

**FIFTY STATE REVIEW OF DISCOVERY STATUTES  
CONTAINING THE “BRADY DUTY” TO DISCLOSE FAVORABLE EVIDENCE  
2013 SB 492**

**SUMMARY**

**The “Brady duty” provides:**

“The suppression by the prosecution of evidence favorable to and requested by an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Brady v. Maryland*, 373 US 83 (1963).

“Brady evidence” includes evidence that would impeach a state’s witness, tend to negate the accused’s guilt, undermine the government’s theory of the case, or mitigate the determination of sentence. *Giglio v. United States*, 405 US 150 (1972); *Kyles v. Whitley*, 514 US 419 (1995).

Subsequent case law has clarified that the duty to disclose *Brady* material exists whether or not the defendant makes a specific request. *Strickler v. Greene*, 527 US 263 (1999); *United States v. Agurs*, 427 US 97 (1976).

**Twenty-nine (29) states contain “Brady duty” provisions in their discovery statutes (note: Maryland is counted twice):**

- **Fifteen (15) states use language “mitigates” or “negates”:**

Alaska • Arizona • Arkansas • Colorado • Florida • Hawaii • Idaho • Illinois • Maryland (uses both “exculpatory” and “negate”) • Minnesota • Missouri • Montana • Utah • Vermont • Washington

- **Nine (9) states use language “exculpatory”:**

Alabama • California • Connecticut • Maryland (uses both “exculpatory” and “negate”) • Massachusetts • Michigan • Mississippi • New Jersey • Wisconsin

- **Five (5) states use language “favorable”:**

Louisiana • New Mexico • Ohio • Oklahoma • Pennsylvania

- **One (1) state uses language “raises a reasonable doubt”:**

Maine

**Five (5) states use a hybrid/varied approach:**

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|-----------|--|
| Nebraska  | (Discovery statute is to read more broad than federal standard)  |
| Texas     | (Duties of district attorneys requires them to not suppress or secrete witnesses capable of establishing innocence)      |
| New York  | (Discovery statute provides the prosecutor is bound to disclose information as required by the Constitution)             |
| Nevada    | (Discovery statute provides the prosecutor is bound to disclose information as required by the Constitution)             |
| Tennessee | (Advisory notes to discovery statutes expressly states that <i>Brady v. Maryland</i> is to be read into discovery rules) |

**Seventeen (17) states contain no Brady provision:**

Delaware • Georgia • Indiana • Iowa • Kansas • Kentucky • New Hampshire • North Carolina • North Dakota • Oregon • Rhode Island • South Carolina • South Dakota • Tennessee • Virginia • West Virginia • Wyoming

## STATES WITH "BRADY DUTY" IN DISCOVERY STATUTE

| STATE       | STATUTORY CITE        | LANGUAGE  |
|-------------|-----------------------|---|
| Alabama     | AL RCrP Rule 16.1(f)  | "Nothing in this Rule 16.1 shall be construed to limit the discovery of exculpatory material or other material to which a defendant is entitled under constitutional provisions or other provisions of law."  |
| Alaska      | AK RCrP Rule 16(b)(3) | "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."  |
| Arizona     | AZ RCrP 15.1 (b)(8)   | Requires disclosure of "[a]ll 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."  |
| Arkansas    | AR RCrP 17.1(d)       | "[T]he prosecuting attorney shall, promptly upon discovering the matter, disclose to defense counsel any material or information within his knowledge, possession, or control, which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the punishment therefor."   |
| California  | CAPenal §1054.5(b)    | Requires disclosure of "any exculpatory evidence."  |
| Colorado    | CO RCrP 16 (l)(b)     | "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."  |
| Connecticut | ConnRCP Sec. 54-86c   | Requires disclosure of "any exculpatory information or material which he may have with respect to the defendant whether or not a request has been made therefor. If prior to or during the trial of the case, the prosecutorial official discovers additional information or material which is exculpatory, he shall promptly disclose the information or material to the defendant." |

| STATE         | STATUTORY CITE           | LANGUAGE   |
|---------------|--------------------------|--|
| Florida       | FL RCrP 3.220 (b)(4)     | "[T]he prosecutor shall disclose to the defendant any material information within the state's possession or control that tends to negate the guilt of the defendant as to any offense charged, regardless of whether the defendant has incurred reciprocal discovery obligations."   |
| Hawaii        | RPenalP 16 (b) (1)(vii)  | The prosecutor must disclose "any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment therefor."   |
| Idaho         | ICR 16(a)                | Requires disclosure "of 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."                         |
| Illinois      | 725 ILCS 5/114-13        | "[T]he investigating agency shall provide to the prosecuting authority any material or information, including but not limited to reports, memoranda, and field notes, within its possession or control that would tend to negate the guilt of the accused of the offense charged or reduce his or her punishment for the homicide offense."            |
| Louisiana     | LSA-C.Cr.P. 718 (1)      | Requires disclosure of evidence "favorable to the defendant and that are material and relevant to the issue of guilt or punishment."   |
| Maine         | ME RCrP Rule 16(a)(1)(c) | "A statement describing any matter or information known to the attorney for the state which may not be known to the defendant and which tends to create a reasonable doubt of the defendant's guilt as to the crime charged."  |
| Maryland      | MD Rule 4-262(d)(1)      | "Attorney shall 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." |
| Massachusetts | MA CrP 14(a)(1)(A)(iii)  | Requires disclosure of "[a]ny facts of an exculpatory nature."   |

| STATE        | STATUTORY CITE               | LANGUAGE   |
|--------------|------------------------------|--|
| Michigan     | MI CR 6.201 (B)(1)           | Requires disclosure of "any exculpatory information or evidence known to the prosecuting attorney."  |
| Minnesota    | 49 MSA Rule 9.01             | "Material or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt."   |
| Mississippi  | URCCP 9.04 (6)               | Requires disclosure of "[a]ny exculpatory material concerning the defendant."  |
| Missouri     | MO Sup. Ct. Rule 25.03(A)(9) | Requires disclosure of "[a]ny 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." |
| Montana      | MCA 46-15-322(1)(e)          | Requires disclosure of "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."   |
| New Jersey   | NJR 3:13-3 (b)               | "[T]he prosecutor shall provide defense counsel with any exculpatory information or material."   |
| New Mexico   | NMRA 5-501(A)(6)             | "[A]ny material evidence favorable to the defendant which the state is required to produce under the due process clause of the United States Constitution."  |
| Ohio         | OH RCrP 16(B)(5)             | Requires disclosure of "[a]ny evidence favorable to the defendant and material to guilt or punishment."  |
| Oklahoma     | 22 Okl.St. Ann. §2002(A)(2)  | "The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment."  |
| Pennsylvania | PA RCrP 573(B)(1)(a)         | Requires disclosure of "[a]ny evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth."  |
| Utah         | UT RCrP Rule 16              | Requires disclosure of: "(a)(4) evidence known to the prosecutor that tends to   |

| STATE      | STATUTORY CITE     | LANGUAGE  |
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|            |                    | negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment; and (a)(5) any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.” |
| Vermont    | VT RCrP 16(b)(2)   | Requires disclosure of “any material or information within his possession or control which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.”   |
| Washington | WA CrR 4.7(3)      | “[T]he prosecuting attorney shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged.”   |
| Wisconsin  | WSA 971.239 (1)(h) | Requires disclosure of “[a]ny exculpatory evidence.”  |
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