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### HOUSE JUDICIARY COMMITTEE OPPOSITION TO SENATE BILL 492-THE "BRADY" BILL Submitted by: Doug Harclerod Executive Director MAY 16, 2013

One experienced District Attorney provided the following analysis and I thought it was on point and that the House Judiciary committee should have it.

Presently the defense cannot subpoena in records pre-trial without Court permission per case law and statute. Counseling records of victims, school records of victims and witnesses, personnel files of public and private employees are all typically off limits for fishing expeditions. Case law, common sense and privacy rights support those restrictions. Under this law as written is it not incumbent upon a prosecutor to seek those very types of records to see if there is any exculpatory information? Yes. What rights does the government have (us) to invade the privacy of our victims and witnesses in this manner without good cause? What liabilities do we as prosecutors incur if we obtain these records? What liability do we have if we attempt to obtain these records, causing the victim to hire a lawyer to "defend" their privacy? What impact would that have on a justice system where victims and witnesses may not want to get involved or stay involved for fear of privacy invasion? What would the public think of us? How can the government be directed by statute to investigate people without good cause? And yet if we don't, when that nugget pops up that is exculpatory the statute is all the Bar needs to find us guilty of violating a statutory requirement to do the search.

Sounds dramatic but that is what this language does to us. The present law doesn't even require us to provide prior convictions unless known to the state 135.815(e), (f)

This is no more than a demand that the government pry into everyone's life to see if there is anything there. This statute might be unconstitutional. Why should Nike turn over a personnel file to a prosecutor because their employee is a crime victim or witness? Where is the good cause? Isn't that the same mindset that caused legislatures to pass rape shield laws protecting victims? If this is done to heighten the awareness of Brady issues then do it with the right language, nothing more.

Obviously the argument will become within *possession or control of the district attorney* won't require the above. If that is the argument then adding the language **known to the prosecutor** will make that clear and won't change the impact or awareness of this added statute. And we won't spend hours litigating our failure to get possible exculpatory information because we have subpoena power etc. that makes obtaining the information in our control.