

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 408

Short Title: Amend Criminal Discovery Laws. (Public)

Sponsors: Representatives T. Moore, Spear, and Shepard (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee C.

March 21, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW REGARDING DISCOVERY IN CRIMINAL CASES.

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:

(1) Make available to the defendant the prosecutor's complete files of all law enforcement and prosecutorial agencies involved in the file involving the investigation of the crimes committed or the prosecution of the defendant. 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. ~~The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant.~~ 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 investigational assistant shall not be required to be in written or recorded form unless there is material and significantly new or different information in the oral statement from a prior statement made by the witness. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) Give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court. Any representative of the State requesting investigatory assistance or expert witness services must file a



1 motion and notice of hearing on the defendant. All such requests must be
2 made in court and in the presence of opposing counsel.

- 3 (3) Give the defendant, at the beginning of jury selection, a written list of the
4 names of all other witnesses whom the State reasonably expects to call
5 during the trial. Names of witnesses shall not be subject to disclosure if the
6 State certifies in writing and under seal to the court that to do so may subject
7 the witnesses or others to physical or substantial economic harm or coercion,
8 or that there is other particularized, compelling need not to disclose. If there
9 are witnesses that the State did not reasonably expect to call at the time of
10 the provision of the witness list, and as a result are not listed, the court upon
11 a good faith showing shall allow the witnesses to be called. Additionally, in
12 the interest of justice, the court may in its discretion permit any undisclosed
13 witness to testify.

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

16 (c) Upon request by the State, a law enforcement ~~or prosecutorial~~ agency shall make
17 available to the State a complete copy of the complete files related to the investigation of the
18 crimes committed or the prosecution of the defendant for compliance with this section and any
19 disclosure under G.S. 15A-902(a)."

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

21 "**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

22 (a) The State is not required to disclose written materials drafted by the prosecuting
23 attorney or the prosecuting attorney's legal staff for their own use at trial, including witness
24 examinations, voir dire questions, opening statements, and closing arguments. Disclosure is
25 also not required of legal research or of records, correspondence, reports, memoranda, or trial
26 preparation interview notes prepared by the prosecuting attorney or by members of the
27 prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or
28 conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

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

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

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

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

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

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

3 (d) If the State has undertaken to comply with this Article by making disclosure, the
4 district attorney or other prosecuting attorney and the legal staff are presumed to be acting in
5 good faith for the purposes of determinations made by the court or agency of the State."

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

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

11 ...

12 (2) Give notice to the State of any expert witnesses that the defendant
13 reasonably expects to call as a witness at trial. Each such witness shall
14 prepare, and the defendant shall furnish to the State, a report of the results of
15 the examinations or tests conducted by the expert. The defendant shall also
16 furnish to the State the expert's curriculum vitae, the expert's opinion, and
17 the underlying basis for that opinion. The defendant shall give the notice and
18 furnish the materials required by this subdivision within a reasonable time
19 prior to trial, as specified by the court. Any defendant requesting
20 investigatory assistance or expert witness services must file a motion and
21 notice of hearing on the State. All such requests must be made in court and
22 in the presence of opposing counsel.

23"

24 **SECTION 4.** G.S. 15A-910 is amended by adding a new subsection to read:

25 "(c) If the court imposes any sanction, it must make specific findings justifying the
26 imposed sanction."

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