



OFFICE OF THE HENNEPIN COUNTY ATTORNEY
MARY F. MORIARTY COUNTY ATTORNEY

Written Comments Regarding SF599 and SF1813
Submitted to the Senate Committee on Judiciary & Public Safety on February 25, 2025 by the
Hennepin County Attorney's Office

Prosecutors' Duties under *Brady/Giglio*

- 1. Federal law, generally referred to as *Brady/Giglio*, requires prosecutors to disclose certain employment data regarding testifying police officers—even if that data is private, held by the police department, and not known to the prosecutor. SF599 and SF1813 may be unconstitutional because they impermissibly restrict when and how prosecutors disclose this employment data.**

To ensure a defendant's due process rights in criminal cases, prosecutors have independent duties under the federal and state constitutions, the Minnesota Criminal Rules, and the Minnesota Rules of Professional Responsibility, to disclose exculpatory or impeachment information that is favorable and material to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963); Minn. Const. art. 1, sec. 7; Minn. R. Crim. P. 9.01, 9.04; Minn. R. Prof. Conduct 3.8. These duties extend "to the others acting on the government's behalf in the case, including the police." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). So, a prosecutor has a duty to disclose evidence known by police officers, even if not known by the prosecutor, because a prosecutor has a duty to learn of such information. *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999).

Impeachment evidence includes information that would cast doubt on a witness's credibility. *Giglio v. United States*, 405 U.S. 150, 154 (1972). Findings by a law enforcement agency that an officer previously committed misconduct, in certain circumstances, could be impeachment evidence. See, e.g., *Ezeka v. State*, --- F.3d ---, 2025 WL 396389, at *6 (Minn. Feb. 5, 2025).

"Evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Ezeka*, 2025 WL 396389, at *6. Therefore, whether information is favorable and material will depend on the facts of the specific case. See also *Kyles*, 514 U.S. at 439. A prosecutor may have to disclose information about an officer in one case, but not the same information in another case. The United States Supreme Court has stated, however, that "the prudent prosecutor will resolve doubtful questions in favor of disclosure." *Kyles*, 514 U.S. at 439.

The authorities cited above – the federal and state constitutions, the Minnesota Criminal Rules, and the Minnesota Rules of Professional Responsibility—also set deadlines for disclosure. The constitutions require disclosure in time to be useful to the defense, while disclosure under Rule 9.01 is required by the Omnibus hearing, and under Rule 9.04, before trial. Notably, federal law does not permit a witness to issue an objection or provide feedback on whether a prosecutor discloses impeachment evidence about them to the defense. If a prosecutor believes that impeachment evidence would be favorable and material to the defense, the prosecutor is legally and ethically obligated to disclose that information to the defense in a timely manner.

- 2. The law requires that prosecutors make timely disclosures. SF599 is likely unconstitutional because the bill sets up a multi-step procedure—lasting at least 10 days—for notifying and obtaining feedback from officers even before the prosecutor can disclose that information to the defense**

SF599 is likely unconstitutional because it conflicts with a prosecutor's obligations under *Brady/Giglio*. The bill sets up a multi-step procedure—lasting at least 10 days—for notifying and obtaining feedback from officers even before the prosecutor can disclose that information to the defense. Subd. 5(a)-(c), (f). This means that a prosecutor would be required to delay disclosure to the defense of information the prosecutor believes is favorable and material to the defense. Given

Hennepin County Attorney's Office, Division of Professional Standards

Government Center, Mail Code 501, 300 South Sixth Street, Minneapolis, MN 55487

www.hennepinattorney.org

that the *Brady/Giglio* process for officers is already delayed because of the difficulty prosecutors have obtaining this information, further delays will inevitably violate a prosecutor's legal and ethical obligations to make timely disclosures. Further, additional staffing would likely be required not only to provide this notice but to track whether input has been received and when information could be disclosed. Prosecutors simply cannot comply with such onerous notification and input procedures while upholding their duties under *Brady/Giglio*. SF1813, which also contemplates that an officer would provide input *before* a prosecutor can make a disclosure, suffers from these same defects. Subd. 2(a)(2).

3. SF1813 is likely unconstitutional because it improperly limits what data can be disclosed under *Brady/Giglio* to the exclusion of other categories of data that a prosecutor would unquestionably need to disclose.

Subdivision 1(c) and the second part of subdivision 2(a)(6) improperly restrict what a prosecutor may consider to be *Brady/Giglio* evidence to instances of untruthfulness, abuse of authority, bias, candor, and criminal convictions *and* even then, that information would only be considered *Brady/Giglio* if a police chief determined the misconduct was intentional. This limited list does not capture a large number of incidents that would be considered *Brady/Giglio* under the law. And whether something is *Brady/Giglio* is not based on the view of a particular police chief. Rather, it is the prosecutor's duty to make a determine of the conduct based on the facts before them. For example, if a prosecutor viewed an officer punching an arrested person lying on the ground, and the chief never investigated that underlying conduct, the prosecutor would still be required to disclose that information under *Brady/Giglio* if a defendant asserted in another case that the officer used excessive force. Any attempt to prohibit a prosecutor from disclosing information they believe to be *Brady/Giglio* is unconstitutional because it infringes on a prosecutor's (federal) legal and ethical obligations, as described above.

4. Allowing police departments to sue prosecutors for *Brady/Giglio* disclosures violates the legal doctrines of prosecutorial immunity and separation of powers.

Subdivision 2(h), gives law enforcement agencies the ability to sue prosecutors for disclosing public or private information about a police officer that a prosecutor believes they were required to disclose under *Brady/Giglio*. The law recognizes that a prosecutor has absolute immunity that protects them from being sued for most of their actions. Because *Brady/Giglio* issues are uniquely decisions made in the context of the prosecution function in individual criminal cases, the absolute immunity doctrine bars civil litigation, including actions for damages, declaratory actions, and injunctive relief. Additionally, it is bad public policy to use legislation to pit prosecutors and officers against one another—in open court—when their interests should be aligned prosecuting crime and protecting the public. And allowing district court challenges could actually be harmful to officers. A public airing of a law enforcement agency's disagreement with a prosecutor's *Brady/Giglio* determination is likely to result in a very public court order. Finally, allowing officers to sue prosecutors for *Brady/Giglio* disclosures would likely have a chilling effect on prosecutors. Rather than encouraging prosecutors to follow the U.S. Supreme Court's directive to "resolve doubtful questions in favor of disclosure" to ensure a defendant's due process rights, this provision discourages disclosure in close calls.

Subdivisions 2(h) and 2(i) violate the separation of powers doctrine by ceding to a court a prosecutor's decision about what disclosures are required under *Brady/Giglio* in a criminal prosecution—an *executive* function. Even more problematic is the statement in subdivision 2(i) that a court's determination about the propriety of a *Brady/Giglio* designation in one case will apply to all cases going forward, which reflects a fundamental misunderstanding of *Brady/Giglio*. One judge in one case cannot decree that disclosed information would never be *Brady/Giglio* in a future case with a different set of facts. Rather, a prosecutor, as described above, must make decisions based on an individual case basis.

5. Subdivision 5 of SF1813 renders the problematic parts of SF1813 meaningless, so those parts should be excluded.

Subdivision 5 is a safety-valve provision that states, "Nothing in this section modifies the independent duty of the prosecuting agency to disclose" *Brady/Giglio* information. But as described above, subdivisions 1 and 2—by improperly restricting what *Brady/Giglio* information is and when it can be disclosed, allowing a police department to sue prosecutors, and having one judge rule forever whether something is considered *Brady/Giglio*—not simply modifies, but obstructs a prosecutor's ability to comply with their independent constitutional and ethical obligations. This subdivision 5, by contract, ensures that prosecutor can decide what to disclose and when to disclose it, rendering the previously discussed and problematic parts of the bill meaningless.