

## **POLICIES FOR COMMENT | 600**

**605** Brady Material Disclosure

**607** Warrant Service

**608** Operations Planning and Deconfliction

**NAVIGATE TO THE POLICY BY CLICKING THE NUMBER OR TITLE**

# Brady Material Disclosure

## 605.1 PURPOSE AND SCOPE

### Best Practice

This policy establishes guidelines for identifying and releasing potentially exculpatory or impeachment information (so-called "*Brady* information" ) to a prosecuting attorney.

### 605.1.1 DEFINITIONS

#### Best Practice

Definitions related to this policy include:

**Brady information** -Information known or possessed by the Fitchburg Police Department that is both favorable and material to the current prosecution or defense of a criminal defendant.

## 605.2 POLICY

### Best Practice

The Fitchburg Police Department will conduct fair and impartial criminal investigations and will provide the prosecution with both incriminating and exculpatory evidence, as well as information that may adversely affect the credibility of a witness. In addition to reporting all evidence of guilt, the Fitchburg Police Department will assist the prosecution by complying with its obligation to disclose information that is both favorable and material to the defense. The Department will identify and disclose to the prosecution potentially exculpatory information, as provided in this policy.

## 605.3 DISCLOSURE OF INVESTIGATIVE INFORMATION

### Best Practice MODIFIED

Officers must include in their investigative reports adequate investigative information and reference to all material evidence and facts that are reasonably believed to be either incriminating or exculpatory to any individual in the case. If an officer learns of potentially incriminating or exculpatory information any time after submission of a case, the officer or the handling investigator must prepare and submit a supplemental report documenting such information as soon as practicable. Supplemental reports shall be promptly processed and transmitted to the prosecutor's office.

If information is believed to be privileged or confidential (e.g., informant or attorney-client information, attorney work product), the officer should discuss the matter with a supervisor and/or prosecutor to determine the appropriate manner in which to proceed.

Evidence or facts are considered material if there is a reasonable probability that they would affect the outcome of a criminal proceeding or trial. Determining whether evidence or facts are material often requires legal or even judicial review. If an officer is unsure, the officer should address the issue with a supervisor. Detectives or officers may have the ability to directly communicate with the prosecuting attorney based upon professional relationships or position within the department.

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Department personnel who are uncertain about whether evidence or facts are material should address the issue with an appropriate prosecutor.

#### **605.4 DISCLOSURE OF REQUESTED INFORMATION**

**Best Practice**

If *Brady* information is located, the following procedure shall apply:

- (a) In the event that a motion has not already been filed by the criminal defendant or other party, the prosecuting attorney and department member shall be notified of the potential presence of *Brady* material in the member's personnel file.
- (b) The prosecuting attorney or department counsel should be requested to file a motion in order to initiate an in-camera review by the court.
  1. If no motion is filed, the supervisor should work with counsel to determine whether the records should be disclosed to the prosecutor.
- (c) The Custodian of Records shall accompany all relevant personnel files during any in-camera inspection and address any issues or questions raised by the court.
- (d) If the court determines that there is relevant *Brady* material contained in the files, only that information ordered released will be copied and released to the parties filing the motion.
  1. Prior to the release of any materials pursuant to this process, the Custodian of Records should request a protective order from the court limiting the use of such materials to the involved case and requiring the return of all copies upon completion of the case.
- (e) If a court has determined that relevant *Brady* information is contained in a member's file in any case, the prosecutor should be notified of that fact in all future cases involving that member.

#### **605.5 INVESTIGATING BRADY ISSUES**

**Best Practice**

If the Department receives information from any source that a member may have issues of credibility, dishonesty or has been engaged in an act of moral turpitude or criminal conduct, the information shall be investigated and processed in accordance with the Personnel Complaints Policy.

#### **605.6 TRAINING**

**Best Practice**

Department personnel should receive periodic training on the requirements of this policy.

#### **605.7 BRADY PROCESS**

**Best Practice**

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The Chief of Police shall select a member of the Department to coordinate requests for *Brady* information. This person shall be directly responsible to the Administration Section Commander or the authorized designee

The responsibilities of the coordinator include but are not limited to:

- (a) Working with the appropriate prosecutors' offices and the City Attorney's office to establish systems and processes to determine what constitutes *Brady* information and the method for notification and disclosure.
- (b) Maintaining a current list of members who have *Brady* information in their files or backgrounds.
  1. Updating this list whenever potential *Brady* information concerning any department member becomes known to the Department or is placed into a personnel or internal affairs file.

#### **605.8 SUBPOENA PROCESSING**

##### **Best Practice**

The individual processing subpoenas (or the supervisor of the subpoenaed member) shall check the subpoenaed member's name against the current list of those who are known to have *Brady* information in their files or background, and shall alert the coordinator if a person on the list is subpoenaed.

# Warrant Service

## 607.1 PURPOSE AND SCOPE

### Best Practice

This policy establishes guidelines for the planning and serving of arrest and search warrants by members of this department. It is understood that this policy cannot address every variable or circumstance that can arise in the service of a search or arrest warrant, as these tasks can involve rapidly evolving and unique circumstances.

This policy is intended to be used in conjunction with the Operations Planning and Deconfliction Policy, which has additional guidance on planning and serving high-risk warrants.

This policy is not intended to address the service of search warrants on locations or property already secured or routine field warrant arrests by patrol officers.

## 607.2 POLICY

### Best Practice

It is the policy of the Fitchburg Police Department to balance the safety needs of the public, the safety of department members, privacy interests and other relevant factors when making decisions related to the service of search and arrest warrants.

## 607.3 OPERATIONS DIRECTOR

### Best Practice

The operations director (see the Operations Planning and Deconfliction Policy) shall review all risk assessment forms with the involved supervisor to determine the risk level of the warrant service.

The operations director will also have the responsibility to coordinate service of those warrants that are categorized as high risk. Deconfliction, risk assessment, operational planning, briefing and debriefing should follow guidelines in the Operations Planning and Deconfliction Policy.

## 607.4 SEARCH WARRANTS

### Best Practice

Officers should receive authorization from a supervisor before preparing a search warrant application. Once authorization is received, the officer will prepare the affidavit and search warrant, consulting with the applicable prosecuting attorney as needed. He/she will also complete the risk assessment form and submit it, along with the warrant affidavit, to the appropriate supervisor and the operations director for review and classification of risk (see the Operations Planning and Deconfliction Policy).

## 607.5 ARREST WARRANTS

### Best Practice

If an officer reasonably believes that serving an arrest warrant may pose a higher risk than commonly faced on a daily basis, the officer should complete the risk assessment form and submit

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it to the appropriate supervisor and the operations director for review and classification of risk (see the Operations Planning and Deconfliction Policy).

If the warrant is classified as high risk, service will be coordinated by the operations director. If the warrant is not classified as high risk, the supervisor should weigh the risk of entry into a residence to make an arrest against other alternatives, such as arresting the person outside the residence where circumstances may pose a lower risk.

### 607.6 WARRANT PREPARATION

**Best Practice**

An officer who prepares a warrant should ensure the documentation in support of the warrant contains as applicable:

- (a) Probable cause to support the search or arrest, including relevant dates and times to demonstrate timeliness and facts to support any request for a warrant based on testimony (Wis. Stat. § 968.12), nighttime or no-knock warrant execution.
- (b) A clear explanation of the affiant's training, experience and relevant education.
- (c) Adequately supported opinions, when relevant, that are not left to unsubstantiated conclusions.
- (d) A nexus between the place to be searched and the persons or items central to the investigation. The facts supporting this nexus should be clear and current. For example, the affidavit shall explain why there is probable cause to believe that a particular person is currently residing at a particular location or that the items sought are present at a particular location.
- (e) Full disclosure of known or suspected residents at the involved location and any indication of separate living spaces at the involved location. For example, it should be disclosed that several people may be renting bedrooms at a single location, even if the exact location of the rooms is not known.
- (f) A specific description of the location to be searched, including photographs of the location, if reasonably available.
- (g) A sufficient description of the items to be seized.
- (h) Full disclosure of any known exculpatory information relevant to the warrant application (refer to the *Brady* Material Disclosure Policy).

### 607.7 HIGH-RISK WARRANT SERVICE

**Best Practice**

The operations director or the authorized designee shall coordinate the service of warrants that are categorized as high risk and shall have sole authority in determining the manner in which the warrant will be served, including the number of officers deployed.

The member responsible for directing the service should ensure the following as applicable:

- (a) When practicable and when doing so does not cause unreasonable risk, video or photographic documentation is made of the condition of the location prior to execution

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of a search warrant. The images should include the surrounding area and persons present.

- (b) The warrant service is audio- and video-recorded when practicable and reasonable to do so.
- (c) Evidence is handled and collected only by those members who are designated to do so. All other members involved in the service of the warrant should alert one of the designated members to the presence of potential evidence and not touch or disturb the items.
- (d) Reasonable efforts are made during the search to maintain or restore the condition of the location.
- (e) Persons who are detained as part of the warrant service are handled appropriately under the circumstances.
- (f) Reasonable care provisions are made for children and dependent adults (see the Child and Dependent Adult Safety Policy).
- (g) A list is made of all items seized and a copy provided to the person in charge of the premises if present or otherwise left in a conspicuous place.
- (h) A copy of the search warrant is left at the location.
- (i) The condition of the property is documented with video recording or photographs after the search.

#### 607.8 DETENTIONS DURING WARRANT SERVICE

##### Best Practice

Officers must be sensitive to the safety risks of all persons involved with the service of a warrant. Depending on circumstances and facts present, it may be appropriate to control movements of any or all persons present at a warrant service (Wis. Stat. § 968.16), including those who may not be the subject of a warrant or suspected in the case. However, officers must be mindful that only reasonable force may be used and weapons should be displayed no longer than the officer reasonably believes is necessary (see the Use of Force Policy).

As soon as it can be determined that an individual is not subject to the scope of a warrant and that no further reasonable suspicion or safety concerns exist to justify further detention, the person should be promptly released.

Officers should, when and to the extent reasonable, accommodate the privacy and personal needs of people who have been detained.

#### 607.9 ACTIONS AFTER WARRANT SERVICE

##### State

The supervisor shall ensure that all affidavits, warrants, receipts and returns, regardless of any associated cases, are filed with the court clerk identified on the warrant as soon as reasonably possible but no later than 48 hours after execution of the warrant, excluding holidays and weekends (Wis. Stat. § 968.17).

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### 607.10 OUTSIDE AGENCIES AND CROSS-JURISDICTIONAL WARRANTS

**Best Practice** **MODIFIED**

The operations director will ensure that cooperative efforts with other agencies in the service of warrants conform to existing mutual aid agreements or other memorandums of understanding and will work cooperatively to mitigate risks including, but not limited to, the following (see the Outside Agency Assistance Policy):

- Identity of team members
- Roles and responsibilities
- Familiarity with equipment
- Rules of engagement
- Asset forfeiture procedures

Any outside agency requesting assistance in the service of a warrant within this jurisdiction should be referred to the Chief of Police or designee. The Chief of Police or designee should review and confirm the warrant, including the warrant location, and should discuss the service with the appropriate supervisor from the other agency. The assigned supervisor should ensure that members of the Fitchburg Police Department are utilized appropriately. Any concerns regarding the requested use of Fitchburg Police Department members should be brought to the attention of the Chief of Police or the authorized designee. The actual service of the warrant will remain the responsibility of the agency requesting assistance.

If the operations director is unavailable, the Shift Sergeant should assume this role.

If officers intend to serve a warrant outside Fitchburg Police Department jurisdiction, the operations director should provide reasonable advance notice to the applicable agency, request assistance as needed and work cooperatively on operational planning and the mitigation of risks detailed in this policy.

Officers will remain subject to the policies of the Fitchburg Police Department when assisting outside agencies or serving a warrant outside Fitchburg Police Department jurisdiction.

### 607.11 TRAINING

**Best Practice**

The Deputy Chief should ensure officers receive periodic training on this policy and associated topics, such as legal issues, warrant preparation, warrant service and reporting requirements.

# Operations Planning and Deconfliction

## 608.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidelines for planning, deconfliction and execution of high-risk operations.

Additional guidance on planning and serving high-risk warrants is provided in the Warrant Service Policy.

### 608.1.1 DEFINITIONS

Best Practice MODIFIED

Definitions related to this policy include:

**High-risk operations** - Operations, including service of search and arrest warrants, that are likely to present higher risks than are commonly faced by officers on a daily basis, including suspected fortified locations, reasonable risk of violence or confrontation with multiple persons, or reason to suspect that persons anticipate the operation.

## 608.2 POLICY

Best Practice

It is the policy of the Fitchburg Police Department to properly plan and carry out high-risk operations, including participation in a regional deconfliction system, in order to provide coordination, enhance the safety of members and the public, decrease the risk of compromising investigations and prevent duplicating efforts.

## 608.3 OPERATIONS DIRECTOR

Best Practice MODIFIED

The Chief of Police will designate a member of this department to be the operations director, typically the Team Leader for the Special Response Team (SRT).

The operations director will develop and maintain a risk assessment form to assess, plan and coordinate operations. This form should provide a process to identify high-risk operations.

The operations director will review risk assessment forms with involved supervisors to determine whether a particular incident qualifies as a high-risk operation. The director will also have the responsibility for coordinating operations that are categorized as high risk.

## 608.4 RISK ASSESSMENT

Best Practice

### 608.4.1 RISK ASSESSMENT FORM PREPARATION

Best Practice

Officers assigned as operational leads for any operation that may qualify as a high-risk operation shall complete a risk assessment form.

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When preparing the form, the officer should query all relevant and reasonably available intelligence resources for information about the subject of investigation, others who may be present and the involved location. These sources may include regional intelligence and criminal justice databases, target deconfliction systems, firearm records, commercial databases and property records. Where appropriate, the officer should also submit information to these resources.

The officer should gather available information that includes, but is not limited to:

- (a) Photographs, including aerial photographs, if available, of the involved location, neighboring yards and obstacles.
- (b) Maps of the location.
- (c) Diagrams of any property and the interior of any buildings that are involved.
- (d) Historical information about the subject of investigation (e.g., history of weapon possession or use, known mental illness, known drug use, threats against police, gang affiliation, criminal history).
- (e) Historical information about others who may be present at the location (e.g., other criminals, innocent third parties, dependent adults, children, animals).
- (f) Obstacles associated with the location (e.g., fortification, booby traps, reinforced doors/windows, surveillance measures, number and type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations).
- (g) Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service).
- (h) Other available options that may minimize the risk to officers and others (e.g., making an off-site arrest or detention of the subject of investigation).

#### 608.4.2 RISK ASSESSMENT REVIEW

##### **Best Practice**

Officers will present the risk assessment form and other relevant documents (such as copies of search warrants and affidavits and arrest warrants) to their supervisor and the operations director.

The supervisor and operations director shall confer and determine the level of risk. Supervisors should take reasonable actions if there is a change in circumstances that elevates the risks associated with the operation.

#### 608.4.3 HIGH-RISK OPERATIONS

##### **Best Practice** **MODIFIED**

If the operations director, after consultation with the involved supervisor, determines that the operation is high risk the operation will be conducted by an outside Tactical Response Team. Additionally, the operations director should:

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- (a) Determine what resources will be needed at the location, and contact and/or place on standby any of the following appropriate and available resources:
  - (a) Special Response Team (SRT)
  - (b) Additional personnel
  - (c) Outside agency assistance
  - (d) Special equipment
  - (e) Medical personnel
  - (f) Persons trained in negotiation
  - (g) Additional surveillance
  - (h) Canines
  - (i) Property and Evidence Room or analytical personnel to assist with cataloguing seizures
  - (j) Forensic specialists
  - (k) Specialized mapping for larger or complex locations
- (b) Contact the appropriate department members or other agencies as warranted to begin preparation.
- (c) Ensure that all legal documents such as search warrants are complete and have any modifications reasonably necessary to support the operation.
- (d) Coordinate the actual operation.

#### **608.5 DECONFLICTION**

##### **Best Practice**

Deconfliction systems are designed to identify persons and locations associated with investigations or law enforcement operations and alert participating agencies when others are planning or conducting operations in close proximity or time or are investigating the same individuals, groups or locations.

The officer who is the operations lead shall ensure the subject of investigation and operations information have been entered in an applicable deconfliction system to determine if there is reported conflicting activity. This should occur as early in the process as practicable, but no later than two hours prior to the commencement of the operation. The officer should also enter relevant updated information when it is received.

If any conflict is discovered, the supervisor will contact the involved jurisdiction and resolve the potential conflict before proceeding.

#### **608.6 OPERATIONS PLAN**

##### **Best Practice** **MODIFIED**

The operations director should ensure that a written operations plan is developed for all high-risk operations. Plans should also be considered for other operations that would benefit from having

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a formal plan. These plans must be shared with the other agencies assisting with the high-risk operation.

The plan should address such issues as:

- (a) Operation goals, objectives and strategies.
- (b) Operation location and people:
  - 1. The subject of investigation (e.g., history of weapon possession/use, known mental illness issues, known drug use, threats against police, gang affiliation, criminal history)
  - 2. The location (e.g., fortification, booby traps, reinforced doors/windows, surveillance cameras and/or lookouts, number/type of buildings, geographic and perimeter barriers, the number and types of weapons likely to be present, information that suggests the presence of explosives, chemicals or other hazardous materials, the potential for multiple dwellings or living spaces, availability of keys/door combinations), including aerial photos, if available, and maps of neighboring yards and obstacles, diagrams and other visual aids
  - 3. Other environmental factors (e.g., nearby venues such as schools and day care centers, proximity of adjacent homes or other occupied buildings, anticipated pedestrian and vehicle traffic at the time of service)
  - 4. Identification of other people who may be present in or around the operation, such as other criminal suspects, innocent third parties and children
  - 5. Vehicles associated with the location or subject of investigation.
- (c) Information from the risk assessment form by attaching a completed copy in the operational plan.
  - 1. The volume or complexity of the information may indicate that the plan includes a synopsis of the information contained on the risk assessment form to ensure clarity and highlighting of critical information.
- (d) Participants and their roles.
  - 1. An adequate number of uniformed officers and marked law enforcement vehicles should be included in the operation team to provide reasonable notice of a legitimate law enforcement operation.
  - 2. How all participants will be identified as law enforcement.
- (e) Whether deconfliction submissions are current and all involved individuals, groups and locations have been deconflicted to the extent reasonably practicable.
- (f) Identification of all communications channels and call-signs.
- (g) Use of force issues.
- (h) Contingencies for handling medical emergencies (e.g., services available at the location, closest hospital, closest trauma center).
- (i) Plans for detaining people who are not under arrest.

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- (j) Contingencies for handling children, dependent adults, animals and other people who might be at the location in accordance with the Child Abuse, Adult Abuse, Child and Dependent Adult Safety and Animal Control policies.
- (k) Communications plan
- (l) Responsibilities for writing, collecting, reviewing and approving reports.

#### 608.6.1 OPERATIONS PLAN RETENTION

##### Best Practice

Since the operations plan contains intelligence information and descriptions of law enforcement tactics, it shall not be filed with the report. The operations plan shall be stored separately and retained in accordance with the established records retention schedule.

#### 608.7 OPERATIONS BRIEFING

##### Best Practice MODIFIED

A briefing should be held prior to the commencement of any high-risk operation to allow all participants to understand the operation, see and identify each other, identify roles and responsibilities and ask questions or seek clarification as needed. Anyone who is not present at the briefing should not respond to the operation location without specific supervisory approval.

- (a) The briefing should include a verbal review of plan elements, using visual aids, to enhance the participants' understanding of the operations plan.
- (b) All participants should be provided a copy of the operations plan and search warrant, if applicable. Participating personnel should be directed to read the search warrant and initial a copy that is retained with the operation plan. Use of force options and limitations, knock and announce rules and items to be seized should be identified at the briefing.
- (c) The operations director shall ensure that all participants are visually identifiable as law enforcement officers.
  - 1. Exceptions may be made by the operations director for officers who are conducting surveillance or working under cover. However, those members exempt from visual identification should be able to transition to a visible law enforcement indicator at the time of enforcement actions, such as entries or arrests, if necessary.
- (d) The briefing should include details of the communications plan.
  - (a) It is the responsibility of the operations director to ensure that Dispatch is notified of the time and location of the operation.
  - (b) The briefing should include a communications check to ensure that all participants are able to communicate with the available equipment on the designated radio channel.

#### 608.8 SRT PARTICIPATION

##### Best Practice

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If the operations director determines that SRT participation is appropriate, the director and the SRT supervisor shall work together to develop a written plan. The SRT supervisor shall assume operational control until all persons at the scene are appropriately detained and it is safe to begin a search. When this occurs, the SRT supervisor shall transfer control of the scene to the handling supervisor. This transfer should be communicated to the officers present.

#### **608.9 MEDIA ACCESS**

**Best Practice**

No advance information regarding planned operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the Media Relations Policy. If a Search Warrant is being served, refer to the Search Warrant Policy for specific prohibitions.

#### **608.10 OPERATIONS DEBRIEFING**

**Best Practice**

High-risk operations should be debriefed as soon as reasonably practicable. The debriefing should include as many participants as possible. This debrief may be separate from any SRT debriefing.

#### **608.11 TRAINING**

**Best Practice** **MODIFIED**

The Deputy Chief should ensure members who participate in operations subject to this policy should receive periodic training including, but not limited to, topics such as legal issues, deconfliction practices, operations planning concepts and reporting requirements.