
DIGEST

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Lopinto

HB No. 371

Abstract: Provides relative to discovery and inspection of certain types of evidence in criminal cases.

Present law provides relative to motions by the state and by the defendant in criminal cases for discovery and inspection of the following types of evidence:

- (1) Any relevant written or recorded confession or statement of any nature of the defendant.
- (2) Any results or reports of a physical or mental examination made in connection with or that are material to the case.
- (3) Any results or reports of scientific tests or experiments made in connection with or that are material to the case, including exculpatory evidence not intended for use at trial.
- (4) Any written or recorded confessions or inculpatory statements made by a codefendant.
- (5) Any oral confession or statement of any nature made by the defendant.
- (6) Any oral statement made by the defendant in response to interrogation by a law enforcement officer.
- (7) Evidence of the commission of any other crime admissible pursuant to present law.
- (8) Any statements of coconspirators.
- (9) The record of arrests and convictions of the defendant, any codefendant, and any witness to be called by the state in its case in chief.
- (10) Any inducement offered to secure the testimony of any witness.
- (11) Books, papers, documents, photographs, tangible objects, buildings, places, or copies that are favorable to the defendant, material and relevant to the issue of guilt or punishment, that are intended for use by the state as evidence, or were obtained from or belong to the defendant.
- (12) Internal reports, memoranda, or other documents made by either party or by the agents of

either party in connection with the investigation, prosecution, or defense of the case.

Proposed law substantially amends present law, including but not limited to the following changes:

- (1) Provides that motions for discovery made by the defendant shall be in writing and shall be filed within the time periods for filing pretrial motions as provided for in present law.
- (2) Provides that motions for discovery made by the defendant relative to oral statements made by the defendant, or the substance of any oral statement made by the defendant in response to interrogation, shall also apply to such statements by any codefendant.
- (3) Provides that nothing in proposed law or present law shall be construed to require that testimony before a grand jury be recorded nor shall it obligate the state to provide any defendant a witness list for any trial or pretrial matter.
- (4) Authorizes the district attorney to delete or excise from information identifying a certain witness, otherwise required to be disclosed pursuant to present law or proposed law, if the district attorney believes that the witness's safety may be compromised by such disclosure. Provides for the procedure by which a defendant may object to such action by the district attorney and the procedure by which such information shall be disclosed to the defendant.
- (5) Amends present law to provide that the district attorney, when ordered to do so by the court, is only required to disclose to the defendant the record of arrests and convictions of the defendant, any codefendant, or any witness, and removes the requirement that the state furnish such records to the defense. Further provides that such records for any witness called by the state in its rebuttal case and any inducement offered to secure such witness's testimony shall be disclosed immediately prior to the witness being sworn.
- (6) Authorizes the defendant to request, and the court to order the district attorney to authorize the defendant to inspect, copy, photograph, or otherwise reproduce, initial offense reports created and known to the prosecutor made in connection with the particular case.
- (7) Removes the requirement that documents and tangible objects be favorable to the defendant and be material and relevant to the issue of guilt or punishment, in order for the district attorney to be ordered to permit or authorize the defendant, or an expert working with the defendant, to inspect, copy, photograph, or otherwise reproduce such items.
- (8) Provides that if the results or reports intended to be used by either party have not been reduced to writing, each party shall produce for the other party a summary which includes the name of the witness, his qualifications, a list of materials upon which his conclusion is based, his opinion, and his reasons therefor.

- (9) Clarifies that motions for discovery by the defendant relative to statements of coconspirators shall include written, recorded, or oral statements that the state intends to introduce in its case in chief.
- (10) Removes the requirement that in order for the state to be required to permit or authorize inspection or reproduction of confessions and statements of codefendants, the statements shall be inculpatory, the written or recorded confessions shall be relevant, and the confessions or statements shall be intended for use at trial.
- (11) Adds internal documents, notes, or other items which contain the mental impressions of the attorney, or any investigator working for the attorney, to the list of items which are not discoverable or subject to inspection.
- (12) Provides that the state shall provide the defendant with any exculpatory evidence that is material to the defendant's guilt or punishment, as constitutionally required by the case *Brady v. Maryland*, 373 U.S. 83 (1963).

(13) Provides for prospective application.

(Amends C.Cr.P. Articles 716, 717(A) and (C), 718, 719(A), 720, 721, 722, 723, 724, 725, 725.1, and 728; Adds C.Cr.P. Articles 716.1 and 717(D))