



Commission on Forensic Science

August 18, 2025

ROSSANA ROSADO

Chair

New York State Division of Criminal
Justice Services

PASQUALE BUFFOLINO, PH.D.

Nassau County Office of the Medical
Examiner Division of Forensic Services

LYDIA DE CASTRO

Westchester County Department of
Laboratories and Research Division of
Forensic Sciences

WILLIAM J. FITZPATRICK, ESQ.

Onondaga County District Attorney

JESSICA GOLDTHWAITE, ESQ.

Legal Aid Society

MICHAEL MARCIANO, PH.D.

Syracuse University

BEVERLY RAUCH

New York State Department of Health

MICHELLI SCHMITZ

Erie County Central Police Services

ANN WILLEY, J.D., PH.D.

STEVEN EPSTEIN, ESQ.

Barket Epstein Kearon Aldea and
LoTurco, LLP

ERIN MURPHY, ESQ.

NYU Law School

JAMES CHITHALEN, PH.D.

New York State Department of Health

NICHOLAS BANBURY, LT. COL.

New York State Police

New York State Forensic Laboratory Directors

Dear Sir/Madam:

Thank you for the work you do which plays a critical part in our shared goal of seeking justice through the gathering and presentation of reliable scientific evidence while ensuring fairness to the accused. This can only occur when prompt disclosures by prosecutors of information favorable to the defense are made consistent with our state and federal constitutions. The Commission on Forensic Science (Commission) offers this practice advisory to support your role as Laboratory Directors in providing information to prosecutors in a timely fashion. Should you need legal advice regarding any of the issues discussed in this practice advisory, please consult your respective counsels.

The Commission writes to provide an important practice advisory and reminder of your ethical disclosure responsibilities as critical members of New York's criminal legal system. As you are aware, the New York State Legislature made significant changes to the discovery rules in criminal cases in 2019. This discovery reform dramatically changed what and when certain information must be disclosed to the defense in criminal cases. Pursuant to constitutional and state laws, prosecutors are required to disclose to defense counsel acts of dishonesty by analysts in your laboratory, regardless of whether the analyst testifies in relation to the incident. Prosecutors are also required to disclose evidence that tends to negate the guilt of an accused person; lessens the culpability of an accused person; supports a potential defense to a charged offense; undermines the identity of an accused as a perpetrator; or provides a basis for a motion to suppress evidence. Prosecutors can only carry out this critical legal duty if Laboratory Directors inform them promptly and accurately.

Even before the recent amendments to New York's discovery laws, prosecutors had an obligation to share with defense counsel exculpatory information and potentially damaging information affecting the credibility of a witness in an arrested case. These *Brady* and *Giglio* obligations cover a myriad of topics including but not limited to filing a false report, planting evidence, falsifying or tampering with existing evidence, and coercion of a witness. This disclosure obligation extends to the conduct of Laboratory employees and Laboratory Directors.



Commission on Forensic Science

ROSSANA ROSADO

Chair

New York State Division of Criminal
Justice Services

PASQUALE BUFFOLINO, PH.D.

Nassau County Office of the Medical
Examiner Division of Forensic Services

LYDIA DE CASTRO

Westchester County Department of
Laboratories and Research Division of
Forensic Sciences

WILLIAM J. FITZPATRICK, ESQ.

Onondaga County District Attorney

JESSICA GOLDTHWAITE, ESQ.

Legal Aid Society

MICHAEL MARCIANO, PH.D.

Syracuse University

BEVERLY RAUCH

New York State Department of Health

MICHELLI SCHMITZ

Erie County Central Police Services

ANN WILLEY, J.D., PH.D.

STEVEN EPSTEIN, ESQ.

Barkat Epstein Kearon Aldea and
LoTurco, LLP

ERIN MURPHY, ESQ.

NYU Law School

JAMES CHITHALEN, PH.D.

New York State Department of Health

NICHOLAS BANBURY, LT. COL.

New York State Police

The timing of the disclosure obligation must be as soon as possible; time is of the essence for disclosure. It is also not limited to when an arrest is made or when the analyst may appear in Court. Prosecutors make decisions about how to charge and manage cases, including plea negotiations and at trial, throughout the life of a case. Similarly, defense lawyers may be in negotiations with prosecutors and advising the client about possible dispositions in the case from the moment they commence representation of the accused. It is thus critical that such decisions include awareness of information that calls into question the strength or accuracy of forensic test results. Depending on the nature of the disclosure, it may also affect the analyst's past or future cases and past or future testimony. The criminal legal system is designed not only to seek justice in the future but to ensure that justice has been applied in the past.

In terms of whom to notify, the Commission suggests starting with the prosecutors having jurisdiction over the cases the analyst has worked on, which may encompass multiple counties. You should follow with notifications to ANAB and the Commission, consistent with accreditation requirements and Article 49-b of the Executive Law. Finally, while you are unlikely to know the specific attorney representing a defendant, you should notify the relevant criminal defense organization, such as the New York State Association of Criminal Defense Lawyers, public defender offices, Legal Aid, or the assigned counsel program director.

It is impossible to list every example of the type of misconduct or error that needs to be reported. When in doubt, disclose.

Thank you for the important work you do and your time and attention to this critical issue.

Sincerely,

cc: New York State District Attorneys
Forensic Science Commission members
DNA Subcommittee members
New York State Association of Criminal Defense Lawyers
New York State Defenders Association