

Non-*Brady* Legal and Ethical Obligations on Prosecutors to Disclose Exculpatory Evidence

Prepared for the National Registry of Exonerations by Marc Allen
July 2018

Introduction

This memo is a survey of authorities, other than the Due Process Clause of the Fourteenth Amendment, that require state prosecutors to disclose exculpatory evidence to criminal defendants. In addition to constitutional constraints, prosecutors and police may also be bound by ethics rules, statutes, professional standards, and court rules.

In *Brady v. Maryland* the Supreme Court held that “suppression by the prosecution of evidence favorable to the accused . . . violated due process where the evidence is material either to guilt or to punishment.”¹ Subsequent cases expanded this rule to information that could be used for impeachment and information known to other members of the prosecution team, such as police.²

Commentators have written extensively on the doctrinal and practical limitations of *Brady* and its progeny.³ Alternate constraints on prosecutors, like ethics and discovery rules, are important places to look for practitioners and policy advocates. These rules have the potential to patch holes in *Brady*, and because they vary by state, they are a good place to look for comparison and experimentation.

The American Bar Association (ABA) has promulgated standards for prosecutors and model ethical rules, both of which address a prosecutor’s responsibility to disclose exculpatory evidence to a defendant. All states impose this obligation in one form or another through their respective professional conduct rules. Some states also include similar requirements in their criminal procedure rules. A single state, California, has created criminal liability for prosecutors who fail to disclose exculpatory evidence. Another state, New Hampshire, interprets the due process clause of its state constitution to require a slightly more scrutiny, or at least to function slightly differently, than *Brady*. Most states allow police to develop their own protocols for dealing with exculpatory evidence, but a small number of states have passed legislation specifying certain standards.

ABA Criminal Justice Standards for the Prosecution Function

The most comprehensive, widely available standards for prosecutorial conduct are the American Bar Association’s (“ABA”) Criminal Justice Standards. The ABA has developed Criminal Justice Standards since 1968. In 2015, the ABA approved the most recent version of its Criminal

¹ 373 U.S. 83, 87 (1963).

² *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

³ See, e.g., Supreme Alafair S. Burke, Revisiting Prosecutorial Disclosure, 84 Ind. L.J. 481, 482 (2009); Bennett L. Gershman, Litigating *Brady v. Maryland*: Games Prosecutors Play, 57 Case W. Res. L. Rev. 531, 534 (2007).

Justice Standards for the Prosecution Function (“ABA Standards”).⁴ The standards are not enforceable. They are intended to be read as best practices for prosecutors and are meant to supplement the Model Rules for Professional Conduct.⁵

Three ABA standards – specifically 3-1.2, 3-3.11, and 3-5.6 – touch on a prosecutor’s responsibilities in regards to exculpatory evidence.

Standard 3-1.2, which addresses the broad responsibilities of a prosecutor, make clear that justice, and not a conviction, is a prosecutor’s ultimate goal in any given case:

Standard 3-1.2 Functions and Duties of the Prosecutor

- (a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor’s office should exercise sound discretion and independent judgment in the performance of the prosecution function.
- (b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

This standard goes on to state that a prosecutor should “know and abide by the standards of professional conduct ... in the applicable jurisdiction,” and support remedial action to address injustices.

Standard 3-5.4 fleshes out the prosecutor’s obligation to coordinate with its own agents and other agencies addresses exculpatory evidence explicitly, and imposes an ethical duty to follow up on evidentiary leads even when the prosecutor believes the resulting information may damage his or her case:

Standard 3-5.4 Identification and Disclosure of Information and Evidence

- (a) After charges are filed if not before, the prosecutor should diligently seek to identify all information in the possession of the prosecution or its agents that tends to negate the guilt of the accused, mitigate the offense charged, impeach the government’s witnesses or evidence, or reduce the likely punishment of the accused if convicted.
- (b) The prosecutor should diligently advise other governmental agencies involved in the case of their continuing duty to identify, preserve, and disclose to the prosecutor information described in (a) above.

⁴ Available at https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition.html

⁵ Std. 3-1.1(b).

- (c) Before trial of a criminal case, a prosecutor should make timely disclosure to the defense of information described in (a) above that is known to the prosecutor, regardless of whether the prosecutor believes it is likely to change the result of the proceeding, unless relieved of this responsibility by a court's protective order. ... A prosecutor should not intentionally attempt to obscure information disclosed pursuant to this standard by including it without identification within a larger volume of materials.
- (d) The obligations to identify and disclose such information continue throughout the prosecution of a criminal case.

[...]

- (g) A prosecutor should not avoid pursuit of information or evidence because the prosecutor believes it will damage the prosecution's case or aid the accused.
- (h) A prosecutor should determine whether additional statutes, rules or case law may govern or restrict the disclosure of information, and comply with these authorities absent court order.

Finally, Standard 3-5.6 extends the prosecutor's obligation to disclose to plea deal negotiations:

Standard 3-5.6 Conduct of Negotiated Disposition Discussions

[...]

- (f) Before entering into a disposition agreement, the prosecutor should disclose to the defense a factual basis sufficient to support the charges in the proposed agreement, and information currently known to the prosecutor that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

The Standards go further than *Brady* in a number of ways. Most importantly, they require prosecutors to disclose *any* information bearing on guilt, mitigation, impeachment or punishment, rather than information the prosecutor deems material. They also make clear that disclosing exculpatory evidence in a timely manner is just one piece of a broader obligation to secure justice, an obligation that expressly includes pursuing evidence that may be detrimental to the prosecutor's case.

An Ethical Duty Beyond Disclosure?

The latest edition of the ABA Standards contain two provisions that suggest that a prosecutor's ethical obligations go beyond *Brady* not just in the type of evidence he or she must disclose, but also the parameters of the investigation he or she should conduct. Standard 3-1.2(b) makes clear that a prosecutor's goal is justice and not necessarily a conviction. And Standard 3-5.4(g) states that a prosecutor "should not avoid pursuit of information or evidence because the prosecutor believes it will damage the prosecution's case or aid the accused."

Few states have incorporated these standards into their local professional rules. Massachusetts and the District of Columbia have adopted language similar to Standard 3-5.4(g).⁶ Illinois and Texas have adopted language similar to Standard 3-1.2(b).⁷

NDAA National Prosecution Standards

The National District Attorneys Association (“NDAA”) publishes its own standards for prosecutorial ethics. The NDAA standards are similarly not enforceable but are considered an aspirational supplement to state ethics rules.⁸ Standard 2-8.4 states:

The prosecutor shall make timely disclosure of exculpatory or mitigating evidence, as required by law and/or applicable rules of ethical conduct

Though the NDAA standards are not as thorough as the ABA standards when it comes to exculpatory evidence, they similarly do not include a materiality requirement on their face.

Rules of Professional Responsibility

The most recent (2014 ed.) ABA model rule on the responsibilities of a prosecutor requires a prosecutor to make timely disclosures of any information that “tends to negate the guilt of the accused or mitigates the offense” and also contains provisions requiring prosecutors to act on post-conviction evidence of innocence.⁹ The model rule imposes a duty to disclose and investigate new evidence of innocence and an additional duty to act to “remedy the conviction” where clear and convince evidence establishes a convicted party’s innocence.

Rule 3.8 states:

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

⁶ S.J.C. Rule 3:07 RPC 3.8

⁷

⁸ Introduction to National District Attorneys Association National Prosecution Standards Third Edition, available at <https://www.ndaa.org/pdf/NDAA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>.

⁹ Special Responsibilities of a Prosecutor, MRPC Rule 3.8

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

- (1) promptly disclose that evidence to an appropriate court or authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction,
 - (i) promptly disclose that evidence to the defendant unless a court authorizes delay, and
 - (ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.¹⁰

Like the ABA Standards, the model rule is broader than *Brady* because it does not distinguish between material and non-material evidence.¹¹

Every state has adopted section (d) of the model rule or a similar standard.¹² The model rule's imposition of an affirmative obligation to act on new exculpatory evidence is less popular. 19 states have adopted section (g), and only 13 of those states have also adopted section (h). Table 1 shows which jurisdictions have implemented which portions of the model rule. The text of the actual state rules, which largely track the model rule but have some differences, are provided in the Appendix.

Table 1. Portions of the ABA Model Rule Adopted by States			
	Professional conduct obligation to disclose exculpatory evidence (model rule (d))	Professional conduct obligation to act on new evidence of innocence (model rule (g))	Professional conduct obligation to respond to clear and convincing evidence of innocence (model rule (h))
Alabama	X		
Alaska	X	X	
Arizona	X	X	X
Arkansas	X		
California	X	X	X
Colorado	X	X	X

¹⁰ ABA MRPC 3.8

¹¹ ABA Ethics Op. 09-454 (2009)

¹² Not every jurisdiction, however, has interpreted their rule similarly. *See In re Kline*, 113 A.3d 202, 210 (D.C. 2015) (comparing rulings from Louisiana, North Dakota, Wisconsin, Colorado, and Ohio).

Connecticut	X	X	
Delaware	X	X	
Florida	X		
Georgia	X		
Hawaii	X	X	
Idaho	X	X	X
Illinois	X	X	X
Indiana	X		
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		
Maine	X		
Maryland	X		
Massachusetts	X	X	X
Michigan	X		
Minnesota	X		
Mississippi	X		
Missouri	X		
Montana	X		
Nebraska	X		
Nevada	X		
New Hampshire	X		
New Jersey	X		
New Mexico	X		
New York	X	X	X
North Carolina	X	X	
North Dakota	X	X	X
Ohio	X		
Oklahoma	X	X	X
Oregon	X		
Pennsylvania	X		
Rhode Island	X		
South Carolina	X		
South Dakota	X		
Tennessee	X	X	X
Texas	X		
Utah	X		
Vermont	X		
Virginia	X		
Washington	X	X	
West Virginia	X	X	X
Wisconsin	X	X	X
Wyoming	X	X	X

District of Columbia	X		
----------------------	---	--	--

Criminal Procedure

State criminal procedure rules vary wildly. A number of states have rules closely resembling the Federal Rules of Criminal Procedure, while some states, like Nevada, lack any statewide rules at all. Other states have robust criminal discovery.

For the purposes of this memo, states can be sorted into three categories: those with a rule requiring the prosecutor to disclose exculpatory evidence automatically, those with a rule requiring the prosecutor to disclose exculpatory evidence in response to a defendant’s motion, and those without a rule addressing exculpatory evidence.

In 24 states, criminal procedure rules require which require the prosecutor to automatically turn exculpatory information over to the defendant.¹³ In 10 states, prosecutors are required to turn over exculpatory evidence upon motion or request of a defendant – a rule that effectively falls below the constitutional floor set by *Brady*, but may be helpful in helping parties resolve the timing of disclosure. In 16 states and the District of Columbia, there is no criminal procedure rule specifically addressing exculpatory evidence. Table 2 shows which states fall into each category. The text of the rules are provided in the Appendix.

Table 2. Criminal Procedure Rules Addressing Exculpatory Evidence		
	Criminal procedure requirement to provide exculpatory evidence on motion/request of defendant	Criminal procedure obligation to provide exculpatory evidence automatically
Alabama		
Alaska		X
Arizona		X
Arkansas		X
California		X
Colorado		X
Connecticut		X
Delaware		
Florida		X

¹³ Of these 24 states some, like Colorado, have language that tracks the ABA Standards and Model Rule: “The prosecuting attorney shall disclose to the defense any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor.” Others, like Louisiana, explicitly adopt the standards of *Brady* and its progeny.

Georgia		
Hawaii		X
Idaho		X
Illinois		X
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana		X
Maine		X
Maryland		X
Massachusetts		X
Michigan	X	
Minnesota	X	
Mississippi	X	
Missouri	X	
Montana	X	
Nebraska	X [†]	
Nevada		
New Hampshire		X
New Jersey		X
New Mexico		X
New York	X	
North Carolina		
North Dakota		
Ohio	X	
Oklahoma		X
Oregon		X
Pennsylvania	X	
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas		X
Utah		X
Vermont		X
Virginia		
Washington		X
West Virginia		X
Wisconsin	X	
Wyoming		

[†] Criminal discovery limited to impeachment information about a jailhouse witness

District of Columbia		
-------------------------	--	--

Other Statutes

Three states have statutes addressing exculpatory evidence separate from professional ethics or criminal procedure rules. Illinois has a statute requiring investigative agencies to cooperate with prosecutors to preserve and disclose exculpatory information.¹⁴ Louisiana has codified the prosecutor’s responsibilities by simply referring to “*Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny” in its criminal code.¹⁵

In 2016 California became the first state to impose criminal penalties for prosecutors who “intentionally and in bad faith” withhold exculpatory material that she knows is “relevant and material to the outcome of a case.”¹⁶ California made this behavior a felony punishable by up to three years of imprisonment.

State Constitutions

Though every state constitution addresses the rights of criminal defendants, only New Hampshire has interpreted its state constitution to impose an independent due process requirement more stringent than *Brady* – if only slightly.¹⁷

The New Hampshire Supreme Court determined that proving materiality under the federal standard “imposed too severe a burden upon the defendant.”¹⁸ Instead, New Hampshire allows a defendant to shift the burden of proving that evidence *is not* material to the prosecution in some circumstances.¹⁹ Under New Hampshire’s due process clause, if a defendant shows that the evidence in question was favorable and was knowingly withheld, the prosecutor then must prove *beyond a reasonable doubt* that the evidence would not have affected the outcome.

Law Enforcement

Like attorneys, the professional organizations in the law enforcement community have developed model standards for dealing with exculpatory evidence. Unlike attorneys, these model policies are generally not public. The International Association of Police Chiefs (“IAPC”), for example,

¹⁴ 725 Ill. Comp. Stat. 5/114-13

¹⁵ La. Code Crim. Proc. art. 723

¹⁶ Cal. Penal Code § 141

¹⁷ The New Jersey Supreme Court has repeatedly noted, in dicta, that its state constitution may require a slightly different standard when evaluating instances where the prosecution failed to turn over a piece of exculpatory evidence that was specifically requested by a defendant, but it has not yet formally made such a ruling. *See State v. Knight*, 145 N.J. 233, 247, 678 A.2d 642, 649 (1996).

¹⁸ *State v. Laurie*, 139 N.H. 325, 330, 653 A.2d 549, 552 (1995).

¹⁹ *State v. Shepherd*, 159 N.H. 163, 170–71, 977 A.2d 1029, 1034–35 (2009).

has a model policy on *Brady* disclosure requirements, but the policy is only available to IAPC members. A number of state level organizations similarly have model policies that are behind paywalls or only available to members.

Private entities that provide training materials, accreditation, and other services to police departments have also developed model policies. The Commission on Accreditation for Law Enforcement Agencies, Inc. (“CALEA”) and Lexipol are two such entities. State level professional organizations, such as the Arkansas Association of Chiefs of Police and the Florida Police Chiefs Association link to CALEA and Lexipol model policies, respectfully, on their websites.²⁰

While statutes criminalizing evidence tampering are ubiquitous, most states have left police departments to develop their own standards and procedures for dealing with exculpatory evidence and cooperating with prosecutors’ offices.²¹ Connecticut, Illinois, and North Carolina are the only jurisdictions that have passed laws governing police conduct in this area. The relevant portions of the statutes are presented in Table 3.

Table 3. Rules for Law Enforcement		
<i>State</i>	<i>Citation</i>	<i>Relevant Provision</i>
Connecticut	Conn. Gen. Stat. § 54-86c	(c) Each peace officer, as defined in subdivision (9) of section 53a-3, shall disclose in writing any exculpatory information or material which he may have with respect to any criminal investigation to the prosecutorial official in charge of such case.
Illinois	725 Ill. Comp. Stat. 5/114-13	(b) Any public investigative, law enforcement, or other public agency responsible for investigating any homicide offense or participating in an investigation of any homicide offense, other than defense investigators, shall provide to the authority prosecuting the

²⁰ <http://arkchiefs.org/resources/aacp-model-policies>; <https://fpca.com/law-enforcement-policies-and-training/>

²¹ Evidence tampering statutes typically include a mens rea element that involves concealing or altering evidence for the purpose of affecting its usability in an investigation or trial. *See, e.g.*, Cal. Penal Code § 141.

For a helpful discussion of the relationship between prosecutors’ offices and police, and a comparison to different model, see Stanley Z. Fisher, The Prosecutor's Ethical Duty to Seek Exculpatory Evidence in Police Hands: Lessons from England, 68 Fordham L. Rev. 1379 (2000).

		<p>offense all investigative material, including but not limited to reports, memoranda, and field notes, that have been generated by or have come into the possession of the investigating agency concerning the homicide offense being investigated. In addition, the investigating agency shall provide to the prosecuting authority any material or information, including but not limited to reports, memoranda, and field notes, within its possession or control that would tend to negate the guilt of the accused of the offense charged or reduce his or her punishment for the homicide offense. Every investigative and law enforcement agency in this State shall adopt policies to ensure compliance with these standards.</p>
North Carolina	N.C. Gen. Stat. § 15A-501	<p>Upon the arrest of a person, with or without a warrant, but not necessarily in the order hereinafter listed, a law-enforcement officer: [...] (6) Must make available to the State on a timely basis all materials and information acquired in the course of all felony investigations. This responsibility is a continuing affirmative duty.</p>

Summary

Each state has adopted a rule of professional conduct requiring prosecutors to identify and disclose exculpatory evidence to the defendant in criminal proceedings. The ABA has interpreted its model rule to be more expansive than the constitutional requirements, and at least some states have done the same. A number of states have gone further and adopted the ABA Model Rule in its entirety or have developed criminal discovery rules that mandate disclosure of exculpatory information. California is the only state that has gone as far as criminalizing the intentional withholding of evidence the prosecutor knows to be material.

Table 4 summarizes the sources discussed above.

Table 4. Non-Brady Source of Obligation on Prosecutor to Disclose Exculpatory Evidence to Defendant			
	Professional Conduct Rule	Criminal Procedure rule/statute	Other statute or state constitution
Alabama	X		
Alaska	X	X	
Arizona	X	X	
Arkansas	X	X	
California	X	X	X
Colorado	X	X	
Connecticut	X	X	
Delaware	X		
Florida	X	X	
Georgia	X		
Hawaii	X	X	
Idaho	X	X	
Illinois	X	X	X
Indiana	X		
Iowa	X		
Kansas	X		
Kentucky	X		
Louisiana	X		X
Maine	X	X	
Maryland	X	X	
Massachusetts	X	X	
Michigan	X	X	
Minnesota	X	X	
Mississippi	X	X	
Missouri	X	X	
Montana	X	X	
Nebraska	X	X*	
Nevada	X		
New Hampshire	X	X	X
New Jersey	X	X	
New Mexico	X	X	
New York	X	X	
North Carolina	X		
North Dakota	X		
Ohio	X	X	
Oklahoma	X	X	
Oregon	X	X	

* Criminal discovery limited to impeachment information about a jailhouse witness

Pennsylvania	X	X	
Rhode Island	X		
South Carolina	X		
South Dakota	X		
Tennessee	X		
Texas	X	X	
Utah	X	X	
Vermont	X	X	
Virginia	X		
Washington	X	X	
West Virginia	X	X	
Wisconsin	X	X	
Wyoming	X		
District of Columbia	X		

Appendix

Alabama

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

Alabama Rules of Professional Conduct: [Rule 3.8](#) Special Responsibilities of a Prosecutor

(1) The prosecutor in a criminal case shall:

[...]

(d) Not willfully fail to 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

Alaska

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 16(b)(3)
Statute	
Other	

Alaska Rules of Professional Conduct: [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(g) When a prosecutor knows of new and credible evidence creating a reasonable likelihood that a defendant did not commit an offense of which the defendant was convicted, the prosecutor shall promptly disclose that evidence to the appropriate court, the defendant’s lawyer, if known, and the defendant, unless a court authorizes delay or unless the prosecutor reasonably believes that the evidence has been or will otherwise be promptly communicated to the court and served on the defendant’s lawyer and the defendant. For purposes of this rule: (1) the term “new” means unknown to a trial prosecutor at the time the conviction was entered or, if known to a trial prosecutor, not disclosed to the defense, either deliberately or inadvertently; (2) the term “credible” means evidence a reasonable person would find believable; (3) the phrase “appropriate court” means the court which entered the conviction against the defendant and, in addition, if appellate proceedings related to the defendant’s conviction are pending, the appellate court which is conducting those proceedings; and (4) the phrase “defendant’s lawyer” means the lawyer, law firm, agency, or organization that represented the defendant in the matter which resulted in the conviction.

Alaska Rules of Criminal Procedure: [Rule 16\(b\)\(3\)](#)

(b) Disclosure to the Accused.

[...]

(3) *Information Tending to Negate Guilt or Reduce Punishment.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney’s possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused’s punishment therefor.

Arizona

Rules of Professional Conduct	ER 3.8
Rules of Criminal Procedure	16A A.R.S. Rules Crim.Proc., Rule 15.1
Statute	
Other	

Arizona Rules of Professional Conduct: [ER 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to the court in which the defendant was convicted and to the corresponding prosecutorial authority, and to defendant's counsel or, if defendant is not represented, the defendant and the indigent defense appointing authority in the jurisdiction, and

(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority, make reasonable efforts to inquire into the matter or to refer the matter to the appropriate law enforcement or prosecutorial agency for its investigation into the matter.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall take appropriate steps, including giving notice to the victim, to set aside the conviction.

(i) A prosecutor who concludes in good faith that information is not subject to subsections (g) or (h) of this Rule does not violate those subsections even if this conclusion is later determined to have been erroneous.

Arizona Rules of Criminal Procedure 15.1(b)

(b) Supplemental disclosure. Except as provided in Rule 39(b), the State must make available to the defendant the following material and information within the State's possession or control:

[...]

(8) all existing material or information that tends to mitigate or negate the defendant's guilt or would tend to reduce the defendant's punishment.

Arkansas

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 17.1(d)
Statute	
Other	

Arkansas Rule of Professional Conduct [3.8\(d\)](#)

The prosecutor in a criminal case shall:

[...]

(d) 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

Arkansas Rules of Criminal Procedure [17.1\(d\)](#)

(d) Subject to the provisions of Rule 19.4, the prosecuting attorney shall, promptly upon discovering the matter, disclose to defense counsel any material or information within his knowledge, possession, or control, which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the punishment therefor.

California

Rules of Professional Conduct	Rule 5-110
Rules of Criminal Procedure	Cal. Penal Code § 1054.1
Statute	Cal. Penal Code § 141
Other	

California Rules of Professional Conduct [Rule 5-110](#)

The prosecutor in a criminal case shall:

[..]

(D) Make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

[...]

(F) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) Promptly disclose that evidence to an appropriate court or authority, and

(2) If the conviction was obtained in the prosecutor's jurisdiction,

(a) Promptly disclose that evidence to the defendant unless a court authorizes delay, and

(b) Undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(G) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Cal. Penal Code § 1054.1

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

[...]

(e) Any exculpatory evidence.

Cal. Penal Code § 141

[...]

(c) A prosecuting attorney who intentionally and in bad faith alters, modifies, or withholds any physical matter, digital image, video recording, or relevant exculpatory material or information, knowing that it is relevant and material to the outcome of the case, with the specific intent that the physical matter, digital image, video recording, or relevant exculpatory material or information will be concealed or destroyed, or fraudulently represented as the original evidence upon a trial, proceeding, or inquiry, is guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for 16 months, or two or three years.

Colorado

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 16
Statute	
Other	

Colorado Rules of Professional Conduct: [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court or prosecutorial authority, and
(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority

(A) disclose the evidence to the defendant, and

(B) if the defendant is not represented, move the court in which the defendant was convicted to appoint counsel to assist the defendant concerning the evidence.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in a court in which the prosecutor exercises prosecutorial authority, of an offense that the defendant did not commit, the prosecutor shall take steps in the appropriate court, consistent with applicable law, to set aside the conviction.

Rules of Criminal Procedure 16

(a) Prosecutor's Obligations.

[...]

(2) The prosecuting attorney shall disclose to the defense any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor.

(3) The prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.

Connecticut

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	CPB § 40-11(b)
Statute	
Other	

Connecticut Rules of Professional Conduct Rule 3.8

The prosecutor in a criminal case shall:

(4) 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; and

[...]

(6) When a prosecutor knows of new and credible evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall, unless a court authorizes delay:

(A) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to a court and an appropriate authority, and

(B) if the conviction was obtained in the prosecutor's jurisdiction, promptly disclose that evidence to the defendant, and a court and an appropriate authority

Connecticut Practice Book § 40-11

(b) In addition to the foregoing, the prosecuting authority shall disclose to the defendant, in accordance with any applicable constitutional and statutory provisions, any exculpatory information or materials that the prosecuting authority may have, whether or not a request has been made therefor

Delaware

Rules of Professional Conduct	Rule 3.8(d)
Rules of Criminal Procedure	
Statute	
Other	

Delaware Lawyers' Rules of Professional Conduct Rule 3.8

(d)(1) 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;

(2) when the prosecutor comes to know of new, credible and material evidence establishing that a convicted defendant did not commit the offense for which the defendant was convicted, the prosecutor shall, unless a court authorizes delay, make timely disclosure of that evidence to the convicted defendant and any appropriate court, or, where the conviction was obtained outside the prosecutor's jurisdiction, to the chief prosecutor of the jurisdiction where the conviction occurred;

Florida

Rules of Professional Conduct	Rule 4-3.8
Rules of Criminal Procedure	3.220(b)(4)
Statute	
Other	

Florida Rules of Professional Conduct 4-3.8

The prosecutor in a criminal case shall:

[...]

(c) 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.

Florida Rules of Criminal Procedure [3.220\(b\)\(4\)](#)

(4) As soon as practicable after the filing of the charging document the prosecutor shall disclose to the defendant any material information within the state's possession or control that tends to negate the guilt of the defendant as to any offense charged, regardless of whether the defendant has incurred reciprocal discovery obligations.

Georgia

Rules of Professional Conduct	Rule 3.8(d)
Rules of Criminal Procedure	
Statute	
Other	

The prosecutor in a criminal case shall:

(d) 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 that mitigates the offense

[...]

The maximum penalty for a violation of this Rule is a public reprimand.

Hawaii

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 16(b)
Statute	
Other	

Hawaii Rule of Professional Conduct: 3.8

A public prosecutor or other government lawyer shall:

[...]

(b) 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 all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

(c) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall

(1) promptly disclose that evidence to an appropriate court or authority; and

(2) if the conviction was obtained in the State of Hawai‘i, promptly disclose that evidence to the defendant and the office of the public defender, unless a court orders otherwise.

(d) A prosecutor’s independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of section (c), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Hawaii Rules of Penal Procedure: Rule 16(b)

(b) Disclosure by the prosecution.

(1) Disclosure of matters within prosecution's possession. The prosecutor shall disclose to the defendant or the defendant's attorney the following material and information within the prosecutor's possession or control:

[...]

(vii) any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment therefor.

Idaho

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 16(a)
Statute	
Other	

Idaho Rules of Professional Conduct [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(g) when a prosecutor knows of new, credible material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction, (A) promptly disclose that evidence to the defendant unless a court authorizes delay, and (B) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) when a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

[Idaho Rule of Criminal Procedure 16](#)

(a) **Mandatory Disclosure of Evidence and Material by the Prosecution.** As soon as practicable after the filing of charges against the accused, the prosecuting attorney must disclose to defendant or defendant's counsel any material or information in the prosecuting attorney's possession or control, or that later comes into the prosecuting attorney's possession or control, that tends to negate the guilt of the accused as to the offense charged or that would tend to reduce the punishment for the offense. The prosecuting attorney's obligations under this paragraph extend to material and information in the possession or control of members of the prosecuting attorney's staff and of any others who have participated in the investigation or evaluation of the case who either regularly report, or have reported in that case, to the office of the prosecuting attorney. The prosecuting attorney must also disclose the general nature of evidence of other crimes, wrongs, or acts, it intends to introduce at trial as required by Rule 404(b) of the Idaho Rules of Evidence.

Illinois

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 412(c)
Statute	725 ILCS 5/114-13
Other	

Illinois Rules of Professional Conduct: [Rule 3.8](#)

The duty of a public prosecutor is to seek justice, not merely to convict. The prosecutor in a criminal case shall:

[...]

(d) 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;

[...].

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further reasonable investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

(i) A prosecutor's judgment, made in good faith, that evidence does not rise to the standards stated in paragraphs (g) or (h), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

Rules on Criminal Proceedings Rule (Illinois Supreme Court Rules) [412\(c\)](#)

(c) Except as is otherwise provided in these rules as to protective orders, the State shall disclose to defense counsel any material or information within its possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor. The State shall make a good-faith effort to

specifically identify by description or otherwise any material disclosed pursuant to this section based upon the information available to the State at the time the material is disclosed to the defense. At trial, the defendant may not offer evidence or otherwise communicate to the trier of fact the State's identification of any material or information as tending to negate the guilt of the accused or reduce his punishment.

725 Ill. Comp. Stat. 5/114-13

§ 114-13. Discovery in criminal cases.

(a) Discovery procedures in criminal cases shall be in accordance with Supreme Court Rules.

(b) Any public investigative, law enforcement, or other public agency responsible for investigating any homicide offense or participating in an investigation of any homicide offense, other than defense investigators, shall provide to the authority prosecuting the offense all investigative material, including but not limited to reports, memoranda, and field notes, that have been generated by or have come into the possession of the investigating agency concerning the homicide offense being investigated. In addition, the investigating agency shall provide to the prosecuting authority any material or information, including but not limited to reports, memoranda, and field notes, within its possession or control that would tend to negate the guilt of the accused of the offense charged or reduce his or her punishment for the homicide offense. Every investigative and law enforcement agency in this State shall adopt policies to ensure compliance with these standards. Any investigative, law enforcement, or other public agency responsible for investigating any “non-homicide felony” offense or participating in an investigation of any “non-homicide felony” offense, other than defense investigators, shall provide to the authority prosecuting the offense all investigative material, including but not limited to reports and memoranda that have been generated by or have come into the possession of the investigating agency concerning the “non-homicide felony” offense being investigated. In addition, the investigating agency shall provide to the prosecuting authority any material or information, including but not limited to reports and memoranda, within its possession or control that would tend to negate the guilt of the accused of the “non-homicide felony” offense charged or reduce his or her punishment for the “non-homicide felony” offense.

This obligation to furnish exculpatory evidence exists whether the information was recorded or documented in any form. Every investigative and law enforcement agency in this State shall adopt policies to ensure compliance with these standards.

Indiana

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

Indiana Rules of Professional Conduct [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

Iowa

Rules of Professional Conduct	Rule 32:3.8
Rules of Criminal Procedure	
Statute	
Other	

Iowa Rules of Professional Conduct: [Rule 32:3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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

Kansas

Rules of Professional Conduct	Rule 226 (3.8)
Rules of Criminal Procedure	
Statute	
Other	

Kansas Rules of Professional Conduct [Rule 226](#)

The prosecutor in a criminal case shall:

[...]

(d) 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

Kentucky

Rules of Professional Conduct	SCR 3.130(3.8)(c)
Rules of Criminal Procedure	
Statute	
Other	

Kentucky Rules of Professional Conduct [SCR 3.130\(3.8\)](#)

The prosecutor in a criminal case shall:

[...]

(c) 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;

Louisiana

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	La. Code Crim. Proc. art. 723
Other	

Louisiana Rules of Professional Conduct: [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows, or reasonably should know, either 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;

La. Code Crim. Proc. art. 723

B. Notwithstanding any provision to the contrary contained herein, the state shall provide the defendant with any evidence constitutionally required to be disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

Maine

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 16(a)(2)(D)
Statute	
Other	

Maine Rules of Professional Conduct [Rule 3.8](#)

The prosecutor shall:

[...]

(b) make timely disclosure in a criminal or juvenile case to counsel for the defendant, or to a defendant without counsel, of the existence of evidence or information known to the prosecutor after diligent inquiry and within the prosecutor's possession or control, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment;

Maine Rules of Criminal Procedure [Rule 16\(a\)\(2\)\(D\)](#)

The attorney for the State shall provide the following to the defendant:

[...]

(D) A statement describing any matter or information known to the attorney for the State that may not be known to the defendant and that tends to create a reasonable doubt of the defendant's guilt as to the crime charged.

Maryland

Rules of Professional Conduct	Rule 19-303.8
Rules of Criminal Procedure	Rule 4-263(d)
Statute	
Other	

Maryland Attorneys Rules of Professional Conduct [Rule 19-303.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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

Md. Rule 4-263(d)

(d) Disclosure by the State's Attorney. Without the necessity of a request, the State's Attorney shall provide to the defense:

[...]

(5) *Exculpatory Information*. All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) *Impeachment Information*. All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

- (A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);
- (B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;
- (C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;
- (D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;
- (E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is

- not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;
- (F) the fact that the witness has taken but did not pass a polygraph examination; and
- (G) the failure of the witness to identify the defendant or a co-defendant;

Massachusetts

Rules of Professional Conduct	SJC Rule 3:07 RPC 3.8
Rules of Criminal Procedure	Rule 14
Statute	
Other	

S.J.C. Rule 3:07 RPC 3.8

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(g) not avoid pursuit of evidence because the prosecutor believes it will damage the prosecution's case or aid the accused; and

[...]

(i) When, because of new, credible, and material evidence, a prosecutor knows that there is a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

- (1)** if the conviction was not obtained by that prosecutor's office, disclose that evidence to an appropriate court or the chief prosecutor of the office that obtained the conviction, and
- (2)** if the conviction was obtained by that prosecutor's office,
 - (i)** disclose that evidence to the appropriate court;

- (ii) notify the defendant that the prosecutor's office possesses such evidence unless a court authorizes delay for good cause shown;
- (iii) disclose that evidence to the defendant unless a court authorizes delay for good cause shown; and
- (iv) undertake or assist in any further investigation as the court may direct.

(j) When a prosecutor knows that clear and convincing evidence establishes that a defendant, in a case prosecuted by that prosecutor's office, was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the injustice.

(k) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (i) and (j), though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

Massachusetts Rules of Criminal Procedure: [Rule 14](#)

(a) Procedures for Discovery.

(1) Automatic Discovery.

(A) Mandatory Discovery for the Defendant. The prosecution shall disclose to the defense, and permit the defense to discover, inspect and copy, each of the following items and information at or prior to the pretrial conference, provided it is relevant to the case and is in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case:

[...]

(iii) Any facts of an exculpatory nature.

[...]

(viii) A summary of identification procedures, and all statements made in the presence of or by an identifying witness that are relevant to the issue of identity or to the fairness or accuracy of the identification procedures. (ix) Disclosure of all promises, rewards or inducements made to witnesses the party intends to present at trial.

Michigan

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 6.201(B)
Statute	
Other	

[Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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 degree of 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;

[Rule 6.201\(B\)](#)

(B) Discovery of Information Known to the Prosecuting Attorney. Upon request, the prosecuting attorney must provide each defendant:

(1) any exculpatory information or evidence known to the prosecuting attorney;

Minnesota

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Minn. R. Crim. P. 9.01
Statute	
Other	

Minnesota Rules of Professional Conduct: [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

[Minn. R. Crim. P. 9.01](#)

Subd. 1. Prosecution Disclosure Without Court Order.

The prosecutor must, at the defense's request and before the Rule [11](#) Omnibus Hearing, allow access at any reasonable time to all matters within the prosecutor's possession or control that relate to the case, except as provided in Rule [9.01, subd. 3](#), and make the following disclosures:

- (6) Exculpatory Information. Material or information in the prosecutor's possession and control that tends to negate or reduce the defendant's guilt.

Mississippi

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 17.2(6)
Statute	
Other	

Mississippi Rules of Professional Conduct [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

- (d) 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

Rule 17.2 Disclosure by the Prosecution.

Subject to the exceptions of Rule 17.6(a) and 17.7, the prosecution must disclose to each defendant or to the defendant's attorney, and permit the defendant or defendant's attorney to inspect, copy, test, and photograph upon written request and without the necessity of court order, the following which is in the possession, custody, or control of the State, the existence of which is known or by the exercise of due diligence may become known to the prosecution:

[...]

- (6) Any exculpatory material concerning the defendant.

Missouri

Rules of Professional Conduct	Rule 4-3.8
Rules of Criminal Procedure	Rule 25.03(A)(9)
Statute	
Other	

Rule 4 - Rules Governing the Missouri Bar and the Judiciary - Rules of Professional Conduct

RULE 4-3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

[...]

(d) 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

25.03. Misdemeanors or Felonies - Disclosure by State to Defendant Without Court Order

(A) Except as otherwise provided in these Rules as to protective orders, the state shall, upon written request of defendant's counsel, disclose to defendant's counsel such part or all of the following material and information within its possession or control designated in said request:

[...]

(9) Any material or information, within the possession or control of the state, which tends to negate the guilt of the defendant as to the offense charged, mitigate the degree of the offense charged, or reduce the punishment.

Montana

Rules of Professional Conduct	§ 3-503.8
Rules of Criminal Procedure	MT ST 46-15-322
Statute	
Other	

Montana Rules of Professional Conduct [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

MT ST 46-15-322. Disclosure by prosecution.

(1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

[...]

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

Nebraska

Rules of Professional Conduct	§ 3-503.8
Rules of Criminal Procedure	Neb. Rev. Stat. § 29-1912²²
Statute	
Other	

[§ 3-503.8](#). Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

[...]

(d) 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

Neb. Rev. Stat. § 29-1912

²² Criminal discovery limited to impeachment information about a jailhouse witness

(1) When a defendant is charged with a felony or when a defendant is charged with a misdemeanor or a violation of a city or village ordinance for which imprisonment is a possible penalty, he or she may request the court where the case is to be tried, at any time after the filing of the indictment, information, or complaint, to order the prosecuting attorney to permit the defendant to inspect and copy or photograph:

[...]

- (g) The known criminal history of a jailhouse witness;
- (h) Any deal, promise, inducement, or benefit that the prosecuting attorney or any person acting on behalf of the prosecuting attorney has knowingly made or may make in the future to the jailhouse witness;
- (i) The specific statements allegedly made by the defendant against whom the jailhouse witness will testify and the time, place, and manner of the defendant's disclosures;
- (j) The case name and jurisdiction of any criminal cases known to the prosecuting attorney in which a jailhouse witness testified about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and whether the jailhouse witness received any deal, promise, inducement, or benefit in exchange for or subsequent to such testimony; and
- (k) Any occasion known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made by another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness and, if any are known, a transcript or copy of such recantation.

Nevada

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

Nevada Rules of Professional Conduct: [Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

- (d) 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

New Hampshire

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 12(a)(2)(B)
Statute	
Other	N.H. Const. Pt. 1, art. XV

Rule 3.8

The prosecutor in a criminal case shall:

[...]

(d) 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

Rule 12. Discovery

(a) Circuit Court-District Division

[...]

(2) Not less than fourteen days prior to trial, the State shall provide the defendant with:

[...]

(B) all exculpatory materials required to be disclosed pursuant to the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny, including *State v. Laurie*, 139 N.H. 325 (1995)

New Jersey

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	N.J. Ct. R. 3:13-3

Statute	
Other	

Rule 3.8

The prosecutor in a criminal case shall:

[...]

(d) make timely disclosure to the defense of all evidence 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;

[R. 3:13-3](#)

3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery.

Unless the defendant agrees to more limited discovery, where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, provide defense counsel with all available relevant material that would be discoverable at the time of indictment pursuant to paragraph (b)(1) of this rule, except that:

- (1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made such relevant material as would not hinder or jeopardize the prosecution or investigation and shall advise defense counsel that complete discovery has not been provided; or
- (2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense counsel to inspect and copy or photograph such material at the prosecutor's office.

Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information or material.

(b) Post Indictment Discovery.

- (1) *Discovery by the Defendant.*

[...]

Discovery shall include exculpatory information or material.

New Mexico

Rules of Professional Conduct	Rule 16-308
Rules of Criminal Procedure	NMRA, Rule 5-501
Statute	
Other	

Rule 16-308 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

[...]

(d) 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 reasonably relevant mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

NMRA, Rule 5-501

A. Information subject to disclosure. Unless a shorter period of time is ordered by the court, within ten (10) days after arraignment or the date of filing of a waiver of arraignment, subject to Paragraph E of this rule, the state shall disclose or make available to the defendant:

[...]

(6) any material evidence favorable to the defendant which the state is required to produce under the due process clause of the United States Constitution.

New York

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	NY CRIM PRO § 240.20
Statute	
Other	

RULE 3.8. Special Responsibilities of Prosecutors and Other Government Lawyers

[...]

(b) A prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant or to a defendant who has no counsel of the existence of evidence or information known to the prosecutor or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the sentence, except when relieved of this responsibility by a protective order of a tribunal.

(c) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court or prosecutor's office; or

(2) if the conviction was obtained by that prosecutor's office,

(A) notify the appropriate court and the defendant that the prosecutor's office possesses such evidence unless a court authorizes delay for good cause shown;

(B) disclose that evidence to the defendant unless the disclosure would interfere with an ongoing investigation or endanger the safety of a witness or other person, and a court authorizes delay for good cause shown; and

(C) undertake or make reasonable efforts to cause to be undertaken such further inquiry or investigation as may be necessary to provide a reasonable belief that the conviction should or should not be set aside.

(d) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted, in a prosecution by the prosecutor's office, of an offense that the defendant did not commit, the prosecutor shall seek a remedy consistent with justice, applicable law, and the circumstances of the case.

(e) A prosecutor's independent judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (c) and (d), though subsequently determined to have been erroneous, does not constitute a violation of this rule.

S 240.20 Discovery; upon demand of defendant.

1. Except to the extent protected by court order, upon a demand to produce by a defendant against whom an indictment, superior court information, prosecutor's information, information, or simplified information charging a misdemeanor is pending, the prosecutor shall disclose to the defendant and make available for inspection, photographing, copying or testing, the following property:

[...]

(h) Anything required to be disclosed, prior to trial, to the defendant by the prosecutor, pursuant to the constitution of this state or of the United States.

North Carolina

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

[Rule 3.8](#) SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

[...]

(d) after reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions including 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;

[...]

(g) When a prosecutor knows of new, credible evidence or information creating a reasonable likelihood that a convicted defendant did not commit an offense for which the defendant was convicted, the prosecutor shall:

- (1) if the conviction was obtained in the prosecutor’s jurisdiction, promptly disclose that evidence or information to (i) the defendant or defendant’s counsel of record if any, and (ii) the North Carolina Office of Indigent Defense Services or, in the case of a federal conviction, the federal public defender for the jurisdiction; or
- (2) if the conviction was obtained in another jurisdiction, promptly disclose that evidence or information to the prosecutor’s office in the jurisdiction of the conviction or to (i) the defendant or defendant’s counsel of record if any, and (ii) the North Carolina Office of Indigent Defense Services or, in the case of a federal conviction, the federal public defender for the jurisdiction of conviction.

(h) A prosecutor who concludes in good faith that evidence or information is not subject to disclosure under paragraph (g) does not violate this rule even if the prosecutor’s conclusion is subsequently determined to be erroneous.

North Dakota

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	

Statute	
Other	

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

[...]

(d) disclose to the defense at the earliest practical time 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;

[...]

(g) when a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted:

- (1) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose notice of the existence of that evidence to an appropriate tribunal and prosecuting authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction
 - (i) promptly disclose the existence of that evidence to the defendant unless a court authorizes delay, and
 - (ii) undertake further investigation or cause an investigation to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) when a prosecutor knows of or receives clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, seek to undo the conviction.

Ohio

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Rule 16
Statute	
Other	

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall not do any of the following:

[...]

(d) fail to 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, fail to disclose to the defense all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by an order of the tribunal

RULE 16. Discovery and Inspection

(B) Discovery: Right to Copy or Photograph. Upon receipt of a written demand for discovery by the defendant, and except as provided in division (C), (D), (E), (F), or (J) of this rule, the prosecuting attorney shall provide copies or photographs, or permit counsel for the defendant to copy or photograph, the following items related to the particular case indictment, information, or complaint, and which are material to the preparation of a defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant, within the possession of, or reasonably available to the state, subject to the provisions of this rule:

[...]

(5) Any evidence favorable to the defendant and material to guilt or punishment;

Oklahoma

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Okla. Stat. Ann. tit. 22, § 2002
Statute	
Other	

[RULE 3.8](#) SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(h) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court and prosecutorial authority in the jurisdiction where the conviction occurred, and

- (2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority,
- (i) unless a court authorizes delay, make reasonable efforts to disclose that evidence to the defendant's attorney or if the defendant is not represented by counsel to the defendant, and
 - (ii) if the defendant is not represented by counsel, move the court in which the defendant was convicted to appoint counsel to assist the defendant concerning the evidence, and
 - (iii) request an appropriate authority to investigate whether the defendant was convicted of an offense that the defendant did not commit.
- (i) When a prosecutor learns of clear and convincing evidence establishing that a defendant was convicted in a court in which the prosecutor exercises prosecutorial authority of an offense that the defendant did not commit, the prosecutor shall promptly notify the appropriate court and make reasonable efforts to notify the defendant's counsel and the defendant.
- (j) A prosecutor's judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (h) and (i) of this rule, though subsequently determined to have been erroneous, does not constitute a violation of this rule.

Okla. Stat. tit. 22, § 2002

2. The state shall provide the defendant any evidence favorable to the defendant if such evidence is material to either guilt or punishment.
3. The prosecuting attorney's obligations under this standard extend to:
 - a. material and information in the possession or control of members of the prosecutor's staff,
 - b. any information in the possession of law enforcement agencies that regularly report to the prosecutor of which the prosecutor should reasonably know, and
 - c. any information in the possession of law enforcement agencies who have reported to the prosecutor with reference to the particular case of which the prosecutor should reasonably know.

Oregon

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Or. Rev. Stat. § 135.815
Statute	
Other	

[RULE 3.8](#) SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; and
- (b) 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.

Or. Rev. Stat. § 135.815

(1) Except as otherwise provided in ORS 135.855 and 135.873, the district attorney shall disclose to a represented defendant the following material and information within the possession or control of the district attorney:

[...]

- (g) Any material or information that tends to:
 - (A) Exculpate the defendant;
 - (B) Negate or mitigate the defendant's guilt or punishment; or
 - (C) Impeach a person the district attorney intends to call as a witness at the trial.

Pennsylvania

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Pa.R.Crim.P. 305(B)(1)(a)
Statute	
Other	

3.8 Special Responsibilities of a Prosecutor

[...]

1. 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

Pa.R.Crim.P. 305(B)(1)(a)

(B) DISCLOSURE BY THE COMMONWEALTH

(1) MANDATORY:

In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided

they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.

(a) Any evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth;

Rhode Island

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

[Rule 3.8](#). Special responsibilities of a prosecutor.

The prosecutor in a criminal case shall:

[...]

(d) 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

South Carolina

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

[Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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

South Dakota

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to exculpate the guilt of the accused, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged exculpatory information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

Tennessee

Rules of Professional Conduct	RULE 3.8
Rules of Criminal Procedure	
Statute	
Other	

RULE 3.8: SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case:

[...]

- (d) 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;

[...]

(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) if the conviction was obtained outside the prosecutor's jurisdiction, promptly disclose that evidence to an appropriate authority, or

(2) if the conviction was obtained in the prosecutor's jurisdiction, undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in the prosecutor's jurisdiction of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

Texas

Rules of Professional Conduct	Rule 3.09
Rules of Criminal Procedure	Tex. Crim. Proc. Code § 39.14 Tex. Crim. Proc. Code § 2.01
Statute	
Other	

[Rule 3.09](#)

The prosecutor in a criminal case shall:

[...]

(d) 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

[Tex. Crim. Proc. Code § 39.14](#)

(h) Notwithstanding any other provision of this article, the state shall disclose to the defendant any exculpatory, impeachment, or mitigating document, item, or information in

the possession, custody, or control of the state that tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.

[Tex. Crim. Proc. Code § 2.01](#)

It shall be the primary duty of all prosecuting attorneys, including any special prosecutors, not to convict, but to see that justice is done. They shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused.

Utah

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Utah R. Crim. P. 16
Statute	
Other	

[Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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 all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal

Utah R. Crim. P. 16

(a) Disclosures by prosecutor. Except as otherwise provided, the prosecutor shall disclose to the defense upon request the following material or information of which the prosecutor has knowledge:

[...]

(a)(4) evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment

Vermont

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	Vt. R. Crim. P. 16
Statute	
Other	

[Rule 3.8](#). SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

[...]

d) 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

Vt. R. Crim. P. 16

(b) The prosecuting attorney shall, as soon as possible, after a plea of not guilty,

(2) Disclose to defendant's attorney any material or information within his possession or control which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce his punishment therefor.

Virginia

Rules of Professional Conduct	Va. Sup. Ct. R. PT 6 2 RPC 3
Rules of Criminal Procedure	
Statute	
Other	

Va. Sup. Ct. R. PT 6 2 RPC 3.8

A lawyer engaged in a prosecutorial function shall:

[...]

(c) not instruct or encourage a person to withhold information from the defense after a party has been charged with an offense;

(d) make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence which the prosecutor knows tends to

negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment, except when disclosure is precluded or modified by order of a court;

Washington

Rules of Professional Conduct	RPC 3.8
Rules of Criminal Procedure	SUPER CT CR Cr R 4.7
Statute	
Other	

[RPC 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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 mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

[...]

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant is innocent of the offense of which the defendant was convicted the prosecutor shall:

- (1) promptly disclose that evidence to an appropriate court or authority, and
- (2) if the conviction was obtained in the prosecutor's jurisdiction,
 - (A) promptly disclose that evidence to the defendant unless a court authorizes delay, and
 - (B) make reasonable efforts to inquire into the matter, or make reasonable efforts to cause the appropriate law enforcement agency to undertake an investigation into the matter.

[...]

(i) A prosecutor's independent judgment, made in good faith, that the evidence is not of such nature as to trigger the obligations of paragraph (g) of this Rule, though subsequently determined to have been erroneous, does not constitute a violation of this Rule.

[SUPER CT CR Cr R 4.7](#)

(3) Except as is otherwise provided as to protective orders, the prosecuting attorney shall disclose to defendant's counsel any material or information within the prosecuting attorney's knowledge which tends to negate defendant's guilt as to the offense charged

West Virginia

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	W. Va. Trial Ct. R., 32.02
Statute	
Other	

[Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

d. 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;

[...]

- i. When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:
 - 1. promptly disclose that evidence to an appropriate court or authority, and
 - 2. if the conviction was obtained in the prosecutor's jurisdiction,
 - i. promptly disclose that evidence to the defendant unless a court authorizes delay, and
 - ii. undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.
- h. When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

[W. Va. Trial Ct. R., 32.02](#)

(a) Exculpatory Evidence. In all criminal cases, the attorney for the State shall advise the attorney for the defendant and provide evidence favorable to the defendant on the issue of the defendant's guilt or punishment without regard to materiality, within the scope of *Brady v. Maryland*, 373 U.S. 83 (1963), including the existence and substance of any payments, promises of immunity, leniency, preferential treatment, or other inducements

made to prospective witnesses, within the scope of *United States v. Giglio*, 405 U.S. 150 (1972).

Wisconsin

Rules of Professional Conduct	SCR 20:3.8
Rules of Criminal Procedure	Wis. Stat. § 971.23
Statute	
Other	

[SCR 20:3.8](#) Special responsibilities of a prosecutor

[...]

(f) A prosecutor, other than a municipal prosecutor, in a criminal case or a proceeding that could result in deprivation of liberty shall:

(1) 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; and

(2) exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under SCR 20:3.6.

(g) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall do all of the following:

(1) promptly disclose that evidence to an appropriate court or authority; and

(2) if the conviction was obtained in the prosecutor's jurisdiction:

(i) promptly make reasonable efforts to disclose that evidence to the defendant unless a court authorizes delay; and

(ii) make reasonable efforts to undertake an investigation or cause an investigation to be undertaken, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

[Wis. Stat. § 971.23](#)

(1) What a district attorney must disclose to a defendant. Upon demand, the district attorney shall, within a reasonable time before trial, disclose to the defendant or his or her attorney and permit the defendant or his or her attorney to inspect and copy or photograph all of the following materials and information, if it is within the possession, custody or control of the state:

[...]

(h) Any exculpatory evidence

Wyoming

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

[Rule 3.8](#)

The prosecutor in a criminal case shall:

[...]

(d) 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;

[...]

(f) When a prosecutor knows of new, credible and material evidence that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate authority or court, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the court and the defendant unless a court authorizes a delay

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit, and

(g) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

District of Columbia

Rules of Professional Conduct	Rule 3.8
Rules of Criminal Procedure	
Statute	
Other	

Rules of Professional Conduct: [Rule 3.8](#)--Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall not:

[...]

(d) Intentionally avoid pursuit of evidence or information because it may damage the prosecution's case or aid the defense;

(e) Intentionally fail to disclose to the defense, upon request and at a time when use by the defense is reasonably feasible, any evidence or information that the prosecutor knows or reasonably should know tends to negate the guilt of the accused or to mitigate the offense, or in connection with sentencing, intentionally fail to disclose to the defense upon request any unprivileged mitigating information known to the prosecutor and not reasonably available to the defense, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;