

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2023

H.B. 704  
Apr 18, 2023  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40313-CE-2

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

Sponsors: Representative Blackwell.

Referred to:

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.



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) The report~~ 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.