

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 122
Feb 16, 2017
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40085-MSz-13 (01/09)

Short Title: Discovery Not Disseminated to Defendant. (Public)

Sponsors: Representatives Stevens, McNeill, and Destin Hall (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROTECTION FOR WITNESSES AND VICTIMS BY ENSURING CERTAIN DISCOVERY MATERIALS REMAIN IN THE CONTROL OF DEFENSE COUNSEL AND ARE NOT DISSEMINATED TO THE DEFENDANT, AS RECOMMENDED BY THE NORTH CAROLINA COURTS COMMISSION.

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:

(1) The State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' 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, but not limited to, preliminary test or screening results and bench notes.

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

b1. The term "investigatory agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor's office in connection with the investigation of the crimes committed or the prosecution of the defendant.

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

d. ~~The Subject to any restrictions imposed pursuant to sub-subdivision e. of this subdivision, the~~ defendant shall have the right to inspect and



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1 copy or photograph any materials contained therein and, under
2 appropriate safeguards, to inspect, examine, and test any physical
3 evidence or sample contained therein.

4 e. Any time the State provides discovery to defense counsel, the State may
5 also give written notice of discovery designating certain items of
6 discovery that are not to be used by the defendant or his or her attorney
7 for any other purpose than in direct relationship to the case and
8 prohibiting further disclosure of these items. In the notice, the State
9 shall state the grounds for its view that limited disclosure of the
10 designated discovery items is necessary for the protection of witnesses,
11 victims, or officers. Upon receipt of such notice, all items of discovery
12 designated in the notice shall remain in the custody and control of
13 defense counsel. Defense counsel may allow the defendant to view the
14 discovery items designated in the notice and may discuss those items
15 with the defendant but shall not permit the defendant to possess or
16 control any designated discovery items or any copies thereof. If served
17 with a notice by the State pursuant to this sub-subdivision, defense
18 counsel may file a motion with the superior court for such relief from
19 the notice as the interests of justice require. If the defendant is pro se in
20 a case that falls under this sub-subdivision, the State may move for a
21 protective order restricting disclosure by the defendant of specified
22 items of discovery and shall state in its motion the grounds for its view
23 that limited disclosure of the designated discovery items is necessary for
24 the protection of witnesses, victims, or officers.

25 (2) The prosecuting attorney to give notice to the defendant of any expert witnesses
26 that the State reasonably expects to call as a witness at trial. Each such witness
27 shall prepare, and the State shall furnish to the defendant, a report of the results
28 of any examinations or tests conducted by the expert. The State shall also
29 furnish to the defendant the expert's curriculum vitae, the expert's opinion, and
30 the underlying basis for that opinion. The State shall give the notice and furnish
31 the materials required by this subsection within a reasonable time prior to trial,
32 as specified by the court. Standardized fee scales shall be developed by the
33 Administrative Office of the Courts and Indigent Defense Services for all
34 expert witnesses and private investigators who are compensated with State
35 funds.

36 (3) The prosecuting attorney to give the defendant, at the beginning of jury
37 selection, a written list of the names of all other witnesses whom the State
38 reasonably expects to call during the trial. Names of witnesses shall not be
39 subject to disclosure if the prosecuting attorney certifies in writing and under
40 seal to the court that to do so may subject the witnesses or others to physical or
41 substantial economic harm or coercion, or that there is other particularized,
42 compelling need not to disclose. If there are witnesses that the State did not
43 reasonably expect to call at the time of the provision of the witness list, and as a
44 result are not listed, the court upon a good faith showing shall allow the
45 witnesses to be called. Additionally, in the interest of justice, the court may in
46 its discretion permit any undisclosed witness to testify.

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

49 (c) On a timely basis, law enforcement and investigatory agencies shall make available to
50 the prosecutor's office a complete copy of the complete files related to the investigation of the
51 crimes committed or the prosecution of the defendant for compliance with this section and any

1 disclosure under G.S. 15A-902(a). Investigatory agencies that obtain information and materials
2 listed in subdivision (1) of subsection (a) of this section shall ensure that such information and
3 materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the
4 defendant.

5 (d) Any person who willfully omits or misrepresents evidence or information required to
6 be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be
7 provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a
8 Class H felony. Any person who willfully omits or misrepresents evidence or information required
9 to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1
10 misdemeanor."

11 **SECTION 2.** This act becomes effective December 1, 2017, and applies to offenses
12 committed on or after that date.