

By: Delegates Rosenberg, Anderson, Carter, Dumais, Gutierrez, Kelley, Lee, Marriott, McComas, and Menes

Introduced and read first time: February 10, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

**Criminal Procedure - Discoverable Material and Information - State's
Attorney Certification**

4 FOR the purpose of requiring the State's Attorney to make a certain certification to
5 the court a certain number of days before a trial relating to the efforts of the
6 State's Attorney and other individuals to exercise due diligence in providing
7 defense counsel with certain discoverable material and information; requiring a
8 certain certification to a written statement from a certain lead investigator
9 confirming that certain discoverable material and information has been
10 provided to the State's Attorney; requiring the court to impose a certain fine if it
11 finds that a certain certification was made in bad faith; authorizing the court to
12 impose a certain fine if it finds that a certain statement was made in bad faith;
13 requiring the court to consider certain factors in imposing a certain fine;
14 defining certain terms; and generally relating to the State's Attorney and
15 discoverable material and information.

16 BY adding to

17 Article - Criminal Procedure
18 Section 4-205
19 Annotated Code of Maryland
20 (2001 Volume and 2004 Supplement)

Preamble

22 WHEREAS, The purpose of a criminal trial is to convict guilty individuals;

23 WHEREAS, Exculpatory information in a criminal case is any information that
24 casts doubt on the guilt of the defendant; casts doubt on the existence of any element
25 of the crime charged; casts doubt on the admissibility or credibility of any evidence in
26 the State's case in chief; or mitigates the sentence;

27 WHEREAS, Under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny in
28 state and federal case law, prosecutors and all state agents involved in the

1 investigation or evaluation of a criminal case are obligated to provide to defendants
2 known exculpatory information in a timely manner;

3 WHEREAS, Under Brady v. Maryland, prosecutors are presumed to know the
4 contents of their own files and to know, through the exercise of "due diligence", the
5 information obtained by those who investigated the case;

6 WHEREAS, Under Brady v. Maryland and its progeny, those involved in
7 investigation are also obligated to provide investigatory information to the
8 prosecutor;

9 WHEREAS, The American College of Trial Lawyers has recommended the
10 codification of the requirements of Brady v. Maryland and its progeny;

11 WHEREAS, It would ensure the fairness and accuracy of criminal trials to
12 clarify the respective, continuing obligations of prosecutors and law enforcement in
13 providing exculpatory information; and

14 WHEREAS, It would ensure the efficiency of criminal trials, by avoiding
15 unnecessary continuances, to certify that all discovery is complete prior to the
16 commencement of trial; now, therefore,

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

19 **Article - Criminal Procedure**

20 4-205.

21 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
22 INDICATED.

23 (2) (I) "DISCOVERABLE MATERIAL AND INFORMATION" MEANS ALL
24 MATERIAL AND INFORMATION SUBJECT TO DISCOVERY BY ANY STATE OR FEDERAL
25 LAW, RULE, OR REGULATION.

26 (II) "DISCOVERABLE MATERIAL AND INFORMATION" INCLUDES
27 INFORMATION THAT IS FAVORABLE TO THE DEFENDANT.

28 (3) "DUE DILIGENCE" RETAINS ITS JUDICIALLY DETERMINED MEANING.

29 (B) (1) AT LEAST 5 DAYS BEFORE TRIAL, THE STATE'S ATTORNEY SHALL
30 CERTIFY TO THE COURT IN WRITING THAT:

31 (I) THE STATE'S ATTORNEY HAS PROVIDED THE DEFENSE
32 COUNSEL WITH ALL DISCOVERABLE MATERIAL AND INFORMATION;

33 (II) THE STATE'S ATTORNEY HAS EXERCISED DUE DILIGENCE IN
34 LOCATING ALL DISCOVERABLE MATERIAL AND INFORMATION KNOWN TO:

1. THE STATE'S ATTORNEY; AND

2. ALL INDIVIDUALS WHO PARTICIPATED IN THE
3 INVESTIGATION OR EVALUATION OF THE OFFENSE FOR WHICH THE DEFENDANT IS
4 BEING TRIED;

5 (III) TO THE BEST OF THE STATE'S ATTORNEY'S KNOWLEDGE, ALL
6 INDIVIDUALS INVOLVED IN THE INVESTIGATION, EVALUATION, OR PROSECUTION OF
7 THE OFFENSE BEING TRIED HAVE:

8 1. EXERCISED DUE DILIGENCE IN LOCATING ALL
9 DISCOVERABLE MATERIAL AND INFORMATION IN THEIR POSSESSION; AND

10 2. PROVIDED ALL DISCOVERABLE MATERIAL AND
11 INFORMATION IN THEIR POSSESSION TO THE STATE'S ATTORNEY; AND

12 (IV) ALL INDIVIDUALS INVOLVED IN THE INVESTIGATION,
13 EVALUATION, OR PROSECUTION OF THE OFFENSE BEING TRIED ACKNOWLEDGE
14 THEIR CONTINUING OBLIGATION TO EXERCISE DUE DILIGENCE IN DISCLOSING
15 DISCOVERABLE MATERIAL AND INFORMATION AS SOON AS THE INFORMATION IS
16 KNOWN TO THE INDIVIDUAL.

17 (2) THE CERTIFICATION FILED BY THE STATE'S ATTORNEY SHALL
18 INCLUDE A WRITTEN STATEMENT FROM THE DESIGNATED LEAD INVESTIGATOR OF
19 EACH LAW ENFORCEMENT AGENCY INVOLVED IN THE INVESTIGATION OF THE
20 OFFENSE BEING TRIED THAT CONFIRMS THAT ALL DISCOVERABLE MATERIAL AND
21 INFORMATION IN THE POSSESSION OF THE LAW ENFORCEMENT AGENCY HAS BEEN
22 PROVIDED TO THE STATE'S ATTORNEY.

23 (C) (1) IF THE COURT FINDS THAT THE CERTIFICATION REQUIRED UNDER
24 SUBSECTION (B)(1) OF THIS SECTION WAS GIVEN IN BAD FAITH, IN ADDITION TO ANY
25 OTHER REMEDY AVAILABLE TO THE COURT, THE COURT SHALL IMPOSE A FINE ON
26 THE OFFENDING PARTY.

27 (2) IF THE COURT FINDS THAT THE STATEMENT REQUIRED UNDER
28 SUBSECTION (B)(2) OF THIS SECTION WAS GIVEN IN BAD FAITH, IN ADDITION TO ANY
29 OTHER REMEDY AVAILABLE TO THE COURT, THE COURT MAY IMPOSE A FINE ON THE
30 LEAD INVESTIGATOR AT ITS DISCRETION.

31 (3) IN DETERMINING THE AMOUNT OF A FINE IMPOSED UNDER THIS
32 SECTION, THE COURT SHALL CONSIDER THE NATURE AND SERIOUSNESS OF THE
33 VIOLATION.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2005.