

Regular Session, 2013

# ACT No. 250

HOUSE BILL NO. 371

BY REPRESENTATIVES LOPINTO AND HONORE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact Code of Criminal Procedure Articles 716, 717, 718, 719(A), 720, 721, 722, 723, 724, 725, 725.1, and 728 and to enact Code of Criminal Procedure Article 729.7, relative to discovery in criminal cases; to amend provisions relative to the discovery of statements made by defendants to include statements by any codefendant; to provide for protection of the identity of certain witnesses; to provide relative to the disclosure of criminal records of defendants, codefendants, and witnesses; to amend provisions relative to the discovery of documents and other tangible objects; to provide relative to the discovery of reports and results of examinations and tests and the form of disclosure for such information; to provide relative to the discovery of statements of coconspirators; to provide relative to the discovery of confessions and statements of codefendants; to provide relative to the discovery of internal documents made by the state, the defendant, or agents of the state or defendant; to provide for prospective application; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Articles 716, 717, 718, 719(A), 720, 721, 722, 723, 724, 725, 725.1, and 728 are hereby amended and reenacted and Code of Criminal Procedure Article 729.7 is hereby enacted to read as follows:

Art. 716. Statements by the defendant, codefendants, and witnesses

A. Upon written motion of the defendant, the court shall order the district attorney to disclose to the defendant, and to permit or authorize the defendant to

1 inspect and copy, photograph or otherwise reproduce any relevant written or  
2 recorded confession or statement of any nature, including recorded testimony before  
3 a grand jury, or copy thereof, of the defendant in the possession, custody, control, or  
4 knowledge of the district attorney.

5 B. ~~Upon~~ Except as provided by Paragraph C of this Article, upon written  
6 motion of the defendant, the court shall order the district attorney to inform the  
7 defendant of the existence, but not the contents, of any oral confession or statement  
8 of any nature made by the defendant or any codefendant which the district attorney  
9 intends to offer in ~~evidence~~ its case in chief at the trial, with the information as to  
10 when, where, and to whom such oral confession or statement was made.

11 C. Upon written motion of the defendant, the court shall order the district  
12 attorney to inform the defendant of the substance of any oral statement made by the  
13 defendant or any codefendant which the state intends to offer in ~~evidence made by~~  
14 ~~the defendant~~ its case in chief at the trial, whether before or after arrest, in response  
15 to interrogation by any person then known to the defendant or the codefendant to be  
16 a law enforcement officer.

17 D. Upon written motion of the defendant, the court shall order the district  
18 attorney to disclose to the defendant, and to permit or authorize the defendant to  
19 inspect and copy any written or recorded statements of any witness the state intends  
20 to call in its case in chief at the trial. For purposes of this Article: (1) "written or  
21 recorded statement of a witness" shall mean any audio or audio-video recording of  
22 an oral statement or interview of a witness, and any statement a witness writes or  
23 signs; (2) for the purposes of this Article, "trial" shall mean the phase of the case at  
24 which the state attempts to meet its burden as to guilt, and specifically does not  
25 extend to pretrial matters or hearings, or to the penalty phase in capital prosecutions.  
26 The state need not provide the defendant any written or recorded statement of its  
27 witnesses until immediately prior to the opening statement at trial.

28 E. Nothing in this Chapter shall be construed to require that testimony before  
29 a grand jury be recorded.

1                    F. Nothing contained in this Chapter shall obligate the state to provide to any  
 2                    defendant a witness list for any trial or pretrial matter.

3                    Art. 717. Disclosure by the state; criminal records of defendant and witnesses;  
 4                    inducements to the state's witnesses

5                    A. ~~On~~ Upon written motion of the defendant, the court shall order the district  
 6                    attorney to disclose, or to direct the appropriate law enforcement agency to disclose;  
 7                    ~~and furnish to the~~ defendant, the record of arrests and convictions of the defendant,  
 8                    ~~any co-defendant~~ codefendant, and any witness to be called by the state in its case  
 9                    ~~in chief~~ calls, or intends to call at trial.

10                    B. The district attorney shall also disclose any inducement offered by the  
 11                    district attorney, or by any law enforcement officer on behalf of the district attorney,  
 12                    ~~to secure the testimony of the witness in the case in chief of the state~~ to any state  
 13                    witness.

14                    C. The time for disclosure provided for by this Article shall be set by the  
 15                    court, provided that the district attorney shall not be required to disclose inducements  
 16                    or records of arrests and convictions until the commencement of trial. For any  
 17                    witness called by the state in its rebuttal case, the record of arrests and convictions  
 18                    of the rebuttal witness, and any inducement offered by the district attorney, or by any  
 19                    law enforcement officer on behalf of the district attorney, to secure testimony of the  
 20                    witness in the state's rebuttal case shall be disclosed immediately prior to the witness  
 21                    being sworn.

22                    D. The provisions of Article 729.7 of this Code regarding the protection of  
 23                    a witness's identity shall apply to this Article.

24                    Art. 718. Documents and tangible objects

25                    Subject to the limitation of Article 723 of this Code, and except as otherwise  
 26                    prohibited by law, ~~on~~ upon written motion of the defendant, the court shall order the  
 27                    district attorney to permit or authorize the defendant to inspect and copy, photograph  
 28                    or otherwise reproduce law enforcement reports created and known to the prosecutor

1 made in connection with the particular case, and to permit or authorize the defendant  
2 or an expert working with the defendant, to inspect, copy, examine, test  
3 scientifically, photograph, or otherwise reproduce books, papers, documents,  
4 photographs, tangible objects, buildings, places, or copies or portions thereof that are  
5 within the possession, custody, or control of the state, and that:

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

8 ~~(2) are intended for use by the state as evidence at the trial, or~~

9 ~~(3) were obtained from or belong to the defendant.~~

10 ~~The court may determine whether evidence is subject to the provisions of are~~  
11 ~~intended for use by the state as evidence in its case in chief at trial, or were obtained~~  
12 ~~from or belong to the defendant.~~

13 \* \* \*

14 Art. 719. Reports of examinations and tests

15 A. Upon written motion of the defendant, the court shall order the district  
16 attorney to permit or authorize the defendant to inspect and copy, photograph, or  
17 otherwise reproduce any results or reports, or copies thereof, of a physical or mental  
18 examination, and of scientific tests or experiments, made in connection with or  
19 material to the particular case, that are in the possession, custody, control, or  
20 knowledge of the district attorney and intended for use at trial. If the witness  
21 preparing the report will be called as an expert, the report shall contain the witness's  
22 area of expertise, his qualifications, a list of materials upon which his conclusion is  
23 based, and his opinion and the reason therefor. If the expert witness has not reduced  
24 his results to writing, or if the expert witness's written report does not contain the  
25 information required of an expert as provided in this Article, the state must produce  
26 for the defendant a written summary containing any information required to be  
27 produced pursuant to this Article but absent from a written report, if any, including  
28 the name of the expert witness, his qualifications, a list of materials upon which his  
29 conclusion is based, and his opinion and the reason therefor.

30 \* \* \*

1 Art. 720. Evidence of other crimes

2 Upon written motion of defendant, the court shall order the district attorney  
 3 to inform the defendant of the state's intent to offer evidence of the commission of  
 4 any other crime admissible under the authority of Louisiana Code of Evidence  
 5 ~~Article 404. Provided Articles 404 and 412.2 however, .~~ However, that ~~such~~ order  
 6 shall not require the district attorney to inform the defendant of the state's intent to  
 7 offer evidence of offenses which relates to conduct that constitutes an integral part  
 8 of the act or transaction that is the subject of the present proceeding or other crimes  
 9 for which the accused was previously convicted.

10 Art. 721. Statements of coconspirators

11 Upon written motion of the defendant, the court shall order the district  
 12 attorney to ~~inform~~ disclose to the defendant of the state's intent to use any written,  
 13 recorded, or oral statements of coconspirators that the state intends to introduce in  
 14 its case in chief pursuant to Louisiana Code of Evidence Article 801(D)(3)(b).

15 Art. 722. Confessions and ~~inculpatory~~ statements of codefendants

16 Upon written motion of the defendant, the court shall order the district  
 17 attorney to permit or authorize the defendant to inspect and copy, photograph, or  
 18 otherwise reproduce any ~~relevant~~ written or recorded confessions or ~~inculpatory~~  
 19 statements made by a codefendant ~~and intended for use at trial.~~ Exculpatory  
 20 ~~evidence shall be produced under this article even though it is not intended for use~~  
 21 ~~at trial.~~

22 Art. 723. State reports and other matters not subject to disclosure, favorable  
 23 evidence

24 A. Except as specifically provided in ~~Articles 716, 718, 721, and 722~~ this  
 25 Chapter, this Chapter does not authorize the discovery or inspection of reports,  
 26 memoranda, notes, or other internal state documents made by the district attorney or  
 27 by agents of the state in connection with the investigation or prosecution of the case;  
 28 or of ~~statements made by witnesses or prospective witnesses, other than the~~  
 29 ~~defendant, to the district attorney, or to agents of the state.~~ any document, notes, or

1 other items which contain the mental impressions of any attorney for the state or any  
 2 investigator working on behalf of such attorney.

3 B. Notwithstanding any provision to the contrary contained herein, the state  
 4 shall provide the defendant with any evidence constitutionally required to be  
 5 disclosed pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny.

6 Art. 724. Documents and tangible objects

7 When the court grants relief sought by the defendant under Article 718 of this  
 8 Code, it shall upon the motion of the district attorney, condition its order by  
 9 requiring ~~that the defendant~~ to disclose to the state, and to permit or authorize the  
 10 ~~district attorney~~ state, or an expert working with the state, to inspect ~~and~~ copy,  
 11 examine, test scientifically, photograph, or otherwise reproduce books, papers,  
 12 documents, photographs, tangible objects, buildings, places, or copies, or portions  
 13 thereof, that are in the possession, custody, or control of the defendant, and that the  
 14 defendant intends to use in evidence at the trial.

15 Art. 725. Reports of examinations and tests

16 When the court grants the relief sought by the defendant ~~under~~ pursuant to  
 17 Article 719 of this Code, it shall, upon the written motion of the state, condition its  
 18 order by requiring ~~that the defendant~~ to disclose to the state, and to permit or  
 19 authorize the state, or an expert working with the state, to inspect and copy,  
 20 photograph, or otherwise reproduce, and disclose to the district attorney any results  
 21 of reports, or copies thereof, of physical and mental examinations and of scientific  
 22 tests or experiments, ~~of a similar nature,~~ made in connection with the particular case,  
 23 that are in the possession, custody, ~~or control,~~ or knowledge of the defendant, and  
 24 ~~that the defendant intends to~~ intended for use as evidence at the trial ~~or were~~  
 25 ~~prepared by a witness whom the defendant intends to call at the trial when such~~  
 26 ~~results or reports relate to his testimony.~~ If the witness preparing the report will be  
 27 called as an expert, the report shall contain the witness's area of expertise, his  
 28 qualifications, a list of materials upon which his conclusion is based, and his opinion  
 29 and the reason therefor. If the expert witness has not reduced his results or reports  
 30 to writing, or if the expert witness's written report does not contain the information



1 defense of the case; or of ~~statements made by the defendant, or by witnesses or~~  
 2 ~~prospective witnesses to the defendant, his agents or attorneys; or of the names of~~  
 3 ~~defense witnesses or prospective defense witnesses.~~ any document, notes, or other  
 4 items which contain the mental impressions of any attorney for the defendant or any  
 5 investigator working on behalf of such attorney.

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7 Art. 729.7. Protection of witness identity

8 A. Notwithstanding any other provision of law to the contrary, the district  
 9 attorney or the defendant may delete or excise from any information required to be  
 10 disclosed herein any information which identifies a witness if such party believes the  
 11 witness's safety may be compromised by the disclosure. If a party objects to the  
 12 deletion or excision, he must do so by written motion. The court shall maintain the  
 13 deletion or excision if, at an ex parte proceeding which shall be recorded and  
 14 maintained under seal, the party excising or deleting such information makes a prima  
 15 facie showing that the witness's safety may be compromised by the disclosure.

16 B. If the information excised by a party includes the substance, or any part  
 17 thereof, of any written or recorded statement of the witness, that party must provide  
 18 the excised substance, or any part thereof, to the other party immediately prior to the  
 19 witness's testimony at the trial.

20 C. If a judge finds that the party excising or deleting such information has  
 21 failed to present prima facie proof to support the deletion or excision of information  
 22 related to a witness, then upon the motion of either party, the court shall order an  
 23 automatic stay of all matters related to the disclosure of information about the  
 24 witness and maintain all proceedings under seal during the time while the moving  
 25 party seeks supervisory review to the appropriate reviewing courts with appellate  
 26 jurisdiction, including the Louisiana Supreme Court.

27 D. The rules of evidence shall not be applicable to the ex parte proceedings  
 28 conducted pursuant to this Article.



1           Section 2. The provisions of this Act shall be become effective for cases billed or  
2 indicted on or after January 1, 2014, and shall be given prospective application from its  
3 effective date, unless the district attorney and the defendant stipulate otherwise in each  
4 particular case, in writing, on the record.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_