



## Cover Memorandum

### Exculpatory & Incriminating Evidence, JHPD Directive #463

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#### **Purpose of the Directive**

The purpose of this Directive is to ensure compliance by Johns Hopkins Police Department (JHPD) members with their solemn obligation to disclose exculpatory and impeachment evidence to a prosecutor in criminal cases.

#### **Summary of Directive Requirements**

This Directive goes well beyond the basic legal requirements established by United States Constitution and the Maryland Declaration of Rights, and recognized through court decisions, including *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Fields v. State*, 432 Md. 650 (2013), regarding a police officer's duty to disclose exculpatory information to a prosecutor. This Directive dictates JHPD members have an affirmative duty to identify and disclose all potentially exculpatory information to the prosecutorial authority, including material or incidents that could be used to impeach them as witnesses.

In any criminal case where a JHPD member is involved as an investigator or an anticipated witness for the government, the member shall provide all potential exculpatory evidence known to the member, as well as all potential impeachment evidence known to the member regarding any anticipated witness for the government, who is not a JHPD member, to the relevant prosecuting authority, whether it be the Office of the State's Attorney, the United States Attorney's Office or another prosecutor's office.

Members must document in writing in the appropriate report and/or case management system any potential exculpatory evidence (e.g., a negative photo array or a misidentification) and any potential impeachment evidence (e.g., the inconsistent statement of a witness) known to or discovered by them. Members must also complete the Required Court Disclosure and provide it to the prosecutor in all criminal cases in which they are investigators or anticipated witnesses without a specific request from the prosecutor. In order to properly complete the Required Court Disclosure, this Directive requires that all JHPD members have an affirmative duty to maintain knowledge of their own disciplinary/Public Safety Accountability Unit (PSAU) histories, including open investigations and closed matters.

In addition, if the JHPD becomes aware of any previously unknown or unrecognized exculpatory evidence where a person is subject to or is experiencing a significant or ongoing deprivation of liberty, the JHPD shall thoroughly investigate any credible information that would indicate the person is innocent. Upon conclusion of the investigation, the findings and any evidence shall be submitted to the appropriate prosecuting authority for review.

This Directive requires that any post-conviction claims that exculpatory evidence was not disclosed to the prosecutor during the original investigation or prosecution shall also be thoroughly investigated. The Directive mandates that the investigation of such claims shall be handled by the PSAU. The Directive requires that if the PSAU investigation identifies any omitted exculpatory evidence, it shall be provided to the relevant prosecutorial authority without regard to the status of the criminal case.

### **Blueprint for the Policy Development Process**

The draft JHPD policies (hereinafter referred to as “directives”) shared for community feedback are based on examples of 21st century best practices in public safety policy, identified through extensive benchmarking of university and municipal law enforcement agencies across the nation. Taken together, they represent a comprehensively progressive approach to policing that prioritizes equity, transparency, accountability, and community-based public safety strategies.

The JHPD’s draft directives embody approaches that community advocates and leading experts have championed locally and in law enforcement reform efforts across the nation. The draft directives have also been developed based on input received through robust community engagement in prior phases of JHPD development, including suggestions received in the legislative process as well as last fall’s Memorandum of Understanding (MOU) public comment period and feedback opportunities.

In addition, the directives were drafted to exceed the minimum requirements of the Constitution and laws of the United States and the State of Maryland, to align with the Community Safety and Strengthening Act (CSSA) and to fulfill the requirements of the MOU between the Johns Hopkins University and the Baltimore Police Department. The Hopkins community and our neighbors throughout Baltimore can help improve and strengthen these directives further through their feedback and input.

Material that was considered in the drafting of the Directive and Procedure Manual, include:

- a. **Publicly available policies from municipal police departments that have undergone substantial reform efforts**, including: the New Orleans Police Department; Seattle Police Department; Portland Police Department; Detroit Police Department; Ferguson Police Department; and Baltimore Police Department;
- b. **National guidance on best practices and model policies from criminal justice reform efforts, social science research centers, and civil rights organizations**, including: the Leadership Conference on Civil and Human Rights; American Civil Liberties Union (ACLU), including the ACLU of Massachusetts’s “Racially Just Policing: Model Policies for Colleges and Universities”; the International Association of Chiefs of Police (IACP); the Police Executive Research Forum (PERF); U.S. Department of Justice Office of Community Oriented Policing Services (COPS Office); The Justice Collaboratory (The JC) at Yale University Law School; and The Center for Innovation in Community Safety (CICS) at Georgetown Law School.
- c. **National and local higher education institutions that are based in comparable environments and make policies publicly available**, including: Carnegie Mellon University; Morgan State University; Towson University; University of Chicago; University of Cincinnati; University of Maryland, Baltimore County; University of Pennsylvania; and Yale University.

To ensure that the proposed directives captured national best practices in community-focused public safety services, the development team collaborated with independent experts from two organizations: National Policing Institute (the Institute), a non-profit dedicated to advancing excellence in policing through research and innovation, and 21CP Solutions, an expert consulting team of former law enforcement personnel, academics, civil rights lawyers, and community leaders dedicated to advancing safe, fair, equitable, and inclusive public safety solutions. Each directive was reviewed by experts selected by both organizations, who provided feedback, suggestions, and edits that were fully incorporated into the current draft.

Finally, individuals and organizations representing the diversity of the Johns Hopkins University community provided feedback to ensure the policies and procedures reflect and respond to the values of our institution and to our community's public safety service needs.

Now they are available for your review. Johns Hopkins is committed to adopting, incorporating, or otherwise reflecting recommended changes and feedback in the final version of policies so long as feedback is aligned with our values and commitments, permissible within legal parameters, and supported by national best practices for community policing and public safety.



**POLICE DEPARTMENT**  
**EXCULPATORY & INCRIMINATING EVIDENCE**

**OPERATIONAL PROCEDURE #463**

Responsible Executive:  
Chief of Police  
Responsible Office:  
Vice President for Public Safety  
Approved by:  
Dr. Branville G. Bard, Jr.  
Issued: [full date]  
Revised: [full date]

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**Policy Statement**

It is the policy of Johns Hopkins Police Department (JHPD) to identify and provide to the prosecution any Potential Exculpatory and Impeachment Evidence as soon as possible following the initiation of any criminal case in state or federal court. The evidence JHPD is required to provide to the prosecution under this policy is not limited to evidence that is admissible at trial, and the duty of disclosure under this policy continues for the duration of a case — from the filing of charges through trial and appeal, until the defendant has completed serving their sentence.

This policy requires honesty and transparency from each JHPD member and oversight from the Public Safety Accountability Unit. Breaches of this policy will adversely affect a member’s ability to continue serving as a member of a law enforcement agency.

**Who is Governed by this Policy**

All personnel, including sworn, non-sworn, and contractual or voluntary persons in service with the Johns Hopkins Police Department are governed by this Directive.

## Purpose

This policy ensures the compliance of Johns Hopkins Police Department (JHPD) members with their solemn obligation to disclose Potential Exculpatory and Impeachment Evidence in criminal cases. This obligation is established in the United States Constitution and the Maryland Declaration of Rights, and recognized through court decisions, including *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), and *Fields v. State*, 432 Maryland 650 (2013).

JHPD members must carefully comply with this obligation because all knowledge of Potential Exculpatory and Impeachment Evidence in the possession of JHPD members is attributed to the prosecuting authority.

## Definitions

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<b>Confidential Disciplinary Investigation:</b>	A disciplinary investigation conducted covertly, such that its existence is hidden from the subject member to safeguard its integrity. Not all open disciplinary investigations are confidential. Only those whose existence is concealed from the subject member are confidential.
<b>Member:</b>	All members of the JHPD, including employees, officers, and volunteers, unless the term is otherwise qualified (e.g., member of the public, member of the Baltimore Police Department, etc.).
<b>Officer:</b>	All sworn police officers, at any rank, as defined by MD Code, Public Safety, § 3-201, in service with the JHPD.
<b>Potential Exculpatory Evidence:</b>	Evidence that is favorable to the defendant because it may disprove the guilt of the defendant or may show the defendant should receive less severe punishment. Examples of Potential Exculpatory Evidence include, but are not limited to: <ul style="list-style-type: none"><li>• Information that tends to disprove the defendant’s guilt concerning any count in a criminal case.</li><li>• Information that tends to cast doubt on the admissibility of evidence that the government plans to offer and that could be subject to a motion to suppress or exclude — for instance, information that tends to undermine probable cause for an arrest or a search or information related to the mishandling of physical evidence.</li><li>• The failure of any eyewitness to make a positive identification of a defendant or an eyewitness’s identification of another individual as the perpetrator.</li><li>• Any statement made by anyone inconsistent with the testimony of a potential witness for the government</li></ul>

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regarding the alleged criminal conduct of the defendant, whether it was written or recorded.

- Information that tends to diminish the degree of the defendant's culpability, the severity of the offense charged, or the severity of the defendant's sentence — for instance, information about a defendant's intellectual or behavioral health disability or minor role in the offense compared to the roles of co-defendants.

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**Potential  
Impeachment  
Evidence:**

Evidence that is favorable to the defendant because it may cast doubt on the credibility of a potential witness for the government, including but not limited to a police officer, an eyewitness, or an informant. Examples of Potential Impeachment Evidence include, but are not limited to:

- Any criminal record or criminal case pending against any anticipated witness for the government.
- Any formal or informal offer of leniency or favorable treatment made by the government to an anticipated witness in any existing or potential criminal case against that witness — for instance, an offer of immunity, non-prosecution, reduced charges, or a reduced sentence.
- Any formal or informal request for leniency or favorable treatment made by an anticipated witness in any existing or potential criminal case against that witness—for instance, a request for immunity, non-prosecution, reduced charges, or a reduced sentence.
- Any benefits, formal or informal, provided by the government to an anticipated witness.
- Information that tends to cast doubt on the credibility or accuracy of an anticipated witness for the government.
- An inconsistent statement made by any anticipated witness for the government, whether that statement was written or recorded.
- Information regarding any mental or physical impairment of any anticipated witness for the government that tends to cast doubt on the witness's ability to testify accurately and truthfully at trial.
- Any allegation or evidence of misconduct in any court of competent jurisdiction, a JHPD trial board, or JHPD's Public Safety Accountability Unit that reflects on the truthfulness, integrity, motive, or bias of any JHPD member or any other individual who is anticipated to be

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called as a witness for the government, regardless of the outcome of the proceeding or investigation addressing such allegation.

- Evidence that an anticipated witness for the government, including a JHPD member, has a racial, religious, or personal bias against a defendant individually or as a member of a group.
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## Core Principles

- I. Constitutional Enforcement.** If a JHPD member fails to disclose Potential Exculpatory or Impeachment Evidence to the prosecutor in a criminal case so that the prosecutor is incapable of disclosing it to the defense, the government's case will be tainted and could be dismissed, and the defendant's constitutional right to due process and a fair trial may be violated. The prompt disclosure of Potential Exculpatory and Impeachment Evidence preserves the integrity of the criminal justice system. The failure to promptly disclose such evidence undermines it.

## Procedures

- I. Member Requirements** (Commission on Accreditation for Law Enforcement Agencies (CALEA) 42.1.6)
- A.** In any criminal case in which a member is involved as an investigator or an anticipated witness for the government, the member shall provide all Potential Exculpatory Evidence known to the member, as well as all known Potential Impeachment Evidence regarding any anticipated witness for the government who is not a member, to the relevant prosecuting authority, whether it be the Office of the State's Attorney, the United States Attorney's Office, or another prosecutor's office.
- B.** The member shall inform the prosecutor of such evidence in writing within five business days after learning that the case has been filed and no later than the date of the first court hearing in the case, or if the member does not identify evidence until after the first court hearing, then within five business days after such discovery. Video evidence, audio evidence, written witness statements, member investigative notes, and any other contemporaneously recorded evidence must be provided in their original, unedited form.
- Note: In many cases, particularly misdemeanor cases, the member may not be aware that the prosecuting authority is pursuing the case until the member receives a summons for the first court hearing.
  - The responsibility of members to provide the relevant prosecuting authority with Potential Exculpatory Evidence, as well as Potential Impeachment Evidence regarding any anticipated witness for the

government who is not a member, exists regardless of whether the prosecutor makes a request for such evidence.

- The responsibility of members to disclose to the relevant prosecuting authority Potential Exculpatory Evidence, as well as Potential Impeachment Evidence regarding any anticipated witness for the government who is not a member, continues for the duration of a case — from the filing of charges through trial and appeal, until the defendant has completed serving their sentence. This continuing duty requires providing new or updated information concerning any previously provided Potential Exculpatory or Impeachment Evidence as such new or updated information is generated or discovered. See Sections III and IV below.
- This policy requires members to provide the prosecuting authority with Potential Exculpatory and Impeachment Evidence. This policy does not impose on members an affirmative obligation to conduct additional investigation for Potential Exculpatory and Impeachment Evidence — e.g., running witness criminal histories — though sound investigative practice necessarily involves testing the integrity of evidence that incriminates a criminal suspect or defendant.

**C.** Members must complete the Required Court Disclosure and provide it to the prosecutor, in all criminal cases in which they are investigators or anticipated witnesses, without a specific request from the prosecutor.

- To properly complete the Required Court Disclosure, all members have an affirmative duty to maintain knowledge of their own disciplinary and Public Safety Accountability Unit histories, including open investigations and closed matters.
- In every case in which they are testifying, members must attempt to review their histories with prosecutors before testifying. Members shall document the date, time, and participants for each meeting.
- When completing the Required Court Disclosure, members shall identify their known disciplinary histories, including any allegations they are aware of, regardless of whether the complaint or allegation has been unfounded, sustained, not sustained, expunged, or resulted in exoneration of the member.
- If the member is the subject of a Confidential Disciplinary Investigation, the member does not have a duty to find out about or disclose such an investigation. Members must still disclose any current or prior investigation that they know about, regardless of the outcome.

**D.** Members must document in writing in the appropriate report and/or case management system any Potential Exculpatory Evidence (e.g., a negative photo array or a misidentification) and any Potential Impeachment Evidence (e.g., the inconsistent statement of a witness) known to or discovered by them.



- E. In fulfilling their disclosure obligations under this policy, members shall not attempt to predict which of the potential witnesses the prosecutor may call, which evidence the prosecutor will use at trial, or which evidence the defense will use in its investigation or at trial.
- F. Members are required to provide to the prosecutor all Potential Exculpatory and Impeachment Evidence, without exception. It is the prosecutor's decision — not the decision of any member — to determine which evidence to disclose to the defense.

## **II. Public Safety Accountability Unit Responsibilities** (CALEA 42.1.6)

- A. To assist prosecutors and members, the Public Safety Accountability Unit (PSAU) shall assign one or more members, civilian or sworn, to serve as the Brady/Giglio Liaison(s), who shall handle responsibilities below for prosecutorial authorities.
- B. Within five business days of receiving from any member a request for records relating to the member's disciplinary history, including disciplinary records, the Brady/Giglio Liaison shall fulfill the request.
- C. If a prosecuting authority submits a request to the Brady/Giglio Liaison to inspect the disciplinary history of any member, the Brady/Giglio Liaison shall make the information available to the prosecuting authority within five business days unless good cause is shown for an extension, or the request indicates it is needed sooner, later, or immediately.
- D. The Brady/Giglio Liaison shall send any records requested or, if a complete disciplinary history is requested, all disciplinary cases in which the member was accused of violating Departmental rules should be sent, whether closed or active, regardless of the case outcome.
- E. If the Brady/Giglio Liaison is unable to fulfill the request within five business days, they shall immediately notify the prosecuting authority and identify a mutually agreeable date and time to provide the requested material.
- F. The PSAU shall follow this procedure of disclosure to the prosecuting authority regardless of whether the request for a member's disciplinary history is initially generated by an inquiry from a defense lawyer or on the prosecutor's own initiative.

## **III. Unknown or Unrecognized Exculpatory Evidence** (CALEA 42.1.6)

- A. If the Department becomes aware of any previously unknown or unrecognized exculpatory evidence where a person is subject to or is experiencing a significant or ongoing deprivation of liberty, the Department shall thoroughly investigate any credible information that would indicate the person is innocent.

- B. Upon conclusion of the investigation, the findings and any evidence shall be submitted to the appropriate prosecuting authority for review.
- C. All investigative actions including documentation of the release of the information to the prosecuting authority shall be documented in the original case file and any physical evidence shall be maintained according to Department policy.

#### **IV. Omitted Exculpatory Evidence** (CALEA 42.1.6)

- A. Claims of omitted exculpatory evidence during the original investigation shall also be thoroughly investigated by the PSAU and shall not be completed by the original investigative personnel assigned to the case.
- B. In addition to investigating the evidence presented, the Department shall also investigate and document the following:
  - When the alleged omitted exculpatory evidence was received.
  - The identity of member that received the information
  - If or when the information or evidence was provided to the prosecuting attorney's office.
- C. If identified, any omitted exculpatory evidence shall be provided to the relevant prosecutorial authority without regard to the status of the criminal case.

#### **V. Supervisor**

To ensure that members are making timely disclosures of Potentially Exculpatory and Impeachment Evidence to prosecuting authorities, supervisors shall regularly inspect their subordinates' case files for compliance with this directive.

#### **VI. Training**

All members shall receive training regarding the duty to disclose Potentially Exculpatory and Impeachment Evidence and the requirements of this policy.

#### **VII. Compliance**

- A. Members who fail to comply with this policy, including by withholding Potentially Exculpatory or Impeachment Evidence, shall be subject to discipline, up to and including termination.
- B. If any member is impeached as a testifying witness with Potentially Exculpatory or Impeachment Evidence and knowingly provides untruthful testimony in response to such impeachment, the member shall be subject to discipline, up to and including termination.

## Policy Enforcement

<b>Enforcement</b>	The Public Safety Accountability Unit investigates suspected violations and may recommend disciplinary action, including termination or dismissal in accordance with any applicable University policy or process.
<b>Reporting Violations</b>	Suspected violations of this Policy should be reported to the Public Safety Accountability Unit by phone or by using <a href="#">the online form</a> .

## Related Resources

<b>University Policies and Documents</b>
Operational Procedure #460, Criminal Investigation
<b>External Documentation</b>
<b>University Forms and Systems</b>

## Contacts

<b>Subject Matter</b>	<b>Office Name</b>	<b>Telephone Number</b>	<b>Email/Web Address</b>
Policy Clarification and Interpretation			