

SENATE BILL 590

E2

1lr1268

By: **Senator Sydnor**

Introduced and read first time: January 29, 2021

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Required Disclosures – Brady Material**

3 FOR the purpose of requiring the State’s Attorney to disclose to the defense certain
4 information in a criminal case; providing that a certain requirement applies
5 regardless of whether certain information would itself constitute certain evidence;
6 requiring the State’s Attorney to produce certain information in a certain form, with
7 a certain exception; requiring the State’s Attorney to make certain efforts to disclose
8 certain information to the defense at a certain time; providing that the State’s
9 Attorney is not required to disclose certain information before a certain time;
10 authorizing the State’s Attorney to apply to the court for a certain modification of
11 certain requirements under certain circumstances; requiring the State’s Attorney to
12 seek certain information from certain government sources; authorizing the court to
13 set timelines for the disclosure of certain information; authorizing a court to take
14 certain actions if the State’s Attorney fails to comply with this Act; defining certain
15 terms; and generally relating to required disclosure of information in a criminal case.

16 BY adding to

17 Article – Criminal Procedure

18 Section 4–207

19 Annotated Code of Maryland

20 (2018 Replacement Volume and 2020 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Criminal Procedure**

24 **4–207.**

25 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 INDICATED.

2 (2) "DEFENSE" MEANS AN ATTORNEY REPRESENTING A DEFENDANT
3 IN A CRIMINAL CASE OR A DEFENDANT IN A CRIMINAL CASE WHO IS ACTING WITHOUT
4 AN ATTORNEY.

5 (3) "GOVERNMENT" INCLUDES FEDERAL, STATE, AND LOCAL LAW
6 ENFORCEMENT OFFICERS AND OTHER GOVERNMENT OFFICIALS WHO HAVE
7 PARTICIPATED IN THE INVESTIGATION AND PROSECUTION OF A CRIMINAL CASE
8 AGAINST A PARTICULAR DEFENDANT.

9 (B) (1) UNLESS THE PARTIES OTHERWISE AGREE OR UNLESS
10 PROHIBITED BY LAW, THE STATE'S ATTORNEY SHALL DISCLOSE TO THE DEFENSE
11 ALL INFORMATION KNOWN TO THE GOVERNMENT THAT IS "FAVORABLE TO AN
12 ACCUSED" AND "MATERIAL EITHER TO GUILT OR TO PUNISHMENT" UNDER BRADY
13 V. MARYLAND, 373 U.S. 83, 87 (1963).

14 (2) THE REQUIREMENT SET FORTH IN PARAGRAPH (1) OF THIS
15 SUBSECTION APPLIES REGARDLESS OF WHETHER THE INFORMATION WOULD
16 ITSELF CONSTITUTE ADMISSIBLE EVIDENCE.

17 (3) (I) UNLESS IMPRACTICABLE, THE STATE'S ATTORNEY SHALL
18 PRODUCE THE INFORMATION IN A REASONABLY USABLE FORM.

19 (II) IF PRODUCTION OF THE INFORMATION IN A REASONABLY
20 USABLE FORM IS IMPRACTICABLE, THE STATE'S ATTORNEY SHALL MAKE THE
21 INFORMATION AVAILABLE TO THE DEFENSE FOR INSPECTION AND COPYING.

22 (4) BEGINNING AT A DEFENDANT'S ARRAIGNMENT OR INITIAL
23 APPEARANCE AND CONTINUING THROUGHOUT THE CRIMINAL PROCEEDING, THE
24 STATE'S ATTORNEY SHALL MAKE A GOOD-FAITH EFFORT TO DISCLOSE THE
25 INFORMATION REQUIRED UNDER THIS SECTION TO THE DEFENSE AS SOON AS
26 REASONABLY POSSIBLE AFTER ITS EXISTENCE IS KNOWN.

27 (C) THE INFORMATION TO BE DISCLOSED UNDER SUBSECTION (A) OF THIS
28 SECTION INCLUDES:

29 (1) INFORMATION THAT IS INCONSISTENT WITH OR TENDS TO NEGATE
30 THE DEFENDANT'S GUILT AS TO ANY ELEMENT, INCLUDING IDENTIFICATION OF AN
31 OFFENSE WITH WHICH THE DEFENDANT IS CHARGED;

32 (2) INFORMATION THAT TENDS TO MITIGATE A CHARGED OFFENSE
33 OR REDUCE THE POTENTIAL PENALTY;

1 **(3) INFORMATION THAT TENDS TO ESTABLISH AN ARTICULATED AND**
2 **LEGALLY COGNIZABLE DEFENSE THEORY OR RECOGNIZED AFFIRMATIVE DEFENSE**
3 **TO AN OFFENSE WITH WHICH THE DEFENDANT IS CHARGED;**

4 **(4) INFORMATION THAT CASTS DOUBT ON THE CREDIBILITY OR**
5 **ACCURACY OF ANY EVIDENCE, INCLUDING WITNESS TESTIMONY, THAT THE**
6 **GOVERNMENT ANTICIPATES USING IN ITS CASE-IN-CHIEF AT TRIAL; AND**

7 **(5) IMPEACHMENT INFORMATION, INCLUDING:**

8 **(I) INFORMATION REGARDING WHETHER ANY PROMISE,**
9 **REWARD, OR INDUCEMENT HAS BEEN GIVEN BY THE STATE'S ATTORNEY TO ANY**
10 **WITNESS IT ANTICIPATES CALLING IN ITS CASE-IN-CHIEF; AND**

11 **(II) INFORMATION THAT IDENTIFIES ALL PENDING CRIMINAL**
12 **CASES AGAINST, AND ALL CRIMINAL CONVICTIONS OF, ANY WITNESS DESCRIBED IN**
13 **ITEM (I) OF THIS ITEM.**

14 **(D) THE STATE'S ATTORNEY IS NOT OBLIGATED TO DISCLOSE THE**
15 **INFORMATION REQUIRED UNDER SUBSECTION (C)(4) OR (5) OF THIS SECTION**
16 **BEFORE A TRIAL DATE IS SET.**

17 **(E) IF THE STATE'S ATTORNEY BELIEVES THAT A DISCLOSURE UNDER THIS**
18 **SECTION WOULD COMPROMISE WITNESS SAFETY, VICTIM RIGHTS, NATIONAL**
19 **SECURITY, A SENSITIVE LAW ENFORCEMENT TECHNIQUE, OR ANY OTHER**
20 **SUBSTANTIAL GOVERNMENT INTEREST, THE STATE'S ATTORNEY MAY APPLY TO THE**
21 **COURT FOR A MODIFICATION OF THE REQUIREMENTS OF THIS SECTION, WHICH MAY**
22 **INCLUDE IN CAMERA REVIEW OR WITHHOLDING OR SUBJECTING TO A PROTECTIVE**
23 **ORDER ALL OR PART OF THE INFORMATION TO BE DISCLOSED.**

24 **(F) THE STATE'S ATTORNEY SHALL SEEK FROM ALL GOVERNMENT**
25 **SOURCES ALL INFORMATION SUBJECT TO DISCLOSURE UNDER THIS SECTION.**

26 **(G) THE COURT MAY SET TIMELINES FOR DISCLOSURE OF ANY**
27 **INFORMATION ENCOMPASSED BY THIS SECTION.**

28 **(H) IF THE STATE'S ATTORNEY FAILS TO COMPLY WITH THIS SECTION, THE**
29 **COURT, IN ADDITION TO ORDERING PRODUCTION OF THE INFORMATION, MAY:**

30 **(1) SPECIFY THE TERMS AND CONDITIONS OF THE REQUIRED**
31 **PRODUCTION;**

- 1 **(2) GRANT A CONTINUANCE;**
- 2 **(3) IMPOSE EVIDENTIARY SANCTIONS; OR**
- 3 **(4) ENTER ANY OTHER ORDER THAT IS JUST UNDER THE**
- 4 **CIRCUMSTANCES.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2021.