

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 704

Short Title: Right to Appeal Giglio Notification. (Public)

Sponsors: Representatives Blackwell, John, Greene, and Carson Smith (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 3, if favorable, Rules, Calendar, and Operations of the House

April 19, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW CRIMINAL JUSTICE OFFICERS AND JUSTICE OFFICERS THE
3 RIGHT TO APPEAL GIGLIO DISCLOSURE NOTIFICATIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 17C-16 reads as rewritten:

6 "§ 17C-16. Requirement to report material relevant to testimony.

7 (a) Definitions. – The following definitions apply in this section:

8 (1) Notification. – A notification issued pursuant to subsection (b) of this section
9 to any person who is certified by the Commission or has received a conditional
10 offer of employment.

11 (2) Notifying Authority. – A superior court judge, district court judge, federal
12 judge, district attorney, assistant district attorney, United States attorney,
13 assistant United States attorney, or the person's agency head.

14 (b) Notification Required to be Reported. – Any person who is certified by the
15 Commission or has received a conditional offer of employment and who has been notified that
16 the person may not be called to testify at trial based on bias, interest, or lack of credibility shall
17 report and provide a copy of that notification to the Criminal Justice Standards Division within
18 30 days of receiving the notification, except as provided in ~~subsection (h)~~ subsections (h) and (i)
19 of this section. This requirement shall only apply if the person is notified by one of the following
20 methods:

21 (1) In writing by a superior court judge, district court judge, federal judge, district
22 attorney, assistant district attorney, United States attorney, assistant United
23 States attorney, or the person's agency head.

24 (2) In open court by a superior court judge, district court judge, or federal judge,
25 and documented in a written order.

26 (c) Preliminary Notice Required to be Issued by a Notifying Authority. – A Notifying
27 Authority shall provide any person the Notifying Authority is considering sending a Notification
28 at least 30 days' written preliminary notice before sending the Notification to that person, the
29 Division, or the person's agency head. If the Notifying Authority cannot reasonably provide the
30 written preliminary notice identified in this subsection before making a disclosure at a trial, in
31 reference to the person's bias, interest, or lack of credibility, the Notifying Authority shall not
32 send the Notification to any party or entity until the person has received written preliminary
33 notice pursuant to this subsection and the opportunity to be heard pursuant to subsection (e) of
34 this section.



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1 (d) Contents of Preliminary Notice Issued by a Notifying Authority. – The written
2 preliminary notice identified in subsection (c) of this section shall inform the person of the
3 following information:

4 (1) That the Notifying Authority is considering writing a Notification on the basis
5 that the person's conduct may disqualify the person from serving as a witness
6 at a criminal trial on the basis of bias, interest, or lack of credibility.

7 (2) What evidence is being considered by the Notifying Authority in anticipation
8 of making the determination.

9 (3) That the person has the right to be heard and present material in the person's
10 defense.

11 (4) The date, time, and location that the person may be heard and present material
12 in the person's defense.

13 (e) Informal Review and Discussion of Notifying Authority Notification Decision. –
14 Before a Notification is sent to any party or entity, the Notifying Authority shall provide the
15 person who is the subject of the potential Notification a meaningful opportunity to be heard and
16 present evidence in the person's defense no sooner than 30 days after providing the person the
17 written preliminary notice identified in subsection (c) of this section. A Notifying Authority shall
18 not deny the person who is the subject of the potential Notification the opportunity to be
19 accompanied by counsel at any meeting conducted pursuant to this subsection.

20 (f) Notifying Authority Must Issue Notification and Notice of Right to Appeal. – If, after
21 providing the person an opportunity to be heard, a Notifying Authority determines that a
22 Notification is warranted, the Notifying Authority shall, within 30 days of providing the person
23 an opportunity to be heard pursuant to subsection (e) of this section, notify the person in writing
24 that the person may not be called at a trial due to bias, interest, or lack of credibility. This written
25 notice shall inform the person:

26 (1) That the person has a right to file an appeal in superior court within 30 days
27 of receiving the Notification. The person receiving the Notification must
28 provide the Notifying Authority written notice of the person's intention to
29 appeal the Notification within 30 days of receiving the Notification.

30 (2) If the person receiving the Notification does not appeal, the Notifying
31 Authority will report the Notification to the Division and the person's agency
32 head after 30 days.

33 (g) Right to Appeal Notification Made by a Notifying Authority. – Any person who
34 receives a Notification from a Notifying Authority has a right to appeal the Notification to
35 superior court within 30 days of the date the person received the Notification pursuant to
36 subsection (h) of this section. Any person who receives the written notice identified in subsection
37 (c) of this section has a right to contest the adequacy of that notice pursuant to subsection (i) of
38 this section within 30 days of the date the person received the written notice. If the person chooses
39 to appeal a Notification or contest the adequacy of the written notice provided pursuant to
40 subsection (c) of this section, the person has no obligation to report the Notification to the
41 Division or the person's agency head until completion of the appeals process provided by
42 subsections (h) and (i) of this section and the Notifying Authority shall not report the Notification
43 to the Division or the person's agency head until the conclusion of the appeals process. If the
44 Notifying Authority does not comply with the appeals process described in this section, including
45 the meeting required by subsection (e) of this section, then the Notifying Authority shall not
46 report the Notification to the Division.

47 (h) Right to Appeal Notification to Superior Court. – To commence an appeal of a
48 Notification issued by a Notifying Authority, the person must file a Notice of Hearing form
49 jointly developed by the North Carolina Criminal Justice Education and Training Standards
50 Commission and the North Carolina Education and Training Standards Commission with the
51 clerk of court for the superior court of the county where the person is domiciled or in the county

1 encompassing the person's employer within 30 days of receiving the Notification. The Notice of
2 Hearing form must be served upon the Notifying Authority who authored the Notification and
3 the Division in any manner prescribed by Rule 4 of the North Carolina Rules of Civil Procedure
4 within 30 days of filing the Notice of Hearing with the clerk of court.

5 (1) On appeal pursuant to subsection (h) of this section, the court shall determine
6 whether a preponderance of evidence establishes that if the petitioner were
7 called to testify in a criminal court case, applicable law would require that the
8 petitioner's bias, interest, or lack of credibility be disclosed to the defense. The
9 court may conduct any evidentiary hearings necessary to make its
10 determination. The petitioner and the Notifying Authority shall have a right
11 to be heard at any hearings. The court shall make findings of fact and
12 conclusions of law in support of its determination.

13 (2) If the superior court finds by a preponderance of the evidence that applicable
14 law would require disclosure of the petitioner's conduct to the defense in
15 criminal court, the petitioner shall comply with the terms of subsection (b) of
16 this section and the Notifying Authority shall, within 30 days, notify the
17 Division and the petitioner's agency head of the Notification and shall include
18 a copy of the findings of fact and conclusions of law prepared by the superior
19 court. If the superior court does not find by a preponderance of the evidence
20 that applicable law would require disclosure of the petitioner's bias, interest,
21 or lack of credibility to a criminal defendant, the Notification shall be
22 rescinded and the terms of subsections (b), (j), and (k) of this section do not
23 apply.

24 (3) If the Notifying Authority who issued the Notification was a superior court
25 judge, a different superior court judge shall conduct all hearings pursuant to
26 this subsection.

27 (i) Right to Appeal the Sufficiency of a Notification. – Any person who receives a
28 Notification or the written notice identified in subsection (c) of this section from a Notifying
29 Authority may apply for a hearing in superior court for a judicial determination of whether the
30 person received written notice pursuant to subsection (c) of this section and whether the notice
31 complied with the terms of subsection (d) of this section. A person may commence a hearing by
32 filing the Notice of Hearing identified in subsection (h) of this section with the clerk of court for
33 the superior court of the county where the person is domiciled or in any county encompassing
34 the person's employer within 30 days of receiving the written notice or Disclosure Notification.
35 The Notice of Hearing form must be served upon the Notifying Authority who provided the
36 notice or Notification and the Division in any manner prescribed by Rule 4 of the North Carolina
37 Rules of Civil Procedure within 30 days of filing the Notice of Hearing with the clerk of court.
38 This hearing is limited to reviewing whether:

39 (1) The person who received the Notification is a person who is certified by the
40 Commission or has received a conditional offer of employment.

41 (2) The person has been notified in writing by a Notifying Authority.

42 (3) The Notification states that the person may not be called to testify at trial based
43 on bias, interest, or lack of credibility.

44 (4) The Notification identifies what evidence is being considered in anticipation
45 of a potential Notification.

46 (5) The Notification states that the person has a right to be heard and present
47 material in his or her defense.

48 (6) The Notification states the date, time, and location that the person may be
49 heard and present material in the person's defense.

50 The superior court shall make findings of fact and conclusions of law in support of its
51 determination. If the superior court finds by a preponderance of the evidence that the written

1 notice complied with the terms of subsection (d) of this section, the petitioner shall have a right
2 to be heard by the Notifying Authority pursuant to subsection (e) of this section at a time and
3 date specified by the Notifying Authority but no sooner than seven days after the conclusion of
4 the hearing identified in this subsection. If the superior court does not so find, the Notifying
5 Authority shall provide the written notice identified in subsection (c) of this section within 30
6 days of the conclusion of the hearing identified in this subsection.

7 ~~(b)(j)~~ The report—Duty for the notified party to report a Notification to the Division. – All
8 reports to the Division and a person's agency head shall be in writing and shall state who notified
9 the person that the person may not be called to testify at trial. A—Except as provided in subsections
10 (g), (h), and (i) of this section, a person required to report to the Division under subsection (a)
11 (b) of this section shall make the same report to the person's agency head within 30 days of being
12 notified that the person may not be called to testify at trial. of receiving a Notification. An agency
13 head who receives a report that a person in the agency has been notified that they may not be
14 called to testify at trial—received a Notification shall also report the notification to the Division in
15 writing within 30 days of the agency head's receipt of that report.

16 ~~(e)(k)~~ Duty for the Notifying Party to Report a Notification to the Division. – A superior
17 court judge, district court judge, federal judge, district attorney, assistant district attorney, United
18 States attorney, or assistant United States attorney who notifies a person that they may not be
19 called to testify at trial as provided in subsection (a)—(b) of this section shall report that notification
20 to the Division and provide a copy of the written document or order within 30 days of notifying
21 the person that they may not be called to testify at trial. Except as provided in subsections (g),
22 (h), and (i) of this section, a Notifying Authority who prepares a Notification as provided in
23 subsection (b) of this section shall report that Notification to the Division and the person's agency
24 head within 30 days of sending the Notification to the person who is the subject of the
25 Notification.

26 ~~(d)(l)~~ Procedure if a Notified Party Transfers to Another Agency. – If the Division transfers
27 to another agency the certification of any person required to report to the Division pursuant to
28 subsection (a)—(b) of this section, the Division shall provide written notification to both the head
29 of the new agency and the elected district attorney in the prosecutorial district where the agency
30 is located that the person has been previously notified that the person may not be called to testify
31 at trial. If the new agency receiving notification pursuant to this subsection is a State agency, the
32 Division shall notify the elected district attorney in every prosecutorial district of the State.

33 ~~(e)(m)~~ Removal of a Notification by the Party Who Issued the Notification. – The Notifying
34 Authority who has issued a Notification may, upon receipt of additional supporting or
35 corroborating information, or a change in factual circumstances, or for any other reason, at any
36 time, reverse, rescind, or otherwise remove a Notification. If the issuing party reverses, rescinds,
37 or otherwise removes a Notification, the party shall notify the person, the person's agency head,
38 and the Division in writing. If any person required to report to the Division pursuant to subsection
39 (a)—(b) of this section is subsequently informed in writing that that notification—the Notification
40 has been rescinded, the person shall provide the Division a copy of that document. The provisions
41 of subsection (d)—(l) of this section do not apply if the person required to report pursuant to
42 subsection (a)—(b) of this section is subsequently informed in writing that the notification has been
43 rescinded.

44 (n) Request to Not Have Notification Transferred to Another Agency. – Any person
45 whose Notification is reported to the Division may, one year after the Division is notified, petition
46 the Division to be exempt from the Division's reporting requirements identified in subsection (l)
47 of this section by serving upon the Division a Notice of Petition jointly developed by the North
48 Carolina Criminal Justice Education and Training Standards Commission and the North Carolina
49 Education and Training Standards Commission. A person's petition shall be granted if additional
50 supporting or corroborating information or a change in factual circumstances establishes by a

1 preponderance of the evidence that applicable law would not require that the petitioner's bias,
2 interest, or lack of credibility be disclosed to the defense.

3 ~~(f) No later than March 1 each year, the Commission shall report to the Joint Legislative~~
4 ~~Oversight Committee on Justice and Public Safety regarding the number of individuals for whom~~
5 ~~the Division received a report required by subsection (a) of this section during the previous~~
6 ~~calendar year. The report shall include information for each case on whether a final agency~~
7 ~~decision has been entered pursuant to Chapter 150B of the General Statutes and what action, if~~
8 ~~any, has been taken against each certification. The report shall not include the name or any other~~
9 ~~identifying information of any person required to report pursuant to subsection (a) of this section.~~

10 (g)(o) Notifications and Related Reports Not Public Record. – The reports and notifications
11 received by the Division-Division, a person, or the person's agency head pursuant to this section
12 shall not be public record.

13 ~~(h) Any person who has received a notification that may meet the reporting requirement~~
14 ~~provided in subsection (a) of this section may apply for a hearing in superior court for a judicial~~
15 ~~determination of whether or not the person received a notification that the person may not be~~
16 ~~called to testify at trial based on bias, interest, or lack of credibility. This hearing is limited to~~
17 ~~reviewing whether (i) a person who is certified by the Commission or has received a conditional~~
18 ~~offer of employment, (ii) has been notified in writing by a superior court judge, district court~~
19 ~~judge, federal judge, district attorney, assistant district attorney, United States attorney, or~~
20 ~~assistant United States attorney; or notified in open court by a superior court judge, district court~~
21 ~~judge, or federal judge, and documented in a written order, and (iii) that notification states that~~
22 ~~the person may not be called to testify at trial based on bias, interest, or lack of credibility, not~~
23 ~~matters of law or admissibility. The person must provide notice of the hearing to the Division.~~
24 ~~One extension of 15 days will be added to the 30-day reporting requirement provided in~~
25 ~~subsection (a) of this section if notice of a hearing is received.~~

26 (p) Constitutional Obligations of Prosecutors and Judges. – Nothing in this section shall
27 be construed to limit the constitutional obligations of prosecutors or judges to make disclosures
28 relating to a person's bias, interest, or credibility to criminal defendants.

29 (q) Employer Use of a Notification. – An employer may not use a Disclosure Notification
30 as the sole reason for taking or denying any of the following employment actions against any
31 person:

- 32 (1) Demotion.
- 33 (2) Suspension.
- 34 (3) Termination.
- 35 (4) Any other disciplinary action.

36 Employers are not to be restricted in using the underlying facts that were the basis for the
37 Notification for taking a disciplinary action, including termination, against the law enforcement
38 officer in accordance with the law enforcement agency's adopted procedures and governing law.

39 (r) Retroactive Review of Notifications Allowed in Superior Court. – Any person who
40 received a Notification at any time prior to the enactment of this section from a Notifying
41 Authority may apply for a hearing in superior court pursuant to subsection (h) of this section. If
42 a superior court does not find by a preponderance of the evidence that applicable law would
43 require disclosure of the petitioner's conduct to the defense in criminal court, the person shall not
44 be subject to the Division's notification requirements identified in subsection (l) of this section
45 and the Notification shall be rescinded.

46 (s) Annual Report. – No later than March 15 of each year, the Commission shall report to
47 the Joint Legislative Oversight Committee on Justice and Public Safety regarding the number of
48 individuals for whom the Division received a report required by subsection (b) of this section during
49 the previous calendar year. The report shall include information for each case on whether a final
50 agency decision has been entered pursuant to Chapter 150B of the General Statutes and what action,

1 if any, has been taken against each certification. The report shall not include the name or any other
2 identifying information of any person required to report pursuant to subsection (b) of this section."

3 **SECTION 2.** G.S. 17E-16 reads as rewritten:

4 "**§ 17E-16. Requirement to report material relevant to testimony.**

5 (a) Definitions. – The following definitions apply in this section:

6 (1) Notification. – A notification issued pursuant to subsection (b) of this section
7 to any person who is certified by the Commission or has received a conditional
8 offer of employment.

9 (2) Notifying Authority. – A superior court judge, district court judge, federal
10 judge, district attorney, assistant district attorney, United States attorney,
11 assistant United States attorney, or the person's agency head.

12 (b) Notification Required to be Reported. – Any person who is certified by the
13 Commission or has received a conditional offer of employment and who has been notified that
14 the person may not be called to testify at trial based on bias, interest, or lack of credibility shall
15 report and provide a copy of that notification to the Justice Officers' Standards Division within
16 30 days of receiving the notification, except as provided in ~~subsection (h)~~ subsections (h) and (i)
17 of this section. This requirement shall only apply if the person is notified by one of the following
18 methods:

19 (1) In writing by a superior court judge, district court judge, federal judge, district
20 attorney, assistant district attorney, United States attorney, assistant United
21 States attorney, or the person's agency head.

22 (2) In open court by a superior court judge, district court judge, or federal judge,
23 and documented in a written order.

24 (c) Preliminary Notice Required to be Issued by a Notifying Authority. – A Notifying
25 Authority shall provide any person the Notifying Authority is considering sending a Notification
26 at least 30 days' written preliminary notice before sending the Notification to that person, the
27 Division, or the person's agency head. If the Notifying Authority cannot reasonably provide the
28 written preliminary notice identified in this subsection before making a disclosure at a trial, in
29 reference to the person's bias, interest, or lack of credibility, the Notifying Authority shall not
30 send the Notification to any party or entity until the person has received written preliminary
31 notice pursuant to this subsection and the opportunity to be heard pursuant to subsection (e) of
32 this section.

33 (d) Contents of Preliminary Notice Issued by a Notifying Authority. – The written
34 preliminary notice identified in subsection (c) of this section shall inform the person of the
35 following information:

36 (1) That the Notifying Authority is considering writing a Notification on the basis
37 that the person's conduct may disqualify the person from serving as a witness
38 at a criminal trial on the basis of bias, interest, or lack of credibility.

39 (2) What evidence is being considered by the Notifying Authority in anticipation
40 of making the determination.

41 (3) That the person has the right to be heard and present material in the person's
42 defense.

43 (4) The date, time, and location that the person may be heard and present material
44 in the person's defense.

45 (e) Informal Review and Discussion of Notifying Authority Notification Decision. –
46 Before a Notification is sent to any party or entity, the Notifying Authority shall provide the
47 person who is the subject of the potential Notification a meaningful opportunity to be heard and
48 present evidence in the person's defense no sooner than 30 days after providing the person the
49 written preliminary notice identified in subsection (c) of this section. A Notifying Authority shall
50 not deny the person who is the subject of the potential Notification the opportunity to be
51 accompanied by counsel at any meeting conducted pursuant to this subsection.

1 (f) Notifying Authority Must Issue Notification and Notice of Right to Appeal. – If, after
2 providing the person an opportunity to be heard, a Notifying Authority determines that a
3 Notification is warranted, the Notifying Authority shall, within 30 days of providing the person
4 an opportunity to be heard pursuant to subsection (e) of this section, notify the person in writing
5 that the person may not be called at a trial due to bias, interest, or lack of credibility. This written
6 notice shall inform the person:

7 (1) That the person has a right to file an appeal in superior court within 30 days
8 of receiving the Notification. The person receiving the Notification must
9 provide the Notifying Authority written notice of the person's intention to
10 appeal the Notification within 30 days of receiving the Notification.

11 (2) If the person receiving the Notification does not appeal, the Notifying
12 Authority will report the Notification to the Division and the person's agency
13 head after 30 days.

14 (g) Right to Appeal Notification Made by a Notifying Authority. – Any person who
15 receives a Notification from a Notifying Authority has a right to appeal the Notification to
16 superior court within 30 days of the date the person received the Notification pursuant to
17 subsection (h) of this section. Any person who receives the written notice identified in subsection
18 (c) of this section has a right to contest the adequacy of that notice pursuant to subsection (i) of
19 this section within 30 days of the date the person received the written notice. If the person chooses
20 to appeal a Notification or contest the adequacy of the written notice provided pursuant to
21 subsection (c) of this section, the person has no obligation to report the Notification to the
22 Division or the person's agency head until completion of the appeals process provided by
23 subsections (h) and (i) of this section and the Notifying Authority shall not report the Notification
24 to the Division or the person's agency head until the conclusion of the appeals process. If the
25 Notifying Authority does not comply with the appeals process described in this section, including
26 the meeting required by subsection (e), then the Notifying Authority shall not report the
27 Notification to the Division.

28 (h) Right to Appeal Notification to Superior Court. – To commence an appeal of a
29 Notification issued by a Notifying Authority, the person must file a Notice of Hearing form
30 jointly developed by the North Carolina Criminal Justice Education and Training Standards
31 Commission and the North Carolina Education and Training Standards Commission with the
32 clerk of court for the superior court of the county where the person is domiciled or in the county
33 encompassing the person's employer within 30 days of receiving the Notification. The Notice of
34 Hearing form must be served upon the Notifying Authority who authored the Notification and
35 the Division in any manner prescribed by Rule 4 of the North Carolina Rules of Civil Procedure
36 within 30 days of filing the Notice of Hearing with the clerk of court.

37 (1) On appeal pursuant to subsection (h) of this section, the court shall determine
38 whether a preponderance of evidence establishes that if petitioner were called
39 to testify in a criminal court case, applicable law would require that the
40 petitioner's bias, interest, or lack of credibility be disclosed to the defense. The
41 court may conduct any evidentiary hearings necessary to make its
42 determination. The petitioner and the Notifying Authority shall have a right
43 to be heard at any hearings. The court shall make findings of fact and
44 conclusions of law in support of its determination.

45 (2) If the superior court finds by a preponderance of the evidence that applicable
46 law would require disclosure of the petitioner's conduct to the defense in
47 criminal court, the petitioner shall comply with the terms of subsection (b) of
48 this section and the Notifying Authority shall, within 30 days, notify the
49 Division and the petitioner's agency head of the Notification and shall include
50 a copy of the findings of fact and conclusions of law prepared by the superior
51 court. If the superior court does not find by a preponderance of the evidence

1 that applicable law would require disclosure of the petitioner's bias, interest,
2 or lack of credibility to a criminal defendant, the Notification shall be
3 rescinded and the terms of subsection (b), (j), and (k) of this section do not
4 apply.

5 (3) If the Notifying Authority who issued the Notification was a superior court
6 judge, a different superior court judge shall conduct all hearings pursuant to
7 this subsection.

8 (i) Right to Appeal the Sufficiency of a Notification. – Any person who receives a
9 Notification or the written notice identified in subsection (c) of this section from a Notifying
10 Authority may apply for a hearing in superior court for a judicial determination of whether the
11 person received written notice pursuant to subsection (c) of this section and whether the notice
12 complied with the terms of subsection (d) of this section. A person may commence a hearing by
13 filing the Notice of Hearing identified in subsection (h) of this section with the clerk of court for
14 the superior court of the county where the person is domiciled or in any county encompassing
15 the person's employer within 30 days of receiving the written notice or Disclosure Notification.
16 The Notice of Hearing form must be served upon the Notifying Authority who provided the
17 notice or Notification and the Division in any manner prescribed by Rule 4 of the North Carolina
18 Rules of Civil Procedure within 30 days of filing the Notice of Hearing with the clerk of court.
19 This hearing is limited to reviewing whether:

20 (1) The person who received the Notification is a person who is certified by the
21 Commission or has received a conditional offer of employment.

22 (2) The person has been notified in writing by a Notifying Authority.

23 (3) The Notification states that the person may not be called to testify at trial based
24 on bias, interest, or lack of credibility.

25 (4) The Notification identifies what evidence is being considered in anticipation
26 of a potential Notification.

27 (5) The Notification states that the person has a right to be heard and present
28 material in his or her defense.

29 (6) The Notification states the date, time, and location that the person may be
30 heard and present material in the person's defense.

31 The superior court shall make findings of fact and conclusions of law in support of its
32 determination. If the superior court finds by a preponderance of the evidence that the written
33 notice complied with the terms of subsection (d) of this section, the petitioner shall have a right
34 to be heard by the Notifying Authority pursuant to subsection (e) of this section at a time and
35 date specified by the Notifying Authority but no sooner than seven days after the conclusion of
36 the hearing identified in this subsection. If the superior court does not so find, the Notifying
37 Authority shall provide the written notice identified in subsection (c) of this section within 30
38 days of the conclusion of the hearing identified in this subsection.

39 ~~(b)(j)~~ Duty for the Notified Party to Report a Notification to the Division. – All
40 reports to the Division and a person's agency head shall be in writing and shall state who notified
41 the person that the person may not be called to testify at trial. A-Except as provided in subsections
42 (g), (h), and (i) of this section a person required to report to the Division under subsection (a)-(b)
43 of this section shall make the same report to the person's agency head within 30 days of being
44 notified that the person may not be called to testify at trial. of receiving a Notification. An agency
45 head who receives a report that a person in the agency has been notified that they may not be
46 called to testify at trial received a Notification shall also report the notification to the Division in
47 writing within 30 days of the agency head's receipt of that report.

48 ~~(e)(k)~~ Duty for the Notifying Party to Report a Notification to the Division. – A superior
49 court judge, district court judge, federal judge, district attorney, assistant district attorney, United
50 States attorney, or assistant United States attorney who notifies a person that they may not be
51 called to testify at trial as provided in subsection (a)-(b) of this section shall report that notification

1 to the Division and provide a copy of the written document or order within 30 days of notifying
2 the person that they may not be called to testify at trial. Except as provided in subsections (g),
3 (h), and (i) of this section, a Notifying Authority who prepares a Notification as provided in
4 subsection (b) of this section shall report that Notification to the Division and the person's agency
5 head within 30 days of sending the Notification to the person who is the subject of the
6 Notification.

7 ~~(d)~~(l) Procedure if a Notified Party Transfers to Another Agency. – If the Division transfers
8 to another agency the certification of any person required to report to the Division pursuant to
9 subsection ~~(a)~~(b) of this section, the Division shall provide written notification to both the head
10 of the new agency and the elected district attorney in the prosecutorial district where the agency
11 is located that the person has been previously notified that the person may not be called to testify
12 at trial. If the new agency receiving notification pursuant to this subsection is a State agency, the
13 Division shall notify the elected district attorney in every prosecutorial district of the State.

14 ~~(e)~~(m) Removal of a Notification by the Party Who Issued the Notification. – The Notifying
15 Authority who has issued a Notification may, upon receipt of additional supporting or
16 corroborating information, or a change in factual circumstances, or for any other reason, at any
17 time, reverse, rescind, or otherwise remove a Notification. If the issuing party reverses, rescinds,
18 or otherwise removes a Notification, the party shall notify the person, the person's agency head,
19 and the Division in writing. If any person required to report to the Division pursuant to subsection
20 (a) of this section is subsequently informed in writing that ~~that notification~~ the Notification has
21 been rescinded, the person shall provide the Division a copy of that document. The provisions of
22 subsection (d) of this section do not apply if the person required to report pursuant to subsection
23 (a) of this section is subsequently informed in writing that the notification has been rescinded.

24 (n) Request to Not Have Notification Transferred to Another Agency. – Any person
25 whose Notification is reported to the Division may, one year after the Division is notified, petition
26 the Division to be exempt from the Division's reporting requirements identified in subsection (l)
27 of this section by serving upon the Division a Notice of Petition jointly developed by the North
28 Carolina Criminal Justice Education and Training Standards Commission and the North Carolina
29 Education and Training Standards Commission. A person's petition shall be granted if additional
30 supporting or corroborating information or a change in factual circumstances establishes by a
31 preponderance of the evidence that applicable law would not require that the petitioner's bias,
32 interest, or lack of credibility be disclosed to the defense.

33 ~~(f)~~ No later than March 1 each year, the Commission shall report to the Joint Legislative
34 Oversight Committee on Justice and Public Safety regarding the number of individuals for whom
35 the Division received a report required by subsection (a) of this section during the previous
36 calendar year. The report shall include information for each case on whether a final agency
37 decision has been entered pursuant to Chapter 150B of the General Statutes and what action, if
38 any, has been taken against each certification. The report shall not include the name or any other
39 identifying information of any person required to report pursuant to subsection (a) of this section.

40 ~~(g)~~(o) Notifications and Related Reports Not Public Record. – The reports and notifications
41 received by the ~~Division~~Division, a person, or the person's agency head pursuant to this section
42 shall not be public record.

43 ~~(h)~~ Any person who has received a notification that may meet the reporting requirement
44 provided in subsection (a) of this section may apply for a hearing in superior court for a judicial
45 determination of whether or not the person received a notification that the person may not be
46 called to testify at trial based on bias, interest, or lack of credibility. This hearing is limited to
47 reviewing whether (i) a person who is certified by the Commission or has received a conditional
48 offer of employment, (ii) has been notified in writing by a superior court judge, district court
49 judge, federal judge, district attorney, assistant district attorney, United States attorney, or
50 assistant United States attorney; or notified in open court by a superior court judge, district court
51 judge, or federal judge, and documented in a written order, and (iii) that notification states that

1 ~~the person may not be called to testify at trial based on bias, interest, or lack of credibility, not~~
2 ~~matters of law or admissibility. The person must provide notice of the hearing to the Division.~~
3 ~~One extension of 15 days will be added to the 30-day reporting requirement provided in~~
4 ~~subsection (a) of this section if notice of a hearing is received.~~

5 (p) Constitutional Obligations of Prosecutors and Judges. – Nothing in this section shall
6 be construed to limit the constitutional obligations of prosecutors or judges to make disclosures
7 relating to a person's bias, interest, or credibility to criminal defendants.

8 (q) Employer Use of a Notification. – An employer may not use a Disclosure Notification
9 as the sole reason for taking or denying any of the following employment actions against any
10 person:

- 11 (1) Demotion.
- 12 (2) Suspension.
- 13 (3) Termination.
- 14 (4) Any other disciplinary action.

15 Employers are not to be restricted in using the underlying facts that were the basis for the
16 Notification for taking a disciplinary action, including termination, against the law enforcement
17 officer in accordance with the law enforcement agency's adopted procedures and governing law.

18 (r) Retroactive Review of Notifications Allowed in Superior Court. – Any person who
19 received a Notification at any time prior to the enactment of this section from a Notifying
20 Authority may apply for a hearing in superior court pursuant to subsection (h) of this section. If
21 a superior court does not find by a preponderance of the evidence that applicable law would
22 require disclosure of the petitioner's conduct to the defense in criminal court, the person shall not
23 be subject to the Division's notification requirements identified in subsection (l) of this section
24 and the Notification shall be rescinded.

25 (s) Annual Report. – No later than March 15 of each year, the Commission shall report to
26 the Joint Legislative Oversight Committee on Justice and Public Safety regarding the number of
27 individuals for whom the Division received a report required by subsection (b) of this section during
28 the previous calendar year. The report shall include information for each case on whether a final
29 agency decision has been entered pursuant to Chapter 150B of the General Statutes and what action,
30 if any, has been taken against each certification. The report shall not include the name or any other
31 identifying information of any person required to report pursuant to subsection (b) of this section."

32 **SECTION 3.** This act is effective when it becomes law.