

**Other State Discovery Rules Creating a Statutory Brady O
Mechanism for Law Enforcement Files to be Reviewed as Part of**

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More than half of the states have incorporated the constitutional Brady obligation into their criminal discovery rules one way or another.¹ None of the states with Brady language in their discovery rules have gone the route of attempting to draft language that would incorporate a summary of the current state of Brady case law. These states have chosen legislative language to create the **statutory obligation** to share favorable evidence (and information in many states) with the defense.

Below are several examples of state statutory Brady language, as well as the state's discovery language regarding the process for ensuring that law enforcement files are also reviewed for Brady material.

State	Brady language examples – broad and clear	Law enforcement files language
Alaska	Rules of Crim. Pro 16(b) (3) <i>Information Tending to Negate Guilt or Reduce Punishment</i> . The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused's punishment therefor .	Rule 16(b) (4) <i>Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff</i> . The prosecuting attorney's obligations extend to material and information in the possession or control of (A) members of the prosecuting attorney's staff, and (B) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.
Arizona	Rules of Crim. Pro 15.1(b) (8) All then existing material or information which tends to mitigate or negate the defendant's guilt as to the offense charged, or which would tend to reduce the defendant's punishment therefor .	Rule 15.1 f. Disclosure by Prosecutor . The prosecutor's obligation under this rule extends to material and information in the possession or control of any of the following: (2) Any law enforcement agency which has participated in the investigation of the case and that is under the prosecutor's direction or control, or, (3) Any other person who has participated in the investigation or evaluation of the case and who his under the prosecutor's direction or control.
Colorado	Rules of Crim. Pro 16, Part I (a)(2) The prosecuting attorney shall disclose to the defense any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor .	Part I(a)(3) The prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office. Part I(b) (4) The prosecuting attorney shall ensure that a flow of information is maintained between the various investigative personnel and his or her

¹ Alaska, Arizona, California, **Colorado**, Connecticut, Florida, Hawaii, **Idaho**, Illinois, Indiana (by local rule), Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, **Missouri**, **Montana**, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, **Utah**, Vermont, Washington State, Wisconsin. This memo includes specific language used in the 7 states listed in bold.

		office sufficient to place within his or her possession or control all material and information relevant to the accused and the offense charged.
Idaho	Criminal Rules, Rule 16(a) <i>Automatic disclosure of evidence and material by the prosecution.</i> As soon as practicable following the filing of charges against the accused, the prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control, or which thereafter comes into the prosecuting attorney's possession or control, which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce the punishment therefor.	Rule 16(a) cont. The prosecuting attorney's obligations under this paragraph extend to material and information in the possession or control of members of prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or with reference to the particular case have reported, to the office of the prosecuting attorney.
Missouri	Supreme Court Rule 25.03(A) ... the state... shall disclose ... (9) Any material or information , within the possession or control of the state, which tends to negate the guilt of the defendant as to the offense charged, mitigate the degree of the offense charged, or reduce the punishment.	Rule 25.03(C) If the defense in its request designates material or information which would be discoverable under this Rule if in the possession or control of the state, but which is, in fact, in the possession or control of other governmental personnel, the state shall use diligence and make good faith efforts to cause such materials to be made available to the defense counsel, and if the state's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court, the court, upon request, shall issue suitable subpoenas or orders to cause such material or information to be made available to the state for disclosure to the defense.
Montana	Code Annotated 46-15-322 (1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control: (e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.	46-15-322 (4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.
Utah	Rules of Crim Pro, Rule 16 (a) ... the prosecutor shall disclose to the defense upon request the following material or information of which he has knowledge: ... (4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment;	