

DALLAS COUNTY CRIMINAL DISTRICT ATTORNEY'S OFFICE

APPROVED PROTOCOL FOR DISCLOSURE COMPLIANCE OF

LAW ENFORCEMENT AGENCIES, FORENSIC LABORATORIES & PROSECUTORS:

39.14(h) (MMA)/BRADY MATERIAL, ACQUISITION, AND DESIGNATIONS;

NON-SPONSORSHIP OF WITNESSES

- 1. Purpose:** Texas Code of Criminal Procedure Article 39.14, also known as the Michael Morton Act (MMA), requires the State to disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged. Tex. Code Crim. App. Proc. Rule 39.14(h). Additionally, *Brady v. Maryland*, 373 U.S. 83, 87 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and their progeny, require the state to disclose exculpatory, impeachment and mitigating evidence favorable to an accused. Further, Rule 3.09(d) of the *Texas Disciplinary Rules of Professional Conduct* requires Prosecutors 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 or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor. (See *V.T.C.A., Govt. Code T. 2, Subt. G App. A, Art. 10, § 9*).
- 2. Agency Notice:** In June 2015, every Dallas County Law Enforcement agency was made aware of a mandate to report to the Dallas County District Attorney's Office all personnel with sustained MMA/Brady material and all personnel with open investigations that implicate MMA/Brady material. Tex. Code Crim. App. Proc. Rule 39.14(h), *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Each January since then, all Dallas County Law Enforcement Agencies have been formally reminded of this requirement by way of a letter sent to each Chief of Police, including a copy of the Dallas County District Attorney's Office's Disclosure Compliance Policy in effect at the time. Beginning in 2017, all laboratories performing forensic testing on cases prosecuted by the Dallas County District Attorney's Office were notified to report all personnel with sustained MMA/Brady material and all personnel with open investigations that implicate MMA/Brady material.
- 3. MMA/Brady Material:** MMA/Brady material for the purposes of this protocol is fully described in the Official Law Enforcement Agency (LEA) and/or Forensic Laboratory Disclosure Notification Policies approved by the District Attorney. This protocol was shared with the following agencies: Tarrant County District Attorney's Office, Collin County District Attorney's Office, Rockwall County District Attorney's Office and the Denton County District Attorney's Office.
- 4. Updates:** It is the responsibility of each agency to immediately notify the Dallas County District Attorney's Office of any MMA/Brady material obtained or revealed on a

prospective witness that they employ. This is a perpetual and on-going obligation of the agency.

- a. On a regular basis the Dallas County District Attorney's Office will send to each agency a request to update the Dallas County District Attorney's Office of any changes to the previous submission of individuals disclosed with MMA/*Brady* material.
5. **Audits and Opinions:** The Dallas County District Attorney's Office will, at the request of the law enforcement agency or on its own volition, review the records of employed individuals and make a determination if sustained offenses or violations are MMA/*Brady* material. Additionally, at the request of a law enforcement agency, the Dallas County District Attorney's Office will review the file of any individual employee of the agency and render an opinion to the agency of whether any sustained offenses or violations constitute MMA/*Brady* material.
6. **Disclosure Compliance Lists:** The Dallas County District Attorney's Office will keep updated disclosure lists of all agency witnesses for which MMA/*Brady* material is received in a confidential database available only to designated investigators and prosecutors assigned to the Public Integrity Division. A signed non-disclosure agreement is required of all designated Dallas County District Attorney's Office investigators and support staff that have access to MMA/*Brady* material. Searches of these lists will be done by the Public Integrity Division upon request.
 - a. **Permanent Disclosure List:** A primary, confidential list of witnesses, along with accompanying, appropriate disclosure information of sustained offenses or violations constituting MMA/*Brady* material, is maintained by the Public Integrity Division. The name of the witness, along with descriptive language of his/her MMA/*Brady* information, will be released to the defense by the State in accordance with the law.
 - b. **Under Review Disclosure List:** A separate, confidential list of witnesses with ongoing, pending cases/investigations where it is alleged that potential MMA/*Brady* material exists is maintained by the Public Integrity Division. The status of these cases/investigations will be checked every 90 days. The Under Review Disclosure List will be updated at the conclusion of case/investigation by removing the witness's name and either (1) adding the witness's name and appropriate disclosure information to the Permanent Disclosure List if the internal review concludes that MMA/*Brady* material exists, or (2) removing the witness's name completely from the Under Review Disclosure List if the internal review concludes no MMA/*Brady* material exists in relation to said witness.
7. **Prosecutors:** All prosecutors employed by the Dallas County District Attorney's Office are governed by The Dallas County District Attorney's Office Assistant District Attorney Disclosure Policy. Pursuant to that policy, any prosecutor who has been found to have committed professional misconduct, as defined therein, will be subject to disclosure to

defense counsel, defendants, or general disclosures on cases handled by the prosecutor. An updated list of such prosecutors will also be kept in a confidential database available only to designated investigators and prosecutors assigned to the Public Integrity Division. Searches of this list will be done by the Public Integrity Division upon request.

- 8. Source Material/Documentation:** The Dallas County District Attorney's Office does not, in the general course of business, keep and maintain a copy of the law enforcement agency's Internal Affairs case file, or source documentation, on a witness. For that reason, the Dallas County District Attorney's Office cannot attest to what is contained in the source material. The Dallas County District Attorney's Office will disclose all known MMA/*Brady* information to counsel for the Defendant. Counsel for the Defendant may, in his/her discretion, subpoena the source material/documentation from the agency.
- 9. Notification to Prosecutors:** Each prosecutor will inquire whether MMA/*Brady* material exists on their prospective witnesses by contacting the Public Integrity Division via email. A response email will be sent to the prosecutor indicating the existence or non-existence of MMA/*Brady* material known to the Dallas County District Attorney's Office. The prosecutor will upload the written disclosure to TechShare and make it discoverable to the defense. In relevant circumstances, the disclosing prosecutor will file a Motion in Limine pursuant to Tex. R. Evid. 608(b), 404(b)(1), and 403, to avoid improper impeachment of the witness with the disclosed information.
- 10. Sponsorship of Witnesses:** When a witness's conduct is of such of nature that the Dallas County District Attorney's Office will not sponsor that witness in any prosecution effort, that witness will be referred to the Disclosure Compliance Review Committee ("DCRC") for placement on the non-sponsorship list.
 - a. The DCRC will consist of the following individuals: The elected Criminal District Attorney, the First Assistant/Chief Administrator, the Chief of the Public Integrity Division, the Bureau C Deputy Administrator, the Chief of the Appellate Division, the Chief of the Conviction Integrity Division, the Disclosure Compliance Assistant District Attorney, the Chief Investigator, and the respective officer's Police Chief or his/her designee.
 - b. The DCRC will meet, as needed, to discuss specific individuals and whether the Office will sponsor those individuals as State's witnesses.
 - c. The Dallas County District Attorney's Office will incorporate a uniform and consistent approach to designating those witnesses for whom it will present for non-sponsorship to the DCRC, including:
 - i. If the designated individual has pled guilty, no contest, convicted or adjudicated of a felony offense, or assaultive offense, or an offense designated as a crime of moral turpitude, or
 - ii. If the designated individual has been sustained for conduct involving untruthfulness AND the individual was additionally untruthful in the investigation, or

- iii. In extraordinary circumstances deemed appropriate by the DCRC and the elected District Attorney, to include but not limited to, the following:
 - The witness exhibited a lack of candor, i.e. the quality of being open and honest, or
 - Intentionally, knowingly, or willfully withheld facts and/or evidence, provide and/or provided misleading statements either expressly or by omission, or during any stage of an internal agencies' investigation, or during any stage of criminal prosecution in which the officer is a witness.
- d. A letter will be dispatched to the chief of the law enforcement agency or chief official over the agency that employs the designated individual advising him/her that the individual is being considered for non-sponsorship. The notification letter will request that a copy of the notification be shared with that individual. A Court Order demanding the entirety of the individual's Internal Affairs or disciplinary file will be attached to the notification with a date-certain to tender the file to the Public Integrity Division of the Dallas County District Attorney's Office.
- e. The Chief of the Public Integrity Division will present the entirety of the file obtained on the designated individual to the DCRC and make a recommendation on whether to sponsor or not sponsor the individual. Recommendations will be offered by all members of the DCRC to the elected Criminal District Attorney, who will make the final determination on sponsorship.
- f. A letter will be dispatched to the chief of the law enforcement agency or chief official over the agency that employees the designated individual advising them whether the Dallas County District Attorney's Office will or will not sponsor the individual as a State's witness. The respective chief may request an appointment with the elected Criminal District Attorney to discuss any concerns regarding said witness.
 - i. A letter indicating non-sponsorship provides notice to the chief of the law enforcement agency or chief official over the agency of the consequences of continuing to use that employee in a manner that necessarily makes the employee an **ESSENTIAL** prosecution witness. If a case cannot be successfully prosecuted without the employee as a State's witness, the case will not be accepted or prosecuted.
 - ii. The District Attorney's Office does not comment on or involve itself in any manner with the employer-employee relationship of the law enforcement agency or the employee. It is not the concern of the District Attorney's Office whether the agency continues to employ or seeks separation from the employee. If the agency elects to continue to use the employee in a manner that makes the employee a necessary witness to a prosecution effort, the

agency does so knowing the District Attorney's Office will be unable to accept or prosecute the case.