link)
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Page 1

Q1

Please provide feedback for this directive

This directive seems to address all the ways in which a member can be found innocent of an accusation either by exculpatory evidence or by inadmissibility of incriminating evidence.

Point 3.2. The decision on whether the allegations are credible or not, should be made by an external, neutral party (DA).

3.3. PSD should provide not only their findings, but also all the materials that let do that decision.

5. All information should be provided to the DA, and they should be the ones who evaluate whether they are substantiated or not.

Q2

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#12

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

When officers use their gun, they should be treated and judged, just like any civilian that uses a gun is judged. For example, if an officer kills someone, he should be tried in a court of law as murder, and he needs to prove that it was in self defense, in front of a jury.

Q2

Respondent skipped this question

Contact Information (optional)

#13

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

I am a citizen with no legal training, so this directive is fairly impossible for me to understand!

Q2

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#14

COMPLETE

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Q1

Please provide feedback for this directive

Transparency regarding police officers' incidences of "use of force" should be made public. If an officer is involved with numerous use of force incidences, they should be investigated and put on probation, and fired if necessary. Creating an environment that is safe for officers to report abuse, excessive force or criminal behavior of other officers should be the rule and reporting officers should be protected from retaliation. This should apply regardless of the rank of the reporting or offending officer. A lower ranking officer should have a safe avenue to report offenses of higher ranking officers.

Q2**Respondent skipped this question**

Contact Information (optional)

#15

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

All of the allegations of exculpatory or impeachable conduct should be forwarded to the DA. Having the police make that determination allows an interested party, the police, to judge whether the material is relevant. Rather the DA should receive such information and make that determination.

Q2

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#16

COMPLETE

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Page 1

Q1

Please provide feedback for this directive

I write today to voice my concern about the proposed policy directive. I sat as a grand juror in Multnomah County earlier this year and was disappointed to see instances of lying by omission, misleading narratives, and questionable testimony by some sworn officers. My takeaway was that some officers feel free to obfuscate, mislead, and lie with impunity. That kind of law enforcement culture is exactly what Brady and Giglio target to bring in to the light of day, and to hopefully eradicate.

In the proposed policy, there are too many layers of bureaucracy that would serve to restrict the appropriate flow of information about potential Brady material. Internal investigations are only one of several sources of information subject to Brady disclosure requirements. The duty is broader and includes all information known to the Bureau whether or not it resulted from an official internal investigation. The directive should be clear in identifying the obligations of individual officers to disclose what they learn in the course of their employment. Supervisors' obligations to seek out potential Brady material and to report it to the Chief should also be clearly laid out. The Chief must bear the ultimate responsibility for making these disclosures. This responsibility should not be watered down by allowing so many other people the option to object to disclosure. The Bureau should err on the side of more disclosures, not less, and allow the DA's office to make the final decision. And since this policy is overdue, there should be Initial Brady Reports created by each supervisor, supported by an affidavit as to their due diligence in seeking and reporting the information to the Chief. Those reports can serve as the baseline from which the Bureau moves forward in compliance with the legal requirements of Brady. I have edited the two page policy to include these and other suggested provisions, and would like to attach my edits to these public comments. Unable to attach the document, I have submit it here as text. I will happily provide a redlined version upon request.

Policy:

1. The Bureau recognizes the obligation imposed on the State by Brady v. Maryland, a subsequent line of court decisions, and state criminal discovery statutory requirements to affirmatively disclose to the defense prior to a criminal trial, material or information in their possession that may be exculpatory or impeaching of a government witness. The Bureau will therefore ensure that it provides potential exculpatory and impeachment material regarding members to the Multnomah County District Attorney's Office (DA), and any other prosecutorial body that relies upon evidence or testimony from the Bureau, who will evaluate it for materiality and admissibility.
2. Honesty, integrity, and lack of bias are essential to effective policing and are required under the rules and policies of the Bureau. Officer adherence to these policies is imperative. Breaches to such policies specifically related to veracity and lack of bias have a direct bearing on an officer's ability to continue serving. Internal investigations into member misconduct can potentially yield exculpatory or impeachment material. The specific duties of Members of the Bureau regarding disclosures to the DA of information that potentially affects an officer's veracity or ability to testify without bias has a direct bearing on the officer's ability to continue serving. The specific duties of members of the Bureau regarding disclosures to the DA of information that potentially affects an officer's veracity or ability to testify without bias, as required under the law, are outlined in this directive.

Procedure:

1. Untruthfulness, Bias, or Misconduct, Which Casts Doubt on the Accuracy of Evidence or Testimony.
 - 1.1. The Bureau shall report untruthfulness, bias, or misconduct, which casts doubt on the accuracy of evidence or testimony, to the DA. Examples include reports on officers whose history regarding honesty, integrity, or abuse of force have a negative bearing on their professional reputation, violations of Directive 310.50, Truthfulness, or HRAR 2.02, Prohibition Against Workplace Harassment, Discrimination, and Retaliation; or any violations concerning proper evidence handling or excluding material information from reports.
 - 1.2. The Chief, or the Chief's designee, shall provide timely notification to the District Attorney's Office regarding all questions of untruthfulness, bias, or misconduct that cast doubt on the accuracy of evidence or testimony.
2. Obligation of All Officers
 - 2.1. It is the obligation of any individual officer to report to their supervisor any elements of their employment as a police officer, any information in an investigative report, or evidence related to an indictment or trial that they may reasonably believe to be subject to disclosure under Brady. This includes instances of dishonesty, abuse of force, criminal arrest of an officer, or acts of racial bias.

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2.1.1. The shift supervisor shall notify the PSD Commander as soon as practicable.

2.1.2. The PSD Commander or designee shall report the information to the Chief and to the DA in a timely manner, and specifically prior to the provision of any testimony or evidence by the involved officer.

3. Obligations of Supervisors to Report Credible Allegations Against a Member Concerning Untruthfulness, Bias, Misconduct, or Abuse of Force

3.1. 3.1 Supervisors are equally obligated to ensure that they act with due diligence in finding and reporting potential Brady material related to any matter, proceeding, or trial in which they have related oversight responsibilities. When a supervisor becomes aware of allegation(s) against a member concerning untruthfulness, bias, misconduct, or abuse of force, from any credible source, the supervisor is required to provide the information to the Chief, or the Chief's designee, as soon as practicable, and specifically prior to the provision of evidence or testimony by the involved officer.

3.2. Because this policy has been long delayed, all supervisory personnel shall provide an Initial Brady Report to the Chief, or the Chief's designee. Each supervisor shall review the personnel files of those whom they supervise, conduct relevant in-person inquiries, and otherwise seek out available information to provide a report of any information which brings into question the honesty, integrity, bias, or abuse of force affecting the professional reputation of officers whom they supervise. Supervisors must execute a sworn affidavit attesting that they have exercised due diligence in gathering information for the Initial Brady Report. All supervisory Initial Brady Reports shall be submitted to the Chief, or the Chief's designee, along with a sworn affidavit as to due diligence.

3.3. The Chief, or the Chief's designee, shall review the information and determine whether a disclosure to the DA's office is in order, erring on the side of disclosure, so that the DA's office may make the final determination.

4. Arrests of a Member.

4.1. The PSD Commander or designee shall report any arrests against a member for crimes of moral turpitude, of which PPB has knowledge, to the DA.

4.2. Any member who becomes aware of any arrests against a member for crimes of moral turpitude shall report those charges to the PSD Commander.

4.1.1. The PSD Commander or designee shall then be responsible for providing such information to the DA and notifying the Chief or designee that they (or a designee) have provided the information the DA.

5. Allegations That Are Not Credible.

Allegations that are not credible are not to be considered potential exculpatory or impeachment material and will not be reported to the DA. All allegations that are credible, despite findings in favor of the officer, shall be reported to the Chief, or the Chief's designee, for referral to the DA. This would include those findings by various reviewing bodies which are in favor of the officer based upon procedural matters only rather than substantive ones, or allegations which reasonably retain credibility despite the finding. An independent determination must be reasonably made by the supervisor, and reported as potential Brady material, if the allegations retain credibly despite the finding.

6. Notification to Member.

6.1. The PSD Commander or designee shall promptly notify a member in writing when the Bureau provides the member's name to the DA, and include in the notification, information about the DA's process of review.

6.2. If the Bureau discovers that the DA has flagged a member in its potential exculpatory or impeachment material database of whom the Bureau was not aware, the PSD Commander or designee shall notify that member and provide information about the DA's process of review.

7. Bureau Response to Impeachment of Testimony of an Officer

7.1. Officers who are intentionally dishonest, knowingly biased, or use excessive force, are subject to impeachment at trial, and are also subject to disciplinary action up to and including termination.

8. Training in Brady Disclosure Requirements

8.1. All sworn officers of the Portland Police Bureau shall receive training in their disclosure and reporting obligations under Brady.

Q2

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COMPLETE

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Q1

Please provide feedback for this directive

So this is the PPB response to the April 2017 Independent Police Review (IPR) report stating the need to have a response to Brady Vs. Maryland. All these years later? So over 3years is your response time to Independent Police Review (IPR) requests?

Q2

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Q1

Please provide feedback for this directive

Thoughts and Comments about Draft Brady Disclosure for Portland Police Bureau

- (1) The rule behind the policy should be stated clearly. There is no need for reference to specific Supreme Court cases.
- (2) The section on definitions should be expanded to include the meaning of “material” and to include more concrete examples.
- (3) The policy statement needs to be simple and clear. The current version is weak, wordy and confusing – e.g., the word “material” is used with two entirely different meanings.
- (4) There should be equal emphasis on the PPB member’s obligation to “gather” exculpatory and impeaching evidence as well as to “disclose” such evidence.
- (5) It should be explained that the policy does not include a good faith exception to a failure to comply.
- (6) The use of the word “substantial” in modifying “allegations” and “doubt” requires a member to exercise independent judgment that may not be uniform and leaves too much room for a member to decide not to “disclose.”

(7) Consequences for a member’s failure to comply with the policy should be spelled out. What follows is a set of proposed changes corresponding to the numbered comments above:

- (1) A new section entitled “The Legal Standard” should be inserted between “References” and “Definitions.” The section should include the following statement:

“The purpose of this section is to set forth practices ensuring that the Portland Police Bureau is in compliance with legal requirements for the gathering and disclosure of certain evidence to criminal defendants. Members have an affirmative duty to inform prosecutors of any evidence that may affect the determination of a defendant’s guilt or innocence or sentence.”

- (2) The section on definitions should be simplified and expanded and should include concrete examples.

Exculpatory Evidence: Evidence that is favorable to the accused, could make a difference in determining guilt or innocence, could influence the sentence or could reflect on the credibility of a government witness, including a police officer. Examples include:

- (a) Information that would directly negate the defendant’s guilt;
- (b) Information that would cast doubt on the admissibility of evidence that the government plans to offer;
- (c) Failure of a proposed witness to make a positive identification of a defendant;
- (d) An inconsistent statement made orally or in writing by any proposed witness;
- (e) Evidence linking a prosecution witness to the crime for which the defendant is being charged;
- (f) Statements made by any person that are inconsistent with statements made by any prosecution witness regarding the alleged criminal conduct;

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- (g) evidence related to the defendant's theory of third-party guilt; and
- (h) Information that tends to diminish the degree of the defendant's culpability or the defendant's offense level under sentencing guidelines.

Impeachment Evidence: Evidence that casts doubt upon the accuracy of any evidence, including witness testimony. Examples include:

- (a) Evidence suggesting that a witness is biased or prejudiced against a party;
 - (b) Evidence showing that a witness has some other motive to fabricate testimony;
 - (c) Evidence showing that a witness has a poor reputation for truthfulness;
 - (d) Evidence of past specific incidents that are probative of the witness's truthfulness or untruthfulness.
 - (e) With respect to evidence relating to members involved in the case, the following information must be turned over to the defense before trial:
 - o Crimes committed by the officer;
 - o Incidents involving untruthfulness by the officer;
 - o Incidents involving dishonesty by the officer;
 - o Evidence indicating bias of the officer; and
 - o Evidence of an officer's excessive use of force or other misconduct.
- Material: Exculpatory evidence is "material" if there is a reasonable probability that disclosing it will change the outcome of a criminal proceeding.

(3) The policy statement should be strengthened and simplified:

"It is the policy of the Portland Police Bureau that members have an affirmative duty to gather and disclose evidence that is exculpatory and information that impeaches the credibility of government witnesses – including the potential testimony of members -- prior to a criminal trial. Such evidence and information will be provided to members of the Multnomah County District Attorney's Office who will evaluate it before disclosing to the defense.

"One source of such evidence is the record of internal investigations into allegations of member misconduct. This policy governs the procedures for providing such information and evidence to the DA."

(4) There should be equal emphasis on the member's obligation to gather evidence as well as to disclose it. The current draft does not say anything about the Bureau's affirmative obligation to "gather" exculpatory evidence. That specific obligation should be included in the statement of policy.

(5) This policy should include a statement that there is no exception recognized for a good faith mistake.

(6) The word "substantial" should not be used to modify "doubt" or "allegation." In the current draft, "impeachment Material" is defined as "Evidence that casts substantial doubt upon the accuracy of any evidence." In the current draft, the Bureau is only required to report "final sustained findings by the Chief of Police of untruthfulness, bias or misconduct which cast substantial doubt on the accuracy of evidence."

Section 1.1.

Similarly, the Discipline Coordinator "should provide timely notification to the Professional Standards Division Commander of final sustained findings of untruthfulness, bias or misconduct which cast substantial doubt on the accuracy of evidence."

Section 1.2.

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Most courts have concluded that impeachment material consists of any evidence that casts any doubt on the accuracy of a witness' testimony. Allowing non-disclosure on the ground the impeachment material did not "substantially" challenge the credibility of a witness is a loophole that most courts would find unacceptable.

Similarly, to require notification or reporting of impeachment evidence only when that evidence casts "substantial" doubt on the accuracy of other evidence invites an exercise of discretion that would undermine the purpose of this directive, i.e., to ensure that the prosecution and investigative authorities will disclose the exculpatory evidence of any kind.

(7) The directive should include a provision that makes clear that non-compliance with the policy will result in adverse consequences to the member.

Q2

Respondent skipped this question

Contact Information (optional)
