



# NATIONAL CRIME VICTIM LAW INSTITUTE

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## WHAT ARE *BRADY* DISCLOSURE OBLIGATIONS?

### THE LEGAL BACKGROUND

*Brady* obligations (which are sometimes referred to as “*Brady* disclosures” or “the *Brady* Rule”) come from a 1963 United States Supreme Court case called *Brady v. Maryland*. In that case, the Supreme Court held that prosecuting attorneys (who may be called “prosecutors,” “solicitors,” “state’s attorneys,” or “district attorneys,” depending on the jurisdiction) are constitutionally obligated to disclose “evidence favorable to an accused . . . [that] is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” This means that prosecutors must automatically give certain information to defendants and their attorneys in criminal cases if that information could help their defense. Information has to be disclosed if it is important to the questions of the defendant’s guilt or punishment, or to the believability of witnesses.

#### What information does the *Brady* Rule cover?

The duty to disclose applies to information known to the prosecutor and/or in prosecutors’ files, as well as to information possessed by others who are acting on behalf of the prosecution in a criminal case. This includes prosecution-based advocates, as well as by members of law enforcement who are working on the case (including victim advocates who are directly employed by law enforcement offices).

#### What about privacy?

*Brady* disclosure obligations are an exception to the privacy protections that may otherwise safeguard victim information when they are speaking with prosecuting attorneys and those acting on behalf of the prosecution, including law enforcement.

Every advocate should be prepared to answer questions from survivors about the level of privacy that applies to information that is shared with them—and to provide referrals to other victim service providers who do not have *Brady* obligations, as a victim may prefer to share their information with someone who can offer a higher level of privacy protection.

Generally speaking, those who are not acting on behalf of the prosecution—such as advocates who work for a community-based organization like a sexual assault resource center or domestic violence resource center—will not have *Brady* disclosure obligations, and additional privacy protections may apply to survivors’ communications with these types of service providers.

## ADDITIONAL RESOURCES

### **The Supreme Court's Opinion in *Brady v. Maryland***

*Brady v. Maryland*, 373 U.S. 83 (1963), available at <https://supreme.justia.com/cases/federal/us/373/83/> (last accessed Feb. 8, 2023).

### **Video/Multimedia Resources**

*An Overview of Brady Obligations* (a brief video overview of *Brady* disclosure obligations), available at <https://www.youtube.com/watch?v=Q19VCiV2nj0>.

*Know Your Rights Quicktools* (short overview videos addressing a variety of victims' rights and issues relating to victims' rights enforcement), available at <https://ncvli.org/know-your-rights-quicktool/>.

*Rights Enforcement Toolkit* (video tutorials, flowcharts, checklists, and sample pleadings designed for practitioners that are divided into Pretrial, Trial, and Post-Trial categories), available at <https://ncvli.org/what-we-do/legal-assistance/rights-enforcement-toolkit/>.

[\*The Privacy Closet\*](#) (a short video overview explaining the concepts of privacy, confidentiality, and privilege using the metaphor of a closet). Free registration is required to access this video, which is part of NCVLI's [\*Victims' Rights Attorney Toolkit\*](#) – to request enrollment, please email [ncvli@lclark.edu](mailto:ncvli@lclark.edu) with the subject line "Victims' Rights Attorney Toolkit."

### **Written Resources**

Nat'l Crime Victim Law Inst., *Law Enforcement-Associated Victim Service Providers and The Brady Rule: Legal Background and Considerations*, 2023, available at <https://ncvli.org/law-enforcement-associated-victim-advocates-and-brady-disclosures-2022/>.

Nat'l Crime Victim Law Inst., *Release of Information Form Considerations*, 2022, available at <https://ncvli.org/release-of-information-form-considerations/>.

Nat'l Crime Victim Law Inst., *Sample Release of Information (ROI) Template*, 2022, available at <https://ncvli.org/sample-release-of-information-template/>.

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