

Durbin-Sullivan Due Process Protections Act Signed Into Law

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WASHINGTON – U.S. Senators Dick Durbin (D-IL) and Dan Sullivan (R-AK) today released the following statements after S. 1380, the Due Process Protections Act, was signed into law. Durbin and Sullivan introduced the bill to help ensure that federal prosecutors respect the constitutional right of defendants to access favorable and potentially exculpatory evidence.

“The Due Process Clause is enshrined in our Constitution as a check against government overreach, but there are inadequate safeguards in federal law to ensure that this fundamental right is protected for criminal defendants. Our bipartisan bill will help protect the right of the accused to all evidence that could exonerate them and hold accountable prosecutors who fail to comply,” Durbin said. “I’m pleased our bill is now law and I thank Senator Sullivan for his partnership in this effort.”

“Alaskans are well aware of the problem of federal prosecutors violating their constitutional duties and obligations following the reckless prosecution of the late Senator Ted Stevens,” said Sullivan. “I put forward this legislation with Senator Durbin to ensure all Americans’ Brady rights are protected, and to hold prosecutors accountable when they violate a defendant’s constitutional rights. This is a good day for justice and the rule of law, and I thank President Trump for signing our bill.”

Under the Fifth and Fourteenth Amendments to the U.S. Constitution, defendants are guaranteed due process under the law. The 1963 *Brady vs. Maryland* U.S. Supreme Court case clarified that due process entails the requirement of prosecutors to disclose to the accused all “favorable” evidence that is “material” to their case.

The Due Process Protections Act:

- Amends Rule 5 of the Federal Rules of Criminal Procedure to require a judge in the beginning of every case to issue an “order to prosecution and defense counsel that confirms the disclosure obligation of the prosecutor under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.”
- Requires each judicial council in which a District Court is located to promulgate a model order that its courts can use at their discretion.
- Permits the courts in each district to tailor the parameters of their Brady order, rather than impose any burdensome requirements on prosecutors.

Having these “Brady orders” in place will make evidence disclosure requirements a priority for prosecutors, and ensure prosecutors can be held to account if they fail to comply with Brady rules.

Despite the constitutional requirement for prosecutors to disclose exculpatory evidence, there continue to be cases in the federal system where this constitutional obligation is ignored. One of the most high-profile examples of this misconduct was the 2008 prosecution of the late Senator Ted Stevens (R-Alaska). The conviction was vacated before sentencing by the federal District Court following revelations of prosecutors and FBI agents conspiring to withhold and conceal favorable evidence from Senator Stevens’ defense.

According to the National Registry of Exonerations, between 1989 and 2017, prosecutors concealed exculpatory evidence at trial in half of all murder exonerations.

1. 1380 was also co-sponsored by Senators Cory Booker (D-NJ), John Cornyn (R-TX), Mike Lee (R-UT), Rand Paul (R-KY) and Sheldon Whitehouse (D-RI).