
LEGAL UPDATE

Legal Services Division



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BRADY-GIGLIO LIST STUDY COMMITTEE MEETING — DECEMBER 6, 2021

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

Overview. The Legislative Council approved the appointment of a Brady-Giglio List Study Committee during the 2021 Legislative Interim. The committee is required to study the disclosure of information contained in law enforcement officer personnel files as such information relates to a Brady-Giglio list; the efficiency of implementing a statewide system for a Brady-Giglio list, identifying impartial entities to conduct investigations pertaining to a law enforcement officer's acts or omissions to act, and recommending the appropriate procedures, due process protections, appeal rights, and criteria for the placement and removal of a law enforcement officer's name on and from a Brady-Giglio list; and any other issues that the committee determines relevant to its objective. The committee must submit a report to the Governor and General Assembly by December 16, 2021.

Procedural Business. The meeting was called to order at 10:00 a.m. in Room 103 of the State Capitol Building. Roll of committee members was taken, and members introduced themselves. The committee elected Senator Dan Dawson and Representative Jarad Klein permanent co-chairpersons and adopted procedural rules.

Panels. Four panels presented before the committee.

Mr. Kevin Cmelik, Director of the Criminal Appeals Division, Office of the Attorney General, presented the policy of the Attorney General's Office concerning the handling of Brady-Giglio material and provided an overview of pertinent cases and types of activities that constitute Brady-Giglio material.

Ms. Shannon Archer, Assistant County Attorney, Polk County Attorney's Office, and Mr. Clint Spurrier, Ringgold and Taylor County Attorney, presented information on how county attorneys handle the disclosure of Brady-Giglio material to a defense attorney when they are in possession of Brady-Giglio material concerning a law enforcement officer. They discussed the difficulty in determining the scope of disclosure, problems related to disclosure of confidential information contained in personnel records of law enforcement officers, and a prosecutor's duty to disclose information. They discussed broad solutions, including the creation of an independent statewide panel that could determine the scope of disclosure and the scope of confidential records, and a process whereby a defense attorney could seek leave from the court to determine the relevancy of the material disclosed in a particular case.

Ms. Martha Lucy, Iowa Appellate Defender, Office of the State Public Defender, and Mr. Bobby Rehkemper, criminal defense attorney, discussed the use of Brady-Giglio material by defense attorneys. They discussed competing due process rights of a defendant to a fair trial, and due process rights of a law enforcement officer who has a sustained finding of a Brady-Giglio violation. They noted that disclosure of Brady-Giglio material is required of the state, and that whether the material is admissible in a trial or proceeding is determined by the court. The committee discussed the option of establishing a statewide Brady-Giglio list that would be maintained by an agency or office and which would collect submitted complaints of law enforcement officer actions.

Mr. Stephan Bayens, Commissioner of the Department of Public Safety, and Mr. Greg Stallman, Police Chief, City of Altoona, presented information on behalf of law enforcement and the Department of Public Safety. They noted that law enforcement officers are often unaware that their names are on a Brady-Giglio list and the need for a mechanism

that would allow for an officer to challenge an officer's placement on the list. The Iowa Police Chiefs Association made a recommendation that all county attorneys maintain a Brady-Giglio list for their county and provide annual updates to a designated repository agency. They also recommended administrative rules be created that establish what conduct by a law enforcement officer leads to a law enforcement officer's name being placed on a Brady-Giglio list, the procedure for investigating a law enforcement officer's conduct, and a uniform due process procedure to challenge a law enforcement officer's name being placed on and removed from a Brady-Giglio list.

Other topics of committee discussion included whether the process used in disciplinary proceedings provides enough due process to a law enforcement officer; how officers are informed that they are on a Brady-Giglio list; whether a prosecutor can rely on a third party's assessment that certain law enforcement officer conduct is not Brady-Giglio material; and the federal practice of sending questions concerning Brady-Giglio material to law enforcement and state prosecutors.

The meeting adjourned at 3:16 p.m.

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