

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 590 (Senator Sydnor)
Judicial Proceedings

Criminal Procedure - Required Disclosures - Brady Material

This bill establishes that unless the parties otherwise agree or unless prohibited by law, a State’s Attorney must disclose to the defense all information known to the government that is “favorable to an accused” and “material either to guilt or to punishment” under *Brady v. Maryland*, 373 U.S. 83 (1963). This requirement applies whether or not the known information would be admissible evidence. A State’s Attorney may apply to the court for a modification of the required disclosure of information under specified circumstances, including concerns for witness safety. If a State’s Attorney fails to comply with the bill’s requirements, the court, in addition to ordering production of the information, may (1) specify the terms and conditions of the required production; (2) grant a continuance; (3) impose evidentiary sanctions; or (4) enter any other order that is just under the circumstances.

Fiscal Summary

State Effect: The bill is procedural and is not anticipated to materially affect State finances or operations.

Local Effect: The bill is procedural and is not anticipated to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: A State’s Attorney must produce the information in a reasonably usable form, unless impracticable. If impracticable, the State’s Attorney must make the

information available to the defense for inspection and copying. Beginning at a defendant's arraignment or initial appearance and continuing throughout the criminal proceeding, the State's Attorney must make a good-faith effort to make the required disclosures of information to the defense as soon as reasonably possible after its existence is known.

Information that must be disclosed includes (1) information that is inconsistent with or tends to negate the defendant's guilt as to any element, including identification of an offense with which the defendant is charged; (2) information that tends to mitigate a charged offense or reduce the potential penalty; (3) information that tends to establish an articulated and legally cognizable defense theory or recognized affirmative defense to an offense with which the defendant is charged; (4) information that casts doubt on the credibility or accuracy of any evidence, including witness testimony, that the government anticipates using in its case-in-chief at trial; and (5) impeachment information, including whether any promise or inducement has been given to a prosecutorial witness and information that identifies pending criminal charges against a witness. With respect to the last two items listed above, the State's Attorney is not required to disclose the information before a trial date is set. The State's Attorney must seek from all government sources all information subject to disclosure. The court may set timelines for disclosure.

Current Law: In *Brady v. Maryland*, 373 U.S. 83 (1963), the U.S. Supreme Court held that a defendant's right to due process is violated under the Fourteenth Amendment of the U.S. Constitution if a prosecutor withholds certain exculpatory evidence from the defendant's lawyer. Exculpatory evidence generally refers to evidence that is favorable to an accused that is material either to guilt or to punishment.

Maryland Rule 4-263, which applies to discovery in the circuit courts, requires a State's Attorney to provide specified types of information to the defense without the necessity of a request. Types of information that must be disclosed include (1) all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and (2) all material or information in any form, whether or not admissible, that tends to impeach a State's witness, including, among other things, evidence of the witness's prior conduct that demonstrates a character for untruthfulness; a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness; specified inconsistent oral statements of the witness; and the failure of the witness to identify the defendant or a co-defendant.

Discovery is available in the District Court in actions that are punishable by imprisonment. Maryland Rule 4-262, which applies to District Court actions, requires the State's Attorney, without the necessity of a request, to provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or

mitigate the defendant's guilt or punishment as to the offense charged and all material or information in any form, whether or not admissible, that tends to impeach a State's witness. Additional provisions apply to required disclosures by a State's Attorney on written request of the defense.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Harford and Montgomery counties; City of College Park; Comptroller's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Morgan State University; Department of General Services; Department of Natural Resources; Department of Public Safety and Correctional Services; Department of State Police; Maryland Department of Transportation; Maryland Department of Health; University System of Maryland; Department of Legislative Services

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