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Uploaded by: Britt, Adiena

Position: FAV

Placeholder for written testimony

Stance:

Testimony: My name is Adiena C. Britt and I reside in the 45th Legislative District of Baltimore City. I am writing to offer my

Thank you.

Adiena C. Britt

6014 Old Harford Rd.

Baltimore, MD 21214

Sydnor Testimony Fav SB0590 Required Disclosures-

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Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony for SB 590
Criminal Procedure – Required Disclosures – Brady Material
Before the Judicial Proceedings Committee
On February 17, 2021

Good afternoon Mr. Chairman, members of the Judicial Proceedings Committee,

Senate Bill 590 will help prosecutors by making it easier to do their job: ensuring that justice be done. While Brady Rule obligations now rest squarely on prosecutors,¹ SB 590 will lighten prosecutors' burdens by spelling out their duties by statute – that they must disclose information tending to show the innocence of the accused. SB 590 will give firm statutory guidance to prosecutors and it will ensure that defendants' are given due process, and that the prosecutor's role is one of administering justice.

In 1963, the Supreme Court held:

The suppression by the prosecution of evidence favorable to an accused person upon request 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. . . .

. . . .

Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.²

Brady v. Maryland is the basis of the Brady Rule: that when prosecution has information that tends to prove the innocence of the accused, fairness requires that the prosecution turn it over.³ Not only is it fair to the individual accused, but justice demands it.

¹ Jason Kreag, *The Jury's Brady Right*, 98 B.U.L. REV. 345, 353 (2018).

² *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

³ See *United States v. Agurs*, 427 U.S. 97, 107 (1976) (“[We] conclude that there is no significant difference between cases in which there has been merely a general request for exculpatory matter and cases . . . in which there has been no request at all.”); *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) (“[T]he duty to disclose is ongoing; information that may be deemed immaterial upon original examination may become important as the proceedings progress . . .”).

The Brady Rule stands for two fundamental values in our Constitutional order: first, that people accused of crimes will have due process. But just as important, if not more so, the Brady Rule commands prosecutors to remember that their job is not to win convictions any way they can within the rules. Brining justice to the State does not mean setting off a train that only stops at conviction. When a conviction is wrong, the prosecutor has the duty to put on the brakes.

In Maryland, the special responsibilities of a prosecutor are reflected in our attorney rules of professional conduct:

The prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal. . .⁴

Since its landmark decision 58 years ago, the Supreme Court has narrowed prosecutors' obligations under the Brady doctrine by focusing less on justice and more on process.⁵ By 1985, the Court had announced "evidence is material [to guilt or punishment] only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."⁶

As it stands today, while prosecutors must turn over to defense material evidence that shows innocence, this rule is weaker than the Brady Rule announced in 1963. This is because the prosecutor gets to decide what evidence might tend to show innocence. So the prosecutor is burdened with competing tasks – he must vigorously prosecute the case "while simultaneously evaluating the information the State possesses dispassionately and from the defendant's perspective."⁷ This dual burden not only makes prosecutors' jobs harder but has at times made justice more elusive.

When a prosecutor fails their duty to disclose exculpatory material, this "Brady misconduct" results in conviction of innocent people and ruining lives. But because there are no effective tools available for holding prosecutors accountable, Brady misconduct is pervasive throughout the country.⁸ Senate Bill 590 is intended to help address this.

Senate Bill 590 would ensure the prosecution makes good-faith efforts to disclose information favorable to the accused as early as the defendant's initial arraignment or appearance and continuing through the proceeding. This information would include not just admissible

⁴ MD. RULE 19-303.8. Special Responsibilities of a Prosecutor.

⁵ See Colin Starger, *Expanding Stare Decicis: The Role of Precedent in the Unfolding Dialectic of Brady v. Maryland*, 46 LOY. L. A. L. REV. 77, 86 (2012).

⁶ United States v. Bagley, 473 U.S. 667, 682 (1985).

⁷ Kreag, *supra* note 1, at 353.

⁸ See Jason Kreag, *Disclosing Prosecutorial Misconduct*, 72 VAND. L. REV. 297, 297 (2019).

"The responses to Brady violations range from doing nothing other than ordering relief for the defendant to the often prohibitively costly comprehensive, independent investigation of the prosecutors responsible for the misconduct." *Id.* at 308.

information, but all information, including: (1) information that is inconsistent with the defendant's guilt; (2) information that tends to mitigate a charge; (3) information that demonstrates defendant had an affirmative defense; (4) information that casts doubt on the accuracy of any evidence, and (5) information that would call into question the credibility of witnesses against the accused, such as the witness's background and any promises or inducements made by the state's attorney to the witness.

Of most importance to enforce the prosecutor's duty, SB 590 will empower the trial court to order production of exculpatory information, grant a continuance, impose sanctions, or issue any other order that is just under the circumstances.

Our criminal justice system must be centered on justice, not simply convictions. Senate Bill 590 will move our system toward justice and for that reason I urge you to vote favorably for SB 590.

SB 590 Support w Amend.pdf

Uploaded by: Giannetti , John

Position: FWA

Maryland Criminal Defense Attorneys' Association



Maryland House of Delegates Judiciary Committee

February 17, 2021 1pm

Hearing on SB 590

Criminal Procedure -Req'd Disclosures

MCDAA POSITION: SUPPORT W/AMENDMENTS

Bill explanation: The bill codifies and clarifies the responsibilities of the State during a criminal case to provide information to the defendant that is exculpatory for the defendant and information that can be used to impeach any of the State's witnesses at trial. The legislation is proposed to supplement the current Maryland Rules regarding discovery as found in Rule 4-263 et sec. The required disclosed information required by the bill is generally referred to as "Brady Material" after a landmark case, *Brady v. Md*, which created the need for analysis of the effect of information withheld from the defendant during trial, as to whether or not such withheld information would have affected the outcome of the case.

MCDAA's position: MCDAA members are very supportive of the sponsor's attempts to clarify and strengthen the discovery laws in Maryland, especially concerning increasing the availability of Brady Information at all parts of the trial, including before Arraignment. Further, we continue to work with the sponsor to craft amendments which will address ensuring the timely receipt of police misconduct information and address the Court's ability to sanction violating parties, as well as clarify that the obligation to provide Brady information extends beyond the end of trial and appeal exhaustion.

For additional information or questions regarding this legislation, please contact MCDAA Government Relations Contact: John Giannetti 410.300.6393, JohnGiannetti.mcdaa@gmail.com or MCDAA legislative committee members: Erica Suter, 202.468.6640 erica@ericasuterlaw.com or Andy Jezic 301.742.7470 avjezic@aol.com

SB 590 Support w Amend.pdf

Uploaded by: Giannetti , John

Position: FWA

Maryland Criminal Defense Attorneys' Association



Maryland House of Delegates Judiciary Committee

February 17, 2021 1pm

Hearing on SB 590 Criminal Procedure -Req'd Disclosures

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MD Judiciary - Testimony SB 590.pdf

Uploaded by: Elalamy, Sara

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 590
Criminal Procedure – Required Disclosures – Brady Material
DATE: February 11, 2021
(2/17)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 590. The offered legislation requires that the State's Attorney disclose to the defense all information known by the government that is favorable to the accused and material to either guilt or punishment, under *Brady v. Maryland*, 737 U.S. 83 (1963). The requirement applies whether or not the known information would be admissible evidence.

The bill is unnecessary and raises strong constitutional concerns. First, necessary constitutional safeguards exist in current law and this bill could result in prosecutors having to disclose less than what is required in the Constitution. In addition, a statute is unnecessary, particularly where that statute will be less favorable to the defendant than an existing Rule.

cc. Hon. Charles Sydnor
Judicial Council
Legislative Committee
Kelley O'Connor

MCPA-MSA_SB 590 Brady Material - Oppose.pdf

Uploaded by: Mansfield, Andrea

Position: UNF



Maryland Chiefs of Police Association Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William C. Smith, Jr. Chairman and
Members of the Judicial Proceedings Committee

FROM: Chief David Morris, Co-Chair, MCPA, Joint Legislative Committee
Sheriff Darren Popkin, Co-Chair, MSA, Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee

DATE: February 17, 2021

RE: **SB 590 – Criminal Procedure – Required Disclosures – Brady Material**

POSITION: **OPPOSE**

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **OPPOSE SB 590**. This bill seeks to regulate the discovery process in criminal cases.

This legislative interference in judicial functions will lead to less effective prosecutions and will alter the constitutional balance between the rights of those charged with committing crimes and those who seek to hold them accountable – law enforcement officers and elected States' Attorneys and other prosecutors. The proposed statute even goes as far as to instruct judges on how to respond to the State's failure to comply.

This proposed statute is unnecessary as United States Supreme Court rulings have already defined the proper and necessary scope of the pre-trial disclosure of evidence and the Maryland Court of Appeals has established rules to implement those requirements. SB 590 improperly violates the separation of powers doctrine and therefor MCPA and MSA **OPPOSE SB 589** and urge an **UNFAVORABLE** report.

SB 590 - Required Disclosures.pdf

Uploaded by: Shellenberger, Scott

Position: UNF

Bill Number: SB 590

**Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed**

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN OPPOSITION TO SENATE BILL 590
REQUIRED DISCLOSURES – BRADY MATERIAL

I write in opposition of Senate Bill 590 that is an unnecessary expansion of case law concerning disclosures by prosecutors in criminal cases. The Supreme Court in 1963 in Brady v. Maryland established that the prosecution must turn over to the defense all evidence that might exonerate a defendant.

There have literally been hundreds of reported appellate cases over the years outlining what is Brady material. An attempt in Senate Bill 590 to codify that which is contained in hundreds of appellate cases is misplaced. The Courts and the Maryland Rules are the branches of government that should decide and outline Brady issues.

What is more, Senate Bill 590 goes beyond that which is even required under Brady. Section (F) states, "the State's Attorney shall seek from all government sources all information subject to disclosure under this section." All government sources? That means I have to contact the Sheriff in Billings, Montana to see if they have any information on my witness.

That means I have to contact the IRS to see if my victim ever lied on their taxes. Brady only requires that I look for such information from agencies that regularly report to me or reported to me in this case. Section (F) is an impossible burden to meet.

What is more in section (c)(5)(11) requires disclosure of all criminal convictions of any witness.

So, if there is a DUI conviction from 20 years ago in California I have to find and disclose that.

Senate Bill 590 is unnecessary and goes well beyond that which can be obtained.

I urge an unfavorable report.

2021-02-17 SB 590 (Letter of Information).pdf

Uploaded by: Jung, Roy

Position: INFO

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.
(410) 576-6380

February 17, 2021

TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: The Office of the Attorney General

RE: SB 590 – Criminal Procedure – Required Disclosures – Brady Material – **Letter of Information**

We are writing to express our concerns regarding Senate Bill 590. The bill seeks to codify prosecutorial discovery obligations. The majority of these obligations already exist both in Maryland Rules 4-262 and 4-263, and in the vast body of case law that has developed in the wake of *Brady v. Maryland*.¹ The language of the bill largely duplicates requirements that are already well-established, and creates a danger of inconsistency, should the statutory language be interpreted or applied differently than existing standards.

Further, we are concerned that the codification of these requirements might lead to the implementation of criminal penalties or other sanctions, beyond those already recognized in Maryland. Prosecutors, like all attorneys, are subject to the Maryland Attorneys' Rules of Professional Conduct, and a failure to adhere to the Rules can result in sanctions, suspension, or disbarment. One of those rules, Rule 19-303.8, entitled Special Responsibilities of a Prosecutor, mirrors some of the language in the bill. Any desire to impose additional penalties for *Brady* violations may be well-intentioned, but has no proven correlation to improving compliance with disclosure requirements.²

¹ 373 U.S. 83 (1963).

² See, e.g., Christina E. Urhausen, *California's New Law Will Fail to Address the Larger Problem of Brady Violations*, 69 Hastings L.J. 1673, 1691 (2018) (stating that imposing additional penalties to individuals for *Brady* violations is a "futile approach" because majority of violations stem from unintentional behavior).

For the foregoing reason, we believe that the potential pitfalls from enacting this legislation outweigh any benefit. Thank you for your consideration in this matter.

cc: Members of the Judicial Proceedings Committee