

10.5 Juvenile’s Constitutional Right to Disclosure of Exculpatory Evidence

- A. *Brady* Material
 - B. Evidence Required to be Disclosed under *Brady*
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A. *Brady* Material

The U.S. Supreme Court recognized the constitutional right of a criminal defendant under the Due Process Clause of the 14th Amendment to disclosure by the State of evidence that is:

- favorable to the defense, *and*
- material to the outcome of either the guilt-innocence or the sentencing phase of the trial.

Brady v. Maryland, 373 U.S. 83, 87 (1963). Subsequent cases have clarified that the right to disclosure does not depend on a request by the defendant for the exculpatory information. *Kyles v. Whitley*, 514 U.S. 419, 433 (1995); *United States v. Bagley*, 473 U.S. 667, 676 (1985). Citing *Brady*, the North Carolina Court of Appeals has stated in a juvenile appeal that “it is true that suppression of evidence favorable to an accused upon request violates due process where the evidence is material to guilt.” *In re Coleman*, 55 N.C. App. 673, 674 (1982).

Although not required by *Kyles* and *Bagley*, it is good practice to file a motion requesting that the State produce exculpatory evidence and specifying to the extent known the evidence that counsel wants the State to produce. This will put the State on notice and will strengthen the record in the event of an appeal.

B. Evidence Required to be Disclosed under *Brady*

Defender Manual. The North Carolina Defender Manual contains a more complete discussion of information required to be disclosed under *Brady* and related cases. *See* 1 NORTH CAROLINA DEFENDER MANUAL § 4.5, *Brady* Material (2d ed. 2013).

Favorable to the defense. Categories of evidence that must be disclosed as favorable to the defense are discussed, with case citations, in 1 NORTH CAROLINA DEFENDER MANUAL § 4.5C, Favorable to Defense (2d ed. 2013). Favorable evidence includes evidence that tends to negate guilt, mitigate an offense or sentence, or impeach the truthfulness of a witness or reliability of evidence. Examples of favorable evidence include:

- impeachment evidence, such as:
 - false statements of a witness

- prior inconsistent statements
- bias of a witness
- witness's capacity to observe, perceive, or recollect
- psychiatric evaluations of a witness
- prior convictions and other misconduct
- evidence discrediting police investigation and credibility
- other favorable evidence, such as:
 - evidence undermining identification of defendant
 - evidence tending to show guilt of another
 - physical evidence
 - “negative” exculpatory evidence (e.g., defendant not mentioned in statement regarding crime)
 - identity of favorable witnesses

Material to outcome. Under *Brady*, evidence must be material to the outcome of either the guilt-innocence or the sentencing phase of the case, in addition to being favorable to the defense. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The U.S. Supreme Court, in *Kyles v. Whitley*, 514 U.S. 419 (1995), provided further guidance regarding when evidence is material to the outcome of the case and must be disclosed. In *Kyles*, the Court stated four aspects of materiality under *Brady*:

- The standard of review for constitutional error for failure to disclose by the State is a “reasonable probability” that the outcome of the trial would have been different.
- The test is not the sufficiency of the evidence presented, but rather whether the favorable evidence might have cast a different light on the evidence presented, thereby undermining confidence in the verdict.
- If the appellate court finds constitutional error, the defendant is entitled to a new trial; the harmless error standard is not applicable.
- Materiality is determined by the cumulative effect of all undisclosed evidence, not on an item-by-item basis.

Kyles v. Whitley, 514 U.S. 419, 434–37 (1995).