

Regular Session, 2012

SENATE BILL NO. 659

BY SENATOR MARTINY

CRIMINAL PROCEDURE. Makes revisions to Code of Criminal Procedure relative to discovery. (8/1/12)

AN ACT

To amend and reenact Code of Criminal Procedure Articles 521, 717, the introductory paragraph of 718 and 718(1) and 729.6 and to enact Code of Criminal Procedure Articles 434.1 and 725.1, relative to criminal discovery; to provide for exceptions to grand jury secrecy; to provide relative to pretrial discovery motions; to provide relative to disclosure of certain evidence and records; to provide relative to disclosure of certain witness information; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 521, 717, the introductory paragraph of 718 and 718(1) and 729.6 are hereby amended and reenacted and Code of Criminal Procedure Articles 434.1 and 725.1 are hereby enacted to read as follows:

Art. 434.1. Exceptions to grand jury secrecy

A. Notwithstanding the provisions of Article 434, the state may disclose to state or federal prosecutors or law enforcement officers, or to investigators on the staff of the district attorney or attorney general, or to expert witnesses, information and documents provided to a grand jury. Any person to whom such disclosure is made shall not engage in further disclosure of the material

1 and shall use the disclosed material solely for purposes of investigation of
2 criminal offenses and enforcement of criminal laws.

3 B. The district attorney shall also disclose to the defendant material
4 evidence favorable to the defendant that was presented to the grand jury.

5 C. The district attorney may also disclose to a witness at trial, including
6 the defendant if the defendant testifies, any statement of the witness before the
7 grand jury that is inconsistent with the testimony of that witness.

8 * * *

9 Art. 521. Time for filing of pretrial motions

10 A. Pretrial motions shall be made or filed within fifteen days after
11 arraignment, unless a different time is provided by law or fixed by the court at
12 arraignment upon a showing of good cause why fifteen days is inadequate.

13 B. Upon written motion at any time and a showing of good cause, the court
14 shall allow additional time to file pretrial motions.

15 C. If by pretrial motion the state or the defendant requests discovery or
16 disclosure of evidence favorable to the defendant, then the court shall fix a time
17 by which the state or the defendant shall respond to the motion.

18 * * *

19 Art. 717. ~~Defendant's prior criminal record~~ Disclosure by the state; criminal
20 records of defendant and witnesses; inducements to the state's
21 witnesses

22 A. On ~~Upon~~ motion of the defendant, the court shall order the district
23 attorney ~~or the~~ to disclose, or to direct the appropriate law enforcement agency to
24 disclose, and furnish to defendant, ~~a copy of any the~~ record of his criminal arrests
25 and convictions ~~that is in their possession or custody~~ of the defendant, any co-
26 defendant, and any witness to be called by the state in its case in chief.

27 B. The district attorney shall also disclose any inducement offered by the
28 district attorney, or by any law enforcement officer on behalf of the district
29 attorney, to secure the testimony of the witness in the case in chief of the state.

C. The time for disclosure provided for by this Article shall be set by the court, provided that the district attorney shall not be required to disclose inducements or records of arrests and convictions until the commencement of trial.

Art. 718. Documents and tangible objects

Subject to the limitation of Article 723, and except as otherwise prohibited by law, on motion of the defendant, the court shall order the district attorney to permit or authorize the defendant, or an expert working with the defendant, to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, ~~which~~ that are within the possession, custody, or control of the state, and ~~which~~ that:

(1) are favorable to the defendant and ~~which~~ that are material and relevant to the issue of guilt or punishment, or

* * *

Art. 725.1. Disclosure by the defendant; names of defense witnesses

If the defendant moves, pursuant to Article 717, for disclosure of the records of arrests and convictions of witnesses to be called by the state in its case in chief, the defendant shall disclose to the district attorney, prior to those witnesses being sworn, the name and date of birth of the witnesses to be called by the defendant in his case in chief.

* * *

Art. 729.6. Applicability of discovery

The rules of this Chapter shall be applied in all criminal cases ~~which are to be tried in the district, parish, and city court courts~~. They shall be applicable following the institution of ~~the criminal~~ prosecution by the return of a grand jury indictment, ~~or the filing of a bill of information, by the district attorney~~ or the filing of an affidavit charging an offense. However, the rules of this Chapter do not apply in city and parish courts to cases in which prosecution is instituted by

1 **affidavit for violations of city or parish ordinances defining traffic offenses.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement, Jr.

DIGEST

Martiny (SB 659)

Proposed law provides for certain exceptions to grand jury secrecy as provided for by present law, including disclosure to other prosecutorial entities and experts of material favorable to the defendant and any statement of a witness that is inconsistent with the witness's grand jury testimony.

Present law provides relative to the time for filing pretrial motions.

Proposed law retains present law and adds that the court may allow additional time to respond to pretrial motions and that the court is to fix the time to respond to a pretrial motion requesting discovery or disclosure of certain other information.

Present law provides for the disclosure to the defendant of the defendant's criminal record.

Proposed law retains present law and adds that disclosure must also include the records of a co-defendant or witness to be called by the state, and that the court will set the time for this disclosure.

Present law provides that in certain circumstances the court is to order the district attorney to permit the defendant to inspect, examine, and test documents and other items.

Proposed law retains present law and makes present law applicable to an expert working with the defendant.

Proposed law provides that if the defendant requests disclosure by the state of the criminal records of the state's witnesses, then the defense must disclose the name and birth date of its witnesses.

Present law provides that discovery is applicable in the district courts following the filing of an indictment or bill of information.

Proposed law retains present law and makes present law applicable in the parish and city courts beginning with the filing of an affidavit charging the offense also. Proposed law further provides that present law and proposed law does not apply in city and parish courts for traffic violation prosecutions instituted by affidavit.

Effective August 1, 2012.

(Amends C.Cr.P. Art. 521, 717, 718(intro para) and 718(1) and 729.6; adds C.Cr.P. Art. 434.1 and 725.1)