

# MAINE CHIEFS OF POLICE ASSOCIATION

## MODEL POLICY

Subject <b>GIGLIO INFORMATION</b>	Effective Date <b>00-00-0000</b>	Number <b>2-38</b>
Distribution <b>All Sworn Personnel</b>	Amends/Supersedes <b>00-00-0000</b>	

### I. Purpose

The purpose of this policy is to ensure that this agency appropriately aids in fulfilling the constitutional governmental duty to affirmatively disclose specific information that may be viewed as adverse to the credibility of its officers who may be material witnesses in prosecutions.

### II. Policy

It is the policy of this agency to disclose all relevant evidence or information that may adversely affect the credibility of law enforcement officers who may be material witnesses in prosecutions to all relevant prosecutors. This policy, while implicating certain principles of *Brady v. Maryland*<sup>1</sup>, is intended to be specific to the requirements of *Giglio v. United States*<sup>2</sup> and its progeny insofar as those requirements affect potential material law enforcement witnesses in criminal proceedings.

### III. Discussion

In *Brady v. Maryland* and *Giglio v. United States*, the U.S. Supreme Court created the mandatory disclosure requirements stated in the Purpose section of this policy. The duty is an affirmative one, i.e., if law enforcement officials know of evidence or information that may be favorable to the defense in a prosecution, including information that may be viewed as adverse to the credibility of law enforcement officers who may be material witnesses, those officials must disclose the information to the prosecutor, whether or not the defense has requested the information.

### IV. Definition

**Giglio Information:** Evidence that, if true, would tend to adversely affect the credibility of a law enforcement officer (LEO) who may be a material witness in a criminal proceeding. This includes any sustained finding that establishes a record of untruthfulness, bias, and/or commission of crimes, as well as information that reflects an impaired ability of an officer to perceive or recall the truth of a matter. It does not include mere allegations, rumors, or other inconclusive information.

### V. Procedures for Law Enforcement Agency

- A. The Chief Law Enforcement Officer (CLEO) shall submit a Law Enforcement Agency Giglio Inquiry to the relevant Office of the District Attorney. The CLEO has a continuing obligation to update the Inquiry if there are relevant circumstances that would change the status of the Inquiry. In addition to the matters addressed on the Giglio Inquiry form, the CLEO shall bring to the attention of the relevant prosecutor any other information regarding an officer that may reasonably be used to question the officer's credibility. The Office of the Attorney General and/or the Office of the United States Attorney, as well as an Office of the District Attorney, may make a Giglio inquiry that is associated with a specific investigation or prosecution. This constitutes a process separate from the procedure described in this Policy insofar as it involves the submission of the Law Enforcement Agency Giglio Inquiry.
- B. The CLEO shall, prior to reporting any potential Giglio information to a prosecutor, notify the respective LEO and provide the LEO with an opportunity to further address the information.
- C. At all times, individual LEO's have a continuing obligation to report to the CLEO any relevant circumstances that would change the status of the Giglio Inquiry.

<sup>1</sup> 373 US 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 - Supreme Court, 1963

<sup>2</sup> 405 US 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 - Supreme Court, 1972

- D. The CLEO may confer with the appropriate prosecutorial agency and, if necessary, agency legal counsel or others, to determine whether any potential *Giglio* information regarding a LEO is so serious as to render the LEO unable to offer credible testimony in a court of law. In making such a determination, the standards enumerated in B. and C. below should be considered.
- E. The prosecutor, prior to disclosing any potential *Giglio* information, shall notify the respective LEO and provide the LEO with an opportunity to further address the information.
- F. In all but obvious cases that clearly necessitate disclosure, the prosecutor should consider seeking judicial guidance in an in camera inspection or seeking a ruling of admissibility if the information were to be disclosed. An in camera review may end the issue.

## VI. Procedures for District Attorney's Office

- A. Upon the disclosure by the CLEO to a relevant prosecutor of any potential *Giglio* information, it becomes the duty of the prosecutor to determine whether the information is subject to further disclosure.
- B. It is recognized that there is a gradient of severity of potential *Giglio* issues, ranging from minor misstatement of fact during employment to an intentional misrepresentation of fact to knowingly false testimony under oath. It is equally recognized that not every such issue necessarily disqualifies an officer from ever testifying.
- C. The prosecutor, in determining whether the information is subject to disclosure, should consider, inter alia, whether the information is clearly indicative of untruthfulness, bias, or an impaired ability to perceive or recall the truth of a matter, whether there is a pending case, whether the particular officer is a necessary witness or can be separated from the case, whether the information is indicative of misconduct that is case specific or officer specific, and whether the information is admissible or would likely lead to the discovery of admissible evidence material to the defense.

PER ORDER OF: \_\_\_\_\_

Chief Executive Officer

\*\*\*ADVISORY\*\*\*

This Maine Chiefs of Police Association model policy is provided to assist your agency in the development of your own policies. All policies mandated by statute contained herein meet the standards as prescribed by the Board of Trustees of the Maine Criminal Justice Academy. Prior to implementation it is recommended to review this model policy and incorporate any changes that will make it unique to your agency. The watermark may be removed by going to page layout, click on watermark, click on remove watermark. Any revisions to an existing model policy will be highlighted via the underline and italics font.

\*\*\* DISCLAIMER \*\*\*

This model policy should not be construed as a creation of a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of this policy will only form the basis for administrative sanctions by the individual law enforcement agency and/or the Board of Trustees of the Maine Criminal Justice Academy. This policy does not hold the Maine Chiefs of Police Association, its employees or its members liable for any third party claims and is not intended for use in any civil actions.

Any questions regarding the policy can be directed to the MCOPA Policy Committee.

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## Law Enforcement Agency Giglio Inquiry

AGENCY NAME: \_\_\_\_\_

1.	Has there been a sustained finding of misconduct by any officer that reflects adversely upon the officer's truthfulness or bias?	Yes No
2.	Has any officer ever been charged with a crime <u>that reflects adversely upon the officer's truthfulness or bias?</u>	Yes No
3.	Are you aware of any pending investigation of alleged misconduct by any officer that reflects adversely upon the officer's truthfulness or bias?	Yes No
4.	Has there ever been an allegation against any officer by a prosecutor, magistrate or judge that reflected adversely on the officer's truthfulness or bias, or a judicial finding in the form of a decision, opinion or order, in which any officer was found to have been untruthful or biased?	Yes No
5.	Are you aware of any information that reflects an impaired ability of an officer to perceive or recall the truth of a matter?	Yes No
6.	Are you aware of any allegation made against any officer by any person that has been publicly aired that claimed that the officer was untruthful or biased?	Yes No
7.	Are you aware of any officer in your agency who resigned from another agency after having been accused of misconduct that adversely reflected upon the officer's truthfulness, bias, or commission of crimes?	Yes No
8.	You are reminded of your duty to update the prosecutor's office if there is any change in the status of any information declared in or sought by this questionnaire.	Check <input type="checkbox"/>

Signature: \_\_\_\_\_ Position: \_\_\_\_\_ Date: \_\_\_\_\_

Paul Gaspar  
Maine Association of Police  
LD 1671

Referenced Attachment/Addendum (Maine Chiefs Model Policy, referenced)  
inadvertently separated from testimony previously submitted by Paul Gaspar,  
Executive Director, Maine Association of Police, in regard to LD1671 -