

**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**

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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*.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> 373 U.S. 83 (1963).

<sup>2</sup> 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