

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 732

Short Title: Fair Discovery Act.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary I.

April 3, 1989

A BILL TO BE ENTITLED

AN ACT TO REQUIRE DISCLOSURE OF ADDITIONAL EVIDENCE BY THE
STATE IN CRIMINAL CASES AND TO REQUIRE A HEARING ON PRETRIAL
MOTIONS AT LEAST SEVEN DAYS BEFORE TRIAL IN MOST
JURISDICTIONS.

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) Statement of Defendant. – Upon motion of a defendant, the court must order the prosecutor:

(1) To permit the defendant to inspect and copy or photograph any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody, or control of the State the existence of which is known or by the exercise of due diligence may become known to the prosecutor; and

(2) To divulge, in written or recorded form, the substance of any oral statement relevant to the subject matter of the case made by the defendant, regardless of to whom the statement was made, within the possession, custody or control of the State, the existence of which is known to the prosecutor or becomes known to him prior to or during the course of trial; except that disclosure of such a statement is not required if it was made to an informant whose identity is a prosecution secret and who will not testify for the prosecution, and if the statement is not exculpatory. If the statement was made to a person other than a

1 law-enforcement officer and if the statement is then known to the
2 State, the State must divulge the substance of the statement no later
3 than 12 o'clock noon, on Wednesday prior to the beginning of the
4 week during which the case is calendared for trial. If disclosure of the
5 substance of defendant's oral statement to an informant whose identity
6 is or was a prosecution secret is withheld, the informant must not
7 testify for the prosecution at trial.

8 (b) Statement of a Codefendant. – Upon motion of a defendant, the court must
9 order the prosecutor:

10 (1) To permit the defendant to inspect and copy or photograph any written
11 or recorded statement of a codefendant which the State intends to offer
12 in evidence at their joint trial; and

13 (2) To divulge, in written or recorded form, the substance of any oral
14 statement made by a codefendant which the State intends to offer in
15 evidence at their joint trial.

16 (c) Defendant's Prior Record. – Upon motion of the defendant, the court must
17 order the State to furnish to the defendant a copy of his prior criminal record, if any, as
18 is available to the prosecutor.

19 (d) Documents and Tangible Objects. – Upon motion of the defendant, the court
20 must order the prosecutor to permit the defendant to inspect and copy or photograph
21 books, papers, documents, photographs, motion pictures, mechanical or electronic
22 recordings, buildings and places, or any other crime scene, tangible objects, or copies or
23 portions thereof which are within the possession, custody, or control of the State and
24 which are material to the preparation of his defense, are intended for use by the State as
25 evidence at the trial, or were obtained from or belong to the defendant.

26 (e) Reports of Examinations and Tests. – Upon motion of a defendant, the court
27 must order the prosecutor to provide a copy of or to permit the defendant to inspect and
28 copy or photograph results or reports of physical or mental examinations or of tests,
29 measurements or experiments made in connection with the case, or copies thereof,
30 within the possession, custody, or control of the State, the existence of which is known
31 or by the exercise of due diligence may become known to the prosecutor. In addition,
32 upon motion of a defendant, the court must order the prosecutor to permit the defendant
33 to inspect, examine, and test, subject to appropriate safeguards, any physical evidence,
34 or a sample of it, available to the prosecutor if the State intends to offer the evidence, or
35 tests or experiments made in connection with the evidence, as an exhibit or evidence in
36 the case.

37 ~~(f) Statements of State's Witnesses.~~

38 ~~(1) In any criminal prosecution brought by the State, no statement or~~
39 ~~report in the possession of the State that was made by a State witness~~
40 ~~or prospective State witness, other than the defendant, shall be the~~
41 ~~subject of subpoena, discovery, or inspection until that witness has~~
42 ~~testified on direct examination in the trial of the case.~~

43 ~~(2) After a witness called by the State has testified on direct examination,~~
44 ~~the court shall, on motion of the defendant, order the State to produce~~

1 any statement of the witness in the possession of the State that relates
2 to the subject matter as to which the witness has testified. If the entire
3 contents of that statement relate to the subject matter of the testimony
4 of the witness, the court shall order it to be delivered directly to the
5 defendant for his examination and use.

6 (3) If the State claims that any statement ordered to be produced under this
7 section contains matter that does not relate to the subject matter of the
8 testimony of the witness, the court shall order the State to deliver that
9 statement for the inspection of the court in camera. Upon delivery the
10 court shall excise the portions of the statement that do not relate to the
11 subject matter of the testimony of the witness. With that material
12 excised, the court shall then direct delivery of the statement to the
13 defendant for his use. If, pursuant to this procedure, any portion of the
14 statement is withheld from the defendant and the defendant objects to
15 the withholding, and if the trial results in the conviction of the
16 defendant, the entire text of the statement shall be preserved by the
17 State and, in the event the defendant appeals, shall be made available
18 to the appellate court for the purpose of determining the correctness of
19 the ruling of the trial judge. Whenever any statement is delivered to a
20 defendant pursuant to this subsection, the court, upon application of
21 the defendant, may recess proceedings in the trial for a period of time
22 that it determines is reasonably required for the examination of the
23 statement by the defendant and his preparation for its use in the trial.

24 (4) If the State elects not to comply with an order of the court under
25 subdivision (2) or (3) to deliver a statement to the defendant, the court
26 shall strike from the record the testimony of the witness, and direct the
27 jury to disregard the testimony, and the trial shall proceed unless the
28 court determines that the interests of justice require that a mistrial be
29 declared.

30 (5) The term 'statement,' as used in subdivision (2), (3), and (4) in relation
31 to any witness called by the State means

- 32 a. A written statement made by the witness and signed or otherwise
33 adopted or approved by him;
34 b. A stenographic, mechanical, electrical, or other recording, or a
35 transcription thereof, that is a substantially verbatim recital or an oral
36 statement made by the witness and recorded contemporaneously with
37 the making of the oral statements.

38 (f) Statements of State's Witnesses. Upon motion of a defendant, the court must
39 order the prosecutor to provide to the defendant the names and addresses of all persons
40 whom the prosecutor intends to call as witnesses at trial or at any evidentiary hearing,
41 together with their relevant written or recorded statements; except that disclosure of
42 these names, addresses, and statements may be restricted, denied, or deferred by the
43 court as provided in G.S. 15A-908.

1 (g) Statements of Persons with Knowledge. Upon motion of a defendant, the
2 court must order the prosecutor to provide to the defendant the names and addresses of
3 all persons known to the prosecutor to have information which may be relevant to the
4 offense charged or to any defense to the offense charged, together with their relevant
5 written or recorded statements; except that disclosure of a statement is not required if (i)
6 the statement was made to an informant whose identity is a prosecution secret and who
7 will not testify for the prosecution, and (ii) the statement is not exculpatory.

8 (h) Exculpatory Information. Upon motion of a defendant, the court must order
9 the prosecutor to disclose to the defendant any material or information within the
10 prosecutor's possession or control which tends to negate the guilt of the accused as to
11 the offense charged or would tend to reduce his punishment for the offense charged.”

12 Sec. 2. G.S. 15A-952 reads as rewritten:

13 **“§ 15A-952. Pretrial motions; time for filing; sanction for failure to file; motion**
14 **hearing date.**

15 (a) Any defense, objection, or request which is capable of being determined
16 without the trial of the general issue may be raised before trial by motion.

17 (b) Except as provided in subsection (d), when the following motions are made in
18 superior court they must be made within the time limitations stated in subsection (c)
19 unless the court permits filing at a later time:

20 (1) Motions to continue.

21 (2) Motions for a change of venue under G.S. 15A-957.

22 (3) Motions for a special venire under G.S. 9-12 or G.S. 15A-958.

23 (4) Motions to dismiss under G.S. 15A-955.

24 (5) Motions to dismiss for improper venue.

25 (6) Motions addressed to the pleadings, including:

26 a. Motions to dismiss for failure to plead under G.S. 15A-924(e).

27 b. Motions to strike under G.S. 15A-924(f).

28 c. Motions for bills of particulars under G.S. 15A-924(b) or G.S.
29 15A-925.

30 d. Motions for severance of offenses, to the extent required by
31 G.S. 15A-927.

32 e. Motions for joinder of related offenses under G.S. 15A-926(c).

33 (c) Unless otherwise provided, the motions listed in subsection (b) must be made
34 at or before the time of arraignment if arraignment is held prior to the session of court
35 for which the trial is calendared. If arraignment is to be held at the session for which
36 trial is calendared, the motions must be filed on or before five o'clock P.M. on the
37 Wednesday prior to the session when trial of the case begins.

38 (d) Motions concerning jurisdiction of the court or the failure of the pleading to
39 charge an offense may be made at any time.

40 (e) Failure to file the motions in subsection (b) within the time required
41 constitutes a waiver of the motion. The court may grant relief from any waiver except
42 failure to move to dismiss for improper venue.

1 ~~(f) When a motion is made before trial, the court in its discretion may hear the~~
2 ~~motion before trial, on the date set for arraignment, on the date set for trial before a jury~~
3 ~~is impaneled, or during trial.~~

4 (f) When a motion is timely made before trial, upon written request of either
5 party, the motion shall be calendared and heard at any session of superior court at which
6 criminal cases are heard prior to the session of court for which the trial is calendared. If
7 the venue of the defendant's case lies within a county where there are each year fewer
8 than 20 regularly scheduled weeks of trial sessions of Superior Court at which criminal
9 cases are heard, the motion may be calendared and heard during the same session for
10 which the trial is calendared; however, in no event shall the motion be calendared and
11 heard less than seven days before trial, in those counties where the motion is allowed to
12 be calendared and heard during the same session of Superior Court."

13 Sec. 3. G.S. 15A-902(c) reads as rewritten:

14 "(c) A motion for discovery under this Article must be heard before a
15 superior court ~~judge.~~ judge pursuant to G.S. 15A-952."

16 Sec. 4. This act shall become effective October 1, 1989.