

WORKING AGENDA FOR CRIMINAL DISCOVERY TASK FORCE MEETING ON
MONDAY, MARCH 11, 2019 & THEREAFTER

1. Adoption of minutes from last meeting.
2. Potential “experts” in the field to address these issues to assist the task force in these efforts? (i.e. judges, practitioners, and appropriate experts in the field)
3. Potential areas of task force study, consideration, and potential recommendations to enhance the timely & complete disclosure of discoverable material in criminal cases. Such recommendations may include:

<i>Should In-House or Outside Training to Lawyers & Law Enforcement Be Provided? ⁱ</i>	<i>Should Changes Be Made to Existing Policies & Procedures and / or Should New Ones Be Promulgated? ⁱⁱ</i>	<i>Should Changes Be Made to Existing RI Law and / or Court Rules? Should New Ones Be Promulgated?</i>	<i>Should Existing Sanctions for Non-Compliance Be Enhanced and / or New Ones Needed?</i>	<i>Misc. ⁱⁱⁱ</i>
1) As a result of ongoing problems with discovery several states have required, either via statute or court rule, mandatory training for lawyers and law enforcement in the area of discovery compliance. Should the task force	As a result of the RIPD’s 2018 APRA request RI law enforcement has, at least as of 5/29/18, thirteen (13) policies for complying with a defendant’s discovery request. ^{iv} 1) Would the timely and complete disclosure of discoverable material	Several types of “fixes” have been considered and in some cases implemented in order to enhance the timely and complete exchange of discoverable material in criminal cases. These include: • RI. Senate Bill # 2018 – S 2420, Sub-Section (c).	1) RI law already has in place several options for sanctions for attorneys who attempt to evade their discovery obligations. ^{ix} Should additional options for sanctions be considered by	Other possibilities that the task force may wish to consider to enhance the timely and complete disclosure of discoverable material in

<p>consider that possibility in RI?</p> <p>If so....</p> <p>2) What form(s) should that training take?</p>	<p>in criminal cases be enhanced by the adoption of uniform policies and procedures in this area?^v</p> <p>If so...</p> <p>2) Could the USDOJ policies, any of the thirteen (13) received as a result of the RIPD's APRA request, or some combination thereof serve as a model or template for a uniform statewide policy in this area?</p> <p>3) A number of accreditation standards of the RI Police Accreditation Commission (RIPAC) arguably apply to the discovery process.^{vi}</p> <p>Would the timely and complete disclosure of discoverable material in criminal cases be</p>	<p>Provides that upon the filing of a motion for discovery by either the defense or state under court rules or the Exculpatory Evidence Doctrine, and request of the party filing the motion, the court must set a date for compliance with reasonable extensions available.</p> <ul style="list-style-type: none"> • NY. Administrative Order of the Administrative Judge of the Courts #200.16 / 200.27. <p>Requires that the court issue a standing order related to discovery in all criminal cases applicable to both the state and defendant.</p> <ul style="list-style-type: none"> • VA. Recently enacted changes to its procedures governing discovery in criminal cases. Among other things these changes require a more robust involvement by the court at the outset, when 	<p>the task force?</p> <p>If so....</p> <p>2) What would they look like?</p>	<p>criminal cases includes but is not limited to:</p> <ol style="list-style-type: none"> 1) Use of electronic case management systems? 2) Use of paper v. electronic files? 3) Collateral agencies involved in investigations like forensic labs either public (RISCL, RIDOH) or private? 4) Open file discovery
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	<p>enhanced by the adoption of relevant standards related to the accreditation process? ^{vii}</p> <p>If so...</p> <p>4) What would the new standards look like?</p>	<p>initial requests for discovery are filed. The court must <u>order</u> the disclosure. In contrast applicable rules in RI provide that discovery takes place “upon request” with little if any court involvement. Thereafter the practice is that the parties exchange discoverable material informally, at least initially. ^{viii}</p> <p>1) Would the timely and complete disclosure of discoverable material in criminal cases be enhanced by the adoption of these court rules, legislation, or some combination thereof?</p> <p>If so...</p> <p>2) What would these changes look like?</p>		<p>?</p> <p>If so, form?</p> <p>5) Support staff involvement?</p> <p>6) Enhance inter-agency cooperation, standardization of procedures, the sharing of information via the internet, or other secure electronic means ^x</p>
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ENDNOTES

ⁱ Examples include:

- §41.111 Texas Government Code (each attorney representing the state in the prosecution of felony and misdemeanor criminal offenses other than Class C misdemeanors shall complete a course of study relating to the duty of a prosecuting attorney to disclose exculpatory and mitigating evidence in a criminal case and the Court of Criminal Appeals shall adopt rules relating to the training)
- <https://www.tdcaa.com/brady-resources/2014-brady-materials> (explains and provides access to the training required in Texas in 2014 and 2018)
- In the early 2000's Illinois reformed its capital trial system by adopting a number of changes to its court rules including the enactment of Illinois Supreme Court Rules 416 and 714 requiring at least 12 hours of training in the preparation and trial of capital cases in a course approved by the Illinois Supreme Court. These and other requirements have been eliminated as the result of Illinois' repeal of the death penalty.

ⁱⁱ As suggested by SR 328, may include the use of protocols to enhance interagency cooperation, standardization of procedures, the sharing of information via the internet, or other secure electronic means.

ⁱⁱⁱ These and other issues relating to discovery are discussed in detail in NY State Bar Association Task Force on Criminal Discovery Final Report (12/1/14). See especially pp. 51-75 regarding recommendations for timely and complete disclosure of Brady materials and the flow of information between police and prosecutors. Available at: <https://www.dropbox.com/sh/3t76nxypylmlf4l/AAxoup7rrJWLRYPFU3c8TNja?dl=0>

^{iv} These include Rhode Island Attorney General and Department of Public Safety (includes RI State Police, Sheriffs, and Capital Police) as well as the Central Falls, Charlestown, Johnston, Middletown, Narragansett, North Smithfield, Tiverton, Warren, West Warwick, Westerly, and Woonsocket Police Departments. A summary of the RIPD's APRA request and the

thirteen (13) individual responses received are collected at:

<https://www.dropbox.com/sh/3t76nxypylmf4l/AAAxoup7rrJWLRyFPU3c8TNja?dl=0>

^v An example is provided by the USDOJ policies in this area which include definitions of exculpatory and impeachment evidence; timing of disclosure; training; looking for and documenting the search for and disclosure of discoverable materials; and forensic evidence. The USDOJ policies in this area are collected at:

<https://www.dropbox.com/sh/3t76nxypylmf4l/AAAxoup7rrJWLRyFPU3c8TNja?dl=0>

^{vi} These include Standards 5.5 - 5.9 (complaints, investigations, records); 8.1 - 8.4 (screening, intelligence, informants); 15.1 – 15.9 (records); and 16.1 – 16.10 (records, reports, chain of custody). These RIPAC standards are collected at:

<https://www.dropbox.com/sh/3t76nxypylmf4l/AAAxoup7rrJWLRyFPU3c8TNja?dl=0>

^{vii} It is critical to note that that RI has a robust history of improving the quality and fairness of its criminal justice system through legislative action coupled with law enforcement professional standards and written policies containing “best practices”. See:

- RIGL § 12-1-16. Improvement of lineup procedures task force **and** RIPAC Standards 8.11 Eye Witness Identification – Photographic or Physical Line-Up; 8.12 Eye Witness Identification – Show-Up
- RIGL § 12-7-22. Electronic recording of custodial interrogations task force **and** RIPAC Standard 8.10 Custodial Interrogations – Capitol Offenses (State Specific).

Examples of the written policies promulgated as a result of the adoption of standards requiring “best practices” can be found at:

- <http://www.providenceri.com/sites/default/files/ppd-directives/360.08%20-%20Eyewitness%20Identification.pdf> (Providence Police Department General Order # 360.08, Eyewitness Identification: Photographic Line-Ups, Physical Line-Ups & Show-Ups)
- <http://www.providenceri.com/sites/default/files/ppd-directives/360.04%20-%20Electronic%20Recording%20of%20Custodial%20Interrogations.pdf> (Providence Police Department General Order # 360.04, Electronic Recording of Custodial Interrogations)

viii See:

- RI. Senate Bill # 2018 – S 2420, Sub-Section (c).
- NY. Administrative Order of the Administrative Judge of the Courts #200.16 / 200.27.
- VA. Enacted changes in 2018 including Rule 3A:11(b), (d)(disclosure by both state and defendant takes place after court order)
- RI. Superior Court Rule of Criminal Procedure 16(a), (b) (parties to a criminal case exchange discoverable material “upon request”). In contrast District Court Rule of Criminal Procedure 16(a)-(d) requires that the parties exchange information only after the filing of a motion and a resulting court order. Current practice in both courts is that the exchange of discoverable materials takes place informally without court intervention, at least initially.

The RI legislation, testimony in support, and the NY and VA court rule changes are collected at:

<https://www.dropbox.com/sh/3t76nxypyImf4l/AAxoup7rrJWLRYPFU3c8TNja?dl=0>.

^{ix} Rule of Professional Conduct 3.8 (special responsibilities of a prosecutor); Superior Court of Criminal 16(i) (court has broad discretion to fashion remedies for discovery violations including exclusion of evidence); State v. Delvalle, 2003 R.I. Super. LEXIS 106, No. P1/02-0211C (Super. Ct. 8/28/03)(motion to dismiss for discovery violation denied but monetary sanction imposed instead); Administrative Order of the Administrative Judge of the (NY) Courts #200.16 / 200.27 also suggests that compliance be grounded in defense counsels, “professional obligations”.

^x This agenda item may be informed by the task force considering the ongoing conversation regarding the use of a new, statewide, and unitary electronic case management system by law enforcement. See:

- RHODE ISLAND POLICE CHIEFS’ ASSOCIATION REQUEST FOR PROPOSAL: COMPUTER AIDED DISPATCH AND RECORDS MANAGEMENT SYSTEM (11/3/16). <https://www.bidnet.com/bneattachments/?/418069106.pdf>

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- RIPCA Records Management System CAD Demonstration by Tyler Technologies (10/18/18). “The Rhode Island Police Chiefs' Association hosted a presentation, given by Tyler Technologies, of their new Records Management System.” <https://www.ripolicechiefs.org/ripca-news>