



NATIONAL CRIME VICTIM LAW INSTITUTE

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BRADY RULE CONSIDERATIONS FOR MENTAL HEALTH CARE PROVIDERS WHO ARE CO-RESPONDERS WITH LAW ENFORCEMENT

What is the *Brady* Rule?

Brady v. Maryland is a case from 1963 in which the United States Supreme Court held that the prosecution in a criminal case must automatically disclose to the defendant and their attorney information that is in the prosecution's possession or control that could be helpful to the defense. This automatic disclosure obligation is known as the *Brady* Rule. Information is subject to the *Brady* Rule if it is important to the question of the defendant's guilt or punishment, or to the believability of witnesses. The "prosecution" is defined broadly for the purposes of the *Brady* Rule; the Rule applies to information in the prosecution's actual possession and in the possession of others acting on the prosecution's behalf, such as the police.

- **How does the *Brady* Rule impact the work of mental health care co-responders?** Mental health care providers who are co-responders with law enforcement may be considered to be acting on the prosecution's behalf for the purposes of the *Brady* Rule; in such instances, victim information that they collect and document may be subject to automatic disclosure to the defendant and their attorney. Whether the *Brady* Rule applies to a specific co-responder depends on multiple factors, many of which involve the structure and operation of the response team. For instance, the *Brady* Rule is most likely to apply if the co-responder is a law enforcement employee, works out of the same physical space as law enforcement, shares office resources with law enforcement, and/or maintains records that are readily accessible by law enforcement or the prosecution. Co-responders can work with prosecutors, law enforcement counsel, and other attorneys to determine how the *Brady* Rule applies to their particular circumstances.
- **Does the *Brady* Rule apply to a mental health care co-responder's communications with victims, witnesses, defendants and others?** If the mental health co-responder is found to be working on behalf of the prosecution for purposes of the *Brady* Rule, then the Rule applies to all information they collect and document, including that received in connection with interactions with victims, witnesses, defendants and even the public.
- **What about crime victim privacy?** The *Brady* Rule is an exception to the privacy protections that may otherwise safeguard victim information when a victim communicates with a prosecuting attorney or others acting on the prosecution's behalf. When a mental

health care co-responder is considered to be working on behalf of the prosecution, privilege protections, confidentiality rules, and other laws that might limit the release of a victim's information, including mental health information, generally will not prevent disclosure of victim information contained in the co-responder's records.

- **How can mental health care co-responders protect victims' interests in light of the *Brady* Rule?** A victim-centered approach to mental health care co-responders' contact with victims will reflect the high costs of disclosure to victim privacy and safety. It will also reflect the complexity of determining whether a particular co-responder is part of the prosecution team for the purposes of the *Brady* Rule. Unless there is a clear law stating that *Brady* does not apply to them, co-responders can best protect victims' interests by acting as if the *Brady* Rule does apply to them. This means that at the first contact with a victim, they provide victims with information about limitations on their ability to keep the victim's information private and provide referrals to victim service providers who are not covered by the *Brady* Rule. This will enable the victim to make a meaningful choice about who has access to their private information.

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