

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 408
PROPOSED COMMITTEE SUBSTITUTE H408-PCS30331-TJ-14

Short Title: Amend Criminal Discovery Laws.

(Public)

Sponsors:

Referred to:

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO STRENGTHEN NORTH CAROLINA'S OPEN-FILE DISCOVERY LAW,
PROTECT CRIME STOPPERS INFORMANTS, PROTECT VICTIM INFORMATION,
REQUIRE LAW ENFORCEMENT AND INVESTIGATORY AGENCIES TO MAKE
TIMELY DISCLOSURE OF THEIR FILES TO PROSECUTORS, AND AVOID
FRIVOLOUS CLAIMS OF PROFESSIONAL MISCONDUCT AGAINST
PROSECUTORS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-903 reads as rewritten:

"§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

(a) Upon motion of the defendant, the court must ~~order the State to~~ order:

(1) ~~The State to make~~ Make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutorial agencies ~~prosecutor's offices~~ involved in the investigation of the crimes committed or the prosecution of the defendant.

a. The term "file" includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. When any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including preliminary test or screening results and bench notes.

b. The term "prosecutorial agency" "prosecutor's office" refers to the office of the prosecuting attorney.

c. The term "investigatory agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor prosecutor's office in connection with the investigation of the crimes committed or the prosecution of the defendant.

d. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is



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1 significantly new or different information in the oral statement from
2 a prior statement made by the witness.

3 e. The defendant shall have the right to inspect and copy or photograph
4 any materials contained therein and, under appropriate safeguards, to
5 inspect, examine, and test any physical evidence or sample contained
6 therein.

7 (2) The prosecuting attorney to give Give notice to the defendant of any expert
8 witnesses that the State reasonably expects to call as a witness at trial. Each
9 such witness shall prepare, and the State shall furnish to the defendant, a
10 report of the results of any examinations or tests conducted by the expert.
11 The State shall also furnish to the defendant the expert's curriculum vitae,
12 the expert's opinion, and the underlying basis for that opinion. The State
13 shall give the notice and furnish the materials required by this subsection
14 within a reasonable time prior to trial, as specified by the court. Standardized
15 fee scales shall be developed by the Administrative Office of the Courts and
16 Indigent Defense Services for all expert witnesses and private investigators
17 who are compensated with State funds.

18 (3) The prosecuting attorney to give Give the defendant, at the beginning of jury
19 selection, a written list of the names of all other witnesses whom the State
20 reasonably expects to call during the trial. Names of witnesses shall not be
21 subject to disclosure if the State-prosecuting attorney certifies in writing and
22 under seal to the court that to do so may subject the witnesses or others to
23 physical or substantial economic harm or coercion, or that there is other
24 particularized, compelling need not to disclose. If there are witnesses that the
25 State did not reasonably expect to call at the time of the provision of the
26 witness list, and as a result are not listed, the court upon a good faith
27 showing shall allow the witnesses to be called. Additionally, in the interest
28 of justice, the court may in its discretion permit any undisclosed witness to
29 testify.

30 (b) If the State voluntarily provides disclosure under G.S. 15A-902(a), the disclosure
31 shall be to the same extent as required by subsection (a) of this section.

32 (c) ~~Upon request by the State, a~~ On a timely basis, law enforcement ~~or prosecutorial~~
33 and investigatory agencies ~~agency~~ shall make available to the ~~State prosecutor's office~~
34 complete copy of the complete files related to the investigation of the crimes committed or the
35 prosecution of the defendant for compliance with this section and any disclosure under
36 G.S. 15A-902(a). Investigatory agencies that obtain information and materials listed in
37 subdivision (1) of subsection (a) of this section shall ensure that such information and materials
38 are fully disclosed to the prosecutor's office on a timely basis for disclosure to the defendant.

39 (d) Any person who willfully omits or misrepresents evidence or information required
40 to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be
41 provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a
42 Class H felony. Any person who willfully omits or misrepresents evidence or information
43 required to be disclosed pursuant to any other provision of this section shall be guilty of a Class
44 1 misdemeanor."

45 **SECTION 2.** G.S. 15A-904 reads as rewritten:

46 "**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

47 (a) The State is not required to disclose written materials drafted by the prosecuting
48 attorney or the prosecuting attorney's legal staff for their own use at trial, including witness
49 examinations, voir dire questions, opening statements, and closing arguments. Disclosure is
50 also not required of legal research or of records, correspondence, reports, memoranda, or trial
51 preparation interview notes prepared by the prosecuting attorney or by members of the

1 prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or
2 conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

3 (a1) The State is not required to disclose the identity of a confidential informant unless
4 the disclosure is otherwise required by law.

5 (a2) The State is not required to provide any personal identifying information of a
6 witness beyond that witness's name, address, date of birth, and published phone number, unless
7 the court determines upon motion of the defendant that such additional information is necessary
8 to accurately identify and locate the witness.

9 (a3) The State is not required to disclose the identity of any individual providing
10 information about a crime or criminal conduct to a Crime Stoppers organization under promise
11 or assurance of anonymity unless ordered by the court. For purposes of this Article, a Crime
12 Stoppers organization or similarly named entity means a private, nonprofit North Carolina
13 corporation governed by a civilian volunteer board of directors that is operated on a local or
14 statewide level that (i) offers anonymity to persons providing information to the organization,
15 (ii) accepts and expands donations for cash rewards to persons who report to the organization
16 information about alleged criminal activity and that the organization forwards to the
17 appropriate law enforcement agency, and (iii) is established as a cooperative alliance between
18 the news media, the community, and law enforcement officials.

19 (a4) The State is not required to disclose the Victim Impact Statement or its contents
20 unless otherwise required by law. For purposes of this Chapter, a Victim Impact Statement is a
21 document submitted by the victim or the victim's family to the State pursuant to the Victims'
22 Rights Amendment.

23 (b) Nothing in this section prohibits the State from making voluntary disclosures in the
24 interest of justice nor prohibits a court from finding that the protections of this section have
25 been waived.

26 (c) This section shall have no effect on the State's duty to comply with federal or State
27 constitutional disclosure requirements."

28 **SECTION 3.** G.S. 15A-905(c)(2) reads as rewritten:

29 "(c) Notice of Defenses, Expert Witnesses, and Witness Lists. – If the court grants any
30 relief sought by the defendant under G.S. 15A-903, or if disclosure is voluntarily made by the
31 State pursuant to G.S. 15A-902(a), the court must, upon motion of the State, order the
32 defendant to:

- 33 ...
- 34 (2) Give notice to the State of any expert witnesses that the defendant
35 reasonably expects to call as a witness at trial. Each such witness shall
36 prepare, and the defendant shall furnish to the State, a report of the results of
37 the examinations or tests conducted by the expert. The defendant shall also
38 furnish to the State the expert's curriculum vitae, the expert's opinion, and
39 the underlying basis for that opinion. The defendant shall give the notice and
40 furnish the materials required by this subdivision within a reasonable time
41 prior to trial, as specified by the court. Standardized fee scales shall be
42 developed by the Administrative Office of the Courts and Indigent Defense
43 Services for all expert witnesses and private investigators who are
44 compensated with State funds.

45"

46 **SECTION 4.** G.S. 15A-910 is amended by adding two new subsections to read:

47 "(c) For purposes of determining whether to impose personal sanctions for untimely
48 disclosure of law enforcement and investigatory agencies' files, courts and State agencies shall
49 presume that prosecuting attorneys and their staff have acted in good faith if they have made a
50 reasonably diligent inquiry of those agencies under G.S. 15A-903(c) and disclosed the
51 responsive materials.

1 (d) If the court imposes any sanction, it must make specific findings justifying the
2 imposed sanction."

3 **SECTION 5.** This act becomes effective December 1, 2011, and applies to cases
4 pending on that date and to cases filed on or after that date.