

MODEL POLICY FOR WASHINGTON PROSECUTORS
FOR
POTENTIAL IMPEACHMENT DISCLOSURE

ADOPTED: June 17, 2022



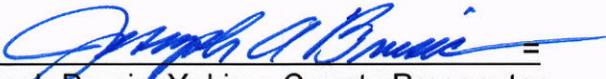
WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS

PREAMBLE

This model policy was prepared by the Best Practices Committee of the Washington Association of Prosecuting Attorneys. The goal of the committee was to create a uniform, robust policy, concerning the disclosure of potential impeachment information (“Potential Impeachment Disclosure” or “PID”) for use by every prosecutor’s office in the State of Washington. RCW 10.93.180 requires each county prosecutor to develop and adopt a written protocol addressing potential impeachment disclosures no later than July 1, 2022.

The committee understands that each county prosecutor’s office has existing policies, practices and procedures concerning PID. These were developed in the unique environment of each office, considering many factors, including resource availability, technology, historical practices, and individual experiences derived from case work. While this model policy is intended to be uniform, the committee intended it to also be flexible so that adjustments can be made that accommodate the environment and culture of individual prosecutor’s offices. The goal of the committee was to develop a broadly applicable policy framework which complies with the relevant legal mandates.

June 17, 2022



Joseph Brusic, Yakima County Prosecutor
Chairperson, WAPA Best Practices Committee

I. LEGAL AUTHORITIES

In representing the State of Washington, prosecuting attorneys function as ministers of justice. Prosecuting attorneys preserve the integrity of the criminal justice system in part by protecting a charged defendant's due process rights to a fair trial.

This discussion of the primary PID legal authorities is not intended to be a comprehensive analysis of all prosecutorial disclosure obligations. It provides a general framework which informs the guidelines and processes included in this model policy.

Prosecutors have an affirmative duty to disclose to a charged defendant exculpatory information and potential impeachment information about prosecution witnesses. There are three primary sources of specific disclosure requirements.

- The Due Process clauses of the federal and state constitutions require prosecutors to disclose exculpatory information to criminal defendants, including information and evidence tending to impeach prosecution witnesses.
- Criminal Rule 4.7(a)(3) states prosecutors "shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged."
- Rule of Professional Conduct 3.8(d) states that a prosecutor in a criminal case shall "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"

The constitutional Due Process requirement for disclosure of exculpatory evidence was set out in Brady v. Maryland, 373 U.S. 83 (1963). This requirement has been explained and modified by numerous subsequent cases. Prosecutors have "a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles v. Whitley, 514 U.S. 419 (1995). The Due Process disclosure requirement includes impeachment information or evidence that could be used to impeach the credibility of a prosecution witness. United States v. Bagley, 473 U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972).

Kyles v. Whitley cautioned prosecutors to interpret the duty of disclosure expansively:

[A] prosecutor anxious about tacking too close to the wind will disclose a favorable piece of evidence. This is as it should be. Such