

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 408  
Committee Substitute Favorable 5/12/11  
Senate Judiciary I Committee Substitute Adopted 6/13/11

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) ~~Make The State to make~~ available to the defendant the complete files of all law enforcement and prosecutorial 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 "~~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.

e.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 investigatory assistant shall not be required to be in written or recorded form unless there is



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

3 ~~d.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 giveGive 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 giveGive 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) On a timely basis,~~Upon request by the State,~~ a law enforcement or prosecutorial  
33 agency and investigatory agencies shall make available to the ~~State~~prosecutor's office a  
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). ~~All public and private entities~~Investigatory agencies that obtain such  
37 information and materials ~~shall ensure that all material~~ listed in subdivision (1) of subsection  
38 (a) of this section shall ensure that such information and materials areis fully disclosed to the  
39 ~~referring prosecutorial agency~~prosecutor's office on a timely basis for disclosure to the  
40 defendant.

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

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

48 "**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

49 (a) The State is not required to disclose written materials drafted by the prosecuting  
50 attorney or the prosecuting attorney's legal staff for their own use at trial, including witness  
51 examinations, voir dire questions, opening statements, and closing arguments. Disclosure is

1 also not required of legal research or of records, correspondence, reports, memoranda, or trial  
2 preparation interview notes prepared by the prosecuting attorney or by members of the  
3 prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or  
4 conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

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

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

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

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

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

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

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

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

35 ...

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

47 ...."

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

49 "(c) For purposes of determining whether to impose personal sanctions for untimely  
50 disclosure of law enforcement and investigatory agencies' files, courts and State agencies shall  
51 presume that prosecuting attorneys and their staffs have acted in good faith if they have made a

1 reasonably diligent inquiry of those agencies under G.S. 15A-903(c) and disclosed the  
2 responsive materials.

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

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