

# HANDOUT 2



STATE OF ARKANSAS



## Commission On Law Enforcement Standards and Training

GOVERNOR  
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04-16-2015

Chief John Pollard  
Kensett Police Department  
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Chief Pollard:

Standards received an initial employment report on 04-15-2015 on Jerry Thomas Clark appointing him as a part time II police officer. A routine check of Mr. Clark through the ACIC system revealed he was convicted of a felony offense in 2004 in Benton County. He received a pardon from Governor Mike Beebe on 06-04-2011.

Commission on Law Enforcement Standards and Training Specification 2 states that a person that has been convicted of a felony offense is not eligible to be a police officer in the State of Arkansas. Regulation 1002 (3) (d) states that a pardon does not release a person from a felony record for the purpose of complying with CLEST rules.

Per our conversation this date, I am returning the initial employment report to you with this letter. Please feel to contact me at [brad.king@arkansas.gov](mailto:brad.king@arkansas.gov) or at 501-683-2728 if you have any questions.

  
Brad King, Standards Specialist

CC:  
Brian Marshall, Deputy Director

<b>State</b>	<b>Felon Disqualifies</b>
Alabama	Yes
Alaska	Yes
Arizona	Yes
Arkansas	Yes
California	Yes
Colorado	Yes
Connecticut	Yes
Delaware	Yes
Florida	Yes Unless Full Pardon
Georgia	Yes
Idaho	Yes
Illinois	Yes
Indiana	Yes
Iowa	Yes
Kansas	Yes
Kentucky	Yes
Louisiana	Yes
Maine	Yes
Maryland	Yes
Massachusetts	Yes
Michigan	Yes
Minnesota	Yes
Mississippi	Yes
Missouri	Yes
Montana	Yes
Nebraska	Yes
Nevada	Yes
New Hampshire	Yes
New Jersey	Yes
New Mexico	Yes
New York	Yes
North Carolina	Yes ; statutes regarding pardons
North Dakota	Yes
Ohio	Yes Unless Full Pardon
Oklahoma	Yes
Oregon	Yes

<b>State</b>	<b>Felon Disqualifies</b>
Pennsylvania	Yes unless Full Pardon
Rhode Island	Yes
South Carolina	Yes
South Dakota	Yes unless Full Pardon, reprieve, commutation, or proof of innocence
Tennessee	Yes
Texas	Yes
Utah	Yes
Vermont	Yes
Virginia	Yes
Washington	Yes
West Virginia	Yes
Wisconsin	Yes unless Full Pardon
Wyoming	Yes

## **12-9-101. Legislative determinations.**

The General Assembly finds and determines that:

- (1) The administration of criminal justice is of statewide concern and that law enforcement is important to the health, safety, and welfare of the people of this state;
- (2) The state has a responsibility to ensure effective law enforcement by establishing minimum selection, training, and educational requirements for law enforcement officers and also to encourage advanced in-service training programs; and
- (3) It is in the public interest that minimum levels of education and training be developed and made available to persons seeking to become law enforcement officers and to persons presently serving as law enforcement officers.

## **12-9-106. Selection and training requirements -- Exceptions.**

(a) (1) The Arkansas Commission on Law Enforcement Standards and Training shall provide by rule that a person shall not be appointed as a law enforcement officer, except on a temporary basis not to exceed one (1) year, unless the person has satisfactorily completed a preparatory program of police training at a school approved by the commission.

(2) (A) A law enforcement officer who lacks the education and training qualifications or background investigation required by the commission shall not have his or her temporary employment extended beyond one (1) year, by renewal of appointment or otherwise, unless extraordinary circumstances exist in the majority opinion of the executive body of the commission.

(B) If the executive body of the commission determines under subdivision (a)(2)(A) of this section that extraordinary circumstances exist, the commission may approve an extension of temporary employment for no more than an eight-month period.

(b) (1) In addition to the requirements of subsection (a) of this section and § 12-9-104(7), the commission, by rules and regulations, shall fix such other qualifications as it deems necessary.

(2) However, no person who pleads or is found guilty of a felony shall be eligible to be appointed or certified as a law enforcement officer.

(c) The commission shall issue a certificate evidencing satisfaction of the requirements of subsections (a) and (b) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in this or another state conforming to the content and quality required by the commission for approved education and training.

(d) Nothing in this section shall be construed to preclude any employing agency from establishing qualifications and standards for hiring, training, compensating, or promoting law enforcement officers that exceed those set by the commission.

(e) (1) Law enforcement officers already serving under full-time permanent appointment on December 31, 1977, shall not be required to meet the requirements of subsections (a) and (b) of this section as a condition of tenure or continued employment, nor shall failure of any such law enforcement officer to fulfill the requirements make him or her ineligible.

(2) Law enforcement officers employed prior to January 1, 1976, may continue their employment and participate in training programs on a voluntary or assigned basis, but failure to meet standards shall not be grounds for their dismissal or termination of employment. Subsequent termination of employment, whether voluntary or involuntary, shall not result in revocation of this exclusion status but such officers shall have the same powers, privileges, and rights and shall be subject to the same rules and restrictions as are applicable to officers whose certification is based on formal training.

(3) Personnel of law enforcement agencies whose status as to coverage under this subchapter is questionable on December 31, 1977, but who are subsequently determined to be subject thereto, shall have an effective date of compliance enforcement as set by the commission, and personnel employed prior to that date shall be excluded from mandatory compliance therewith.

**MINIMUM STANDARDS FOR EMPLOYMENT OR  
APPOINTMENT OR CONTINUED EMPLOYMENT**

- (1) Subject to the provisions of A.C.A. 12-9-106(e), no individual shall serve, be employed or otherwise function as a law enforcement officer in this State who is not certified by the Commission at the appropriate classification for the position held by the individual. The Commission has determined that it is in the best interest of the State of Arkansas for the temporary employment period to be restricted further than that stated in A.C.A. 12-9-106(e). Accordingly, an individual may serve, be employed or otherwise function as a law enforcement officer for a term of nine (9) months from initial employment or appointment as a law enforcement officer provided the provisions in Regulation 1002, Subsection 3(a-k) are met and verified on the Initial Employment Report (F-1) submitted by the employing agency. Furthermore, the Commission has determined that it is in the best interest of the State of Arkansas to extend this period by a maximum of three months for an absolute maximum of twelve (12) months. Therefore, upon the finding of extraordinary circumstances, the Commission, by majority vote, may extend this period by a maximum of three (3) months, for an absolute maximum period of twelve (12) months. (See Regulation 1008 for exceptions.) All requests for extensions must be submitted and received by the Commission prior to the end of the nine (9) month period, or any extension thereof. No individual who has been decertified by the Commission shall be eligible to serve, be employed or otherwise function as a law enforcement officer in this State unless the Commission shall have by majority vote agreed that the individual shall again be eligible to so serve.
  
- (2) Verification of minimum employment standards must be maintained by the employing department.
  
- (3) Every officer employed by a law enforcement unit shall:
  - (a) Be a citizen of the United States. (See Specification S-1)
  - (b) Be at least 21 years of age. (See Specification S-1)
  - (c) Be fingerprinted and a search initiated of state and national fingerprint files to disclose any criminal record. Procedure is prescribed in Specification S-2, Fingerprint Record Check.
  - (d) Be free of a felony record. A felony record shall mean having entered a plea of guilty, been found guilty, or otherwise having been convicted of an offense, the punishment for which could have

been imprisonment in a federal penitentiary or a state penitentiary. The fact that an individual has received a pardon, or their record has been expunged shall not release the individual from having a felony record for the purposes of this regulation. (See Specification S-2)

- (e) Be of good character as determined by a thorough background investigation as prescribed in Specification S-3, The Background Investigation.
  - (f) Be a high school graduate or have passed the General Education Development (GED) Test indicating high school graduation level. (See Specification S-4)
  - (g) Be examined by a licensed physician and meet the physical requirements prescribed in Specification S-5, Physical Examination.
  - (h) Be interviewed personally prior to employment by the department head or his representative, or representatives to determine such things as the applicant's motivation, appearance, demeanor, attitude and ability to communicate. Commission Form F-11, Qualifications Appraisal Guide, or other appropriate form may be used to record the interview. (See Specification S-6)
  - (i) Be examined by an individual licensed to practice psychiatry or psychology and qualified to perform such evaluations in the State of Arkansas, who after examination finds the officer to be competent and recommends the agency hire the individual. (See Specification S-7)
  - (j) Possess a valid driver's license.
  - (k) Successfully complete a CLEST firearms qualification and review departmental policies, specifically policies covering the use of force, criminal law, and emergency vehicle operations. (No officer may carry a firearm in the course of employment or in the performance of official duties until this requirement is met and documented on the Initial Employment Report (F-1) submitted to the Office of Law Enforcement Standards.
  - (l) For continued employment, must successfully complete a minimum of sixteen (16) hours of CLEST certified training annually, to include firearms qualification and Racial Profiling.
- (4) It is emphasized that these are minimum standards for employment or appointment. Higher standards are

recommended whenever the availability of qualified applicants meets the demand.

- (5) The minimum standards for employment or appointment must be complied with as contained herein before employment. The decision to employ an applicant should depend upon the results and recommendations received by the investigators and examiners, except, for items (3)(g) and (3)(i). In accordance with the Americans with Disabilities Act, a determination to hire or not hire individuals should be made prior to the examinations required by (3)(g) and (3)(i). An offer of employment, if any, is to then be made contingent upon the successful completion of (3)(g) and (3)(i).
- (6) Law enforcement officers who have complied with the minimum standards for employment or appointment who terminate their employment and are reemployed by a law enforcement agency within six (6) months following their termination date, may transfer the required documentation evidencing compliance with the standards to the files of the new agency. The only pre-employment requirement that the new employer will be required to complete is a new background investigation and oral interview. The employing agency may require the officer to meet any or all pre-employment requirements, again, if they so desire.
- (7) If an officer is determined by the Commission to be in noncompliance, the Commission will notify the director of the employing agency by certified letter. The Commission shall give the individual and the employing agency a reasonable amount of time to remedy the deficiency. If at the end of that period, including any extension thereof, the individual remains in noncompliance, the individual will not be eligible to function as a law enforcement officer until proof of compliance is presented to the Commission by the agency director or his representative. In addition, at the end of the period allowed by the Commission for the individual to remedy the deficiency, including any extensions thereof, if the officer remains in noncompliance, the officer will be removed from the agency payroll and will not be eligible to be employed in any capacity as a law enforcement officer until compliance is met and proof is furnished to the Commission by the agency director or his representative. In the event the agency refuses to remove the officer from the payroll and/or continues to allow the officer to serve as a law enforcement officer, the Commission shall seek an injunction prohibiting the



agency from employing and/or using the officer and prohibiting the officer from acting as a law enforcement officer.

- (8) Any individual who fails the required training course, as set out herein, or is expelled from the required training course, will not be eligible to serve as a law enforcement officer for twenty-four (24) months following the date of failure or expulsion from the training course.
- (9) Any individual who fails to meet the physical or mental minimum standards of this Regulation, shall be individually reviewed to determine if said person can perform the essential functions of the duties of a law enforcement officer, with or without reasonable accommodations. The employing or appointing agency shall first determine if the individual can perform the essential functions of the duties of a law enforcement officer. If the agency believes that individual can perform the essential functions of the duties of a law enforcement officer, with or without reasonable accommodations, the employing or appointing agency shall request the Commission to determine if said person can perform the essential functions of the duties of a law enforcement officer. If the Commission determines, by a majority vote, that the individual can perform the essential functions of a law enforcement officer, with or without reasonable accommodations, and the employing or appointing unit and/or the individual agrees to the reasonable accommodations, then the Commission shall waive the minimum standard in question.

## **SPECIFICATION S-2**

### **S-2**

#### **TITLE: FINGERPRINT RECORD CHECK**

This requirement supplements Section 1002 (3)(c), (d) and (e) of the Regulations. The fingerprint record check is conducted to implement the minimum employment or appointment standard that prohibits the employment of applicants who have pled guilty or been convicted of crimes, the punishment for which could have been imprisonment in a federal penitentiary or state prison.

#### **REQUIREMENTS**

1. A search of state and national files to disclose any criminal record.
2. Any applicant who has entered a plea of guilty or has been convicted by any state or by the Federal Government of a crime, the punishment for which could have been imprisonment in a federal penitentiary or a state prison will not be eligible for certification.
3. Retention on a permanent basis by the employing unit will depend upon the satisfactory results of the fingerprint record check on all law enforcement officers employed under the Act.

#### **PROCEDURES**

1. A criminal records search will be conducted through the Arkansas Crime Information Center (ACIC) and National Crime Information Center (NCIC) on each candidate for employment.
2. Each candidate for employment is fingerprinted on the standard applicant fingerprint form (FBI Card FD-258), which is to be forwarded to the Arkansas State Police, Little Rock, Arkansas. State files will be checked and the card forwarded to the FBI in Washington, D.C.
3. Applicants with criminal records as defined in Requirement 2 of this Specification will be rejected. Applicants with criminal records other than felony offenses will be evaluated and a final decision reached by the department concerned.

4. The results of all ACIC, NCIC, and fingerprint records checks will be retained by the employing agency and must be available for examination at any reasonable time by representatives of the Commission. Records checks will be maintained regardless of the results of the inquiry.
5. Examination by the Commission shall be expressly for the purpose of verifying agency compliance to the Regulations.
6. **FALSIFICATION OF FINGERPRINT AND CRIMINAL HISTORY RECORDS**

Any department head who certifies to the Commission that an applicant's fingerprints have been taken and submitted as required, when they have not, shall be in violation of Ark. Code Ann. 5-53-103. False swearing is a Class A misdemeanor.

## ***Brady* Disclosure**

***Brady* disclosure** consists of exculpatory or impeaching information and evidence that is material to the guilt or innocence or to the punishment of a defendant. The term comes from the U.S. Supreme Court case, *Brady v. Maryland*, in which the Supreme Court ruled that suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process. Following *Brady*, the prosecutor must disclose evidence or information that would prove the innocence of the defendant **or would enable the defense to more effectively impeach the credibility of government witnesses**. Evidence that would serve to reduce the defendant's sentence must also be disclosed by the prosecution.

12/27/2010

## Giglio for Law Enforcement Officers & Credibility Determinations

**By John V. Berry, Berry & Berry, PLLC, WWW.BERRYLEGAL.COM**

"Giglio" is a term that is well known amongst law enforcement officers, but it is often generalized to the extent that the specific meaning and scope of the Giglio case is sometimes misplaced. I thought that I would provide a short refresher on Giglio and how it impacts police officers today. In short, Giglio is a term often associated with the issue of law enforcement officer credibility in court.

### **The Giglio Case**

The case itself, Giglio v. United States, 405 U.S. 150 (1972), was a landmark decision which began to apply a number of duties of disclosure to prosecutors in criminal cases as it pertained to government witnesses (and chiefly among them police officers). The Supreme Court, in Giglio, along with a few other related and following cases essentially established a doctrine where prosecutors acquired a duty to disclose evidence about the credibility of government witnesses (typically, police officers) which had to be turned over following a request by defense counsel. The principal holding in Giglio was explained by the Supreme Court when it held that when the reliability of a given witness may be determinative of either guilt or innocence nondisclosure of evidence affecting credibility could become reversible error.

### **A Few Cases Following Giglio**

The Giglio principle was further expanded some 4 years later in 1976 by the Supreme Court in United States v. Agurs, 427 U.S. 97 (1976) which recognized a duty by prosecutors to disclose exculpatory information, like the type that involves officer credibility issues in prosecutions. In Agurs, the Supreme Court held that the prosecution had to provide the information even in the absence of defense counsel's request for such information.

Next, the Court's decision in Kyles v. Whitley, 514 U.S. 419 (1995) further added to the burdens that prosecutors faced in terms of credibility determinations that could likely face police officers as witnesses. The

Court in Kyles imposed an affirmative duty on a prosecutor "to learn of any favorable evidence known to the others acting on the government's behalf, including the police," and a resulting duty to disclose that evidence to the defense. In this case, the defendant was convicted of first-degree murder but was given a new trial after it was discovered that the prosecutor had not divulged exculpatory evidence, even though the prosecutor was unaware of the evidence, which was in police files. The Kyles Court emphasized that even if a prosecutor had been unaware of the exculpatory evidence that regulations can be established to carry the prosecutor's burden and to ensure communication of all relevant information on each case to all the attorneys involved.

### **The Reality of Giglio and it's Effect on Law Enforcement Officers**

These court cases and others have slowly built up the requirement that law enforcement officers be truthful in all of their dealings. When evidence of untruthfulness in cases (or in some jurisdictions evidence of untruthfulness in general, see Lewis v. United States, 408 A.2d 303 (D.C. 1979) (creating a prosecutorial "Lewis list" within the District of Columbia for general acts of untruthfulness and other issues)) comes out in today's litigious society, prosecutions in some criminal cases can be made more difficult through the forced disclosure of these rules. The Supreme Court has essentially created a string of decisions which require prosecutors to learn of and then to disclose to criminal defense attorneys information which will then be used to attempt to impeach law enforcement witnesses in criminal cases.

One of the difficulties with credibility information is that it is not consistently provided by each law enforcement agency to local prosecutors. This difficult often stems from internal politics within a police department. In some cases, this type of internal politics decides which members of a department get turned in to prosecutors as unreliable and which do not (usually those with a friend in the Chief's office). This has led to inconsistent practices internally in police departments and often times disciplinary actions or security clearance issues with respect to the truthfulness of individual police officers and supervisors.

Some police departments have responded to these issues with different policies. Some departments have attempted to enforce a strict truthfulness policy and terminate officers who violate them; this often times leads to officer appeals and reversals of terminations because departments inevitably misread the case law and make legal mistakes. Still other departments attempt to place the police officer or supervisor in an

administrative assignment (often times another mistake related to a lack of legal guidance about the weight that these issues have. One other issue that has also occurred is the inconsistent disclosures in Giglio situations by local prosecutors. There are a number of situations in which different prosecutors have led to an inconsistent application of Giglio (often times less experienced prosecutors make mistakes about the application of Giglio to their criminal prosecutions) causing an otherwise good case to be dropped due to a misunderstanding of Giglio.

### **Closing Thoughts on Giglio and the Police Officer**

This is a continuing and as yet unresolved issue. It appears that the courts are still refining Giglio and departments have generally played catch up in responding to new court decisions as they are issued. Police officers facing truthfulness issues should consult an attorney as early in the process as possible to determine how best to proceed when facing these types of disciplinary or impeachment issues.