

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 408  
Committee Substitute Favorable 5/12/11

Short Title: Amend Criminal Discovery Laws.

(Public)

Sponsors:

Referred to:

March 21, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO STRENGTHEN NORTH CAROLINA'S OPEN-FILE DISCOVERY LAW,  
3 PROTECT CRIME STOPPERS INFORMANTS, PROTECT VICTIM INFORMATION,  
4 REQUIRE LAW ENFORCEMENT AND INVESTIGATORY AGENCIES TO MAKE  
5 TIMELY DISCLOSURE OF THEIR FILES TO PROSECUTORS, AND AVOID  
6 FRIVOLOUS CLAIMS OF PROFESSIONAL MISCONDUCT AGAINST  
7 PROSECUTORS.

8 The General Assembly of North Carolina enacts:

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

10 "§ 15A-903. Disclosure of evidence by the State – Information subject to disclosure.

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

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

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

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

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

31 d. Oral statements shall be in written or recorded form, except that oral  
32 statements made by a witness to a prosecuting attorney outside the  
33 presence of a law enforcement officer or investigatorial assistant  
34 shall not be required to be in written or recorded form unless there is  
35 significantly new or different information in the oral statement from  
36 a prior statement made by the witness.



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

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

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

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

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

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

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

44 "**§ 15A-904. Disclosure by the State – Certain information not subject to disclosure.**

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

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

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

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

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

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

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

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

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

31 ...

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

43 ...."

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

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

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

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