

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 978

Short Title: Depose State's Criminal Witnesses.

(Public)

Sponsors: Senator Ballance.

Referred to: Election Laws.

April 19, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT WHEN A DEFENDANT IS INDICTED BY THE GRAND JURY BEFORE HE HAS BEEN AFFORDED OR WAIVED A PROBABLE CAUSE HEARING, THE DEFENDANT MAY DEPOSE THE STATE'S PRIMARY WITNESSES.

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

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

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

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

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

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

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

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

38 (f) Statements of State's Witnesses.

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

- 1 (2) After a witness called by the State has testified on direct examination,
2 the court shall, on motion of the defendant, order the State to produce
3 any statement of the witness in the possession of the State that relates
4 to the subject matter as to which the witness has testified. If the entire
5 contents of that statement relate to the subject matter of the testimony
6 of the witness, the court shall order it to be delivered directly to the
7 defendant for his examination and use.
- 8 (3) If the State claims that any statement ordered to be produced under this
9 section contains matter that does not relate to the subject matter of the
10 testimony of the witness, the court shall order the State to deliver that
11 statement for the inspection of the court in camera. Upon delivery the
12 court shall excise the portions of the statement that do not relate to the
13 subject matter of the testimony of the witness. With that material
14 excised, the court shall then direct delivery of the statement to the
15 defendant for his use. If, pursuant to this procedure, any portion of the
16 statement is withheld from the defendant and the defendant objects to
17 the withholding, and if the trial results in the conviction of the
18 defendant, the entire text of the statement shall be preserved by the
19 State and, in the event the defendant appeals, shall be made available
20 to the appellate court for the purpose of determining the correctness of
21 the ruling of the trial judge. Whenever any statement is delivered to a
22 defendant pursuant to this subsection, the court, upon application of
23 the defendant, may recess proceedings in the trial for a period of time
24 that it determines is reasonably required for the examination of the
25 statement by the defendant and his preparation for its use in the trial.
- 26 (4) If the State elects not to comply with an order of the court under
27 subdivision (2) or (3) to deliver a statement to the defendant, the court
28 shall strike from the record the testimony of the witness, and direct the
29 jury to disregard the testimony, and the trial shall proceed unless the
30 court determines that the interests of justice require that a mistrial be
31 declared.
- 32 (5) The term 'statement', as used in subdivision (2), (3), and (4) in relation
33 to any witness called by the State means:
- 34 a. A written statement made by the witness and signed or
35 otherwise adopted or approved by him;
- 36 b. A stenographic, mechanical, electrical, or other recording, or a
37 transcription thereof, that is a substantially verbatim recital or
38 an oral statement made by the witness and recorded
39 contemporaneously with the making of the oral statements.

40 (g) Upon motion by the defendant in any prosecution brought by the State in
41 which the defendant is indicted before he has been afforded or waived a probable-cause
42 hearing, the defendant may as a matter of right depose the State's primary witnesses for
43 that case. The defendant shall request to take the depositions of those witnesses in
44 accordance with the provisions of G.S. 15A-902."

1 Sec. 2. This act shall become effective October 1, 1989.