



SPONSOR: Rep. Lynn & Sen. Hoffner & Rep. Dorsey Walker &
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HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 165

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO DISCOVERY IN CRIMINAL CASES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as
2 shown by underline as follows:

3 CHAPTER 36. DISCOVERY

4 § 3601. Purpose.

5 In 1963, the United States Supreme Court held that the suppression by the prosecution of evidence favorable to an
6 accused upon request violates due process where the evidence is material to guilt or to punishment irrespective of the good
7 or bath faith of the prosecution. The purpose of this chapter is to ensure the fairness and finality of criminal trials and
8 guilty pleas by requiring that the accused in every criminal prosecution shall receive promptly all information and evidence
9 favorable to an accused that is material to guilt or to punishment.

10 § 3602. Mandatory disclosure.

11 (a) The State must timely disclose to the defense all information and evidence favorable to the defendant that is
12 material to guilt or to punishment within the possession of the prosecutors, law enforcement agencies, and other
13 investigatory agencies involved in case investigation and prosecution.

14 (b) The State has an obligation to diligently seek and identify all information that does any of the following:

15 (1) Tends to negate the guilt of the accused.

16 (2) Mitigate the offense charged.

17 (3) Impeach the government's witnesses or evidence which shall include disclosure of all of the following that
18 are or were pending at the time of the witness's statement or proposed testimony:

19 a. Criminal charges

20 b. Criminal investigations.

21 c. Violations of probation.

22 (4) Reduce the likely punishment of the defendant if convicted.

23 (c) The State shall diligently advise all governmental agencies involved in the defendant's case of the agencies'
24 continuing duty to identify, preserve, and disclose to the prosecutor information described in § 3602(b).

25 (d) An individual prosecutor on a case has a duty to learn of any favorable evidence known to others acting on the
26 government's behalf on the case, including the police.

27 (e) The State is required to timely disclose all of the following:

28 (1) Current or past relationship of any witness to the Attorney General's office including the substance of any
29 discussions between the office and any witness related to the initiation or resolution, or attempt thereof, of criminal
30 charges against the witness, or against another person on the witness' behalf, and all promises, benefits, rewards, or
31 inducements made to persons providing information to law enforcement agencies, investigatory agencies, or the
32 Attorney General's office.

33 (2) The prior cooperation history of any person the State intends to call as a witness at trial, including as an
34 informant or pursuant to an agreement in a prior criminal case, regardless of jurisdiction.

35 (3) Any evidence regarding any person who may be called as a witness concerning any investigation into the
36 witness's conduct or performance in the employee's employment or duties as an employee and the State intends the
37 witness to testify at trial in the witness's capacity as an employee or former employee.

38 (4) All information within the Attorney General's Office or any police or government agency relating to the
39 credibility of any law enforcement officer.

40 (f) The court may issue subpoenas or orders necessary to ensure that information required to be disclosed under
41 this section is provided to the defense.

42 § 3603. Timing of disclosure.

43 (a) The State must disclose information under § 3602 within a reasonable time after learning of the information.

44 (b) Unless notice is given that disclosure is withheld under § 3605, all information under § 3602 must be disclosed
45 no later than 45 days prior to trial.

46 § 3604. Continuing duty to disclose.

47 The discovery duties imposed by this chapter apply prior to, during, and after trial. The Attorney General must
48 promptly disclose any additional information that is identified under this chapter after initial discovery is provided to the
49 defendant.

50 § 3605. Regulation of discovery; protective orders.

51 Upon written motion of a party demonstrating a particularized, compelling need, which includes a finding that
52 there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary

53 annoyance or embarrassment, the court may at any time order that discovery or inspection be restricted pursuant to a
54 protective order. Any protective order entered under this section may not restrict disclosure to defense counsel of record.

55 § 3606. Certificate of Compliance.

56 (a) When the State has provided all discovery required by this chapter, it shall file with the court a Certificate of
57 Compliance. The prosecutor shall certify that, to the best of its knowledge and after reasonable inquiry, the State has
58 disclosed and made available all items subject to disclosure under this chapter. If an additional disclosure is subsequently
59 provided, a supplemental certificate shall be filed with the court.

60 (b) When the State withholds information, the prosecutor's Certificate of Compliance must do all of the following:

61 (1) Expressly note that withholding.

62 (2) Describe the nature of the documents, communications, or tangible things not produced or disclosed in a
63 manner that, without revealing information itself, will enable the defendant to assess the claim.

64 § 3607. Failure to comply.

65 (a) If at any time during the course of the proceedings the court determines that the State has failed to comply with
66 this chapter or with an order issued pursuant to this chapter, the court in addition to exercising its contempt powers may do
67 any of the following:

68 (1) Order the State to permit the discovery or inspection.

69 (2) Grant a continuance or recess.

70 (3) Prohibit the State from introducing information not disclosed into evidence.

71 (4) Declare a mistrial.

72 (5) Dismiss the charge, with or without prejudice.

73 (6) Order the reimbursement of costs incurred by the defendant.

74 (7) Enter other appropriate orders.

75 (b) Prior to finding any of the foregoing sanctions appropriate, the court shall consider both the materiality of the
76 subject matter and the totality of the circumstances surrounding an alleged failure to comply with this chapter or an order
77 issued pursuant to this chapter.

SYNOPSIS

This bill codifies the prosecution's obligation under *Brady v. Maryland*, a United State Supreme Court case, which requires the prosecution to provide evidence favorable to an accused. The purpose of this bill is to ensure the fairness and finality of criminal trials and guilty plea by requiring that the accused in every criminal case promptly receives all information and evidence favorable that is material to guilt or to punishment. The bill sets for what the prosecution must mandatorily disclose to the defense, which includes information relating to the credibility of a police officer and impeachment evidence of government witnesses such as favorable treatment of the witness's criminal charges. The bill sets forth the process and timing of such disclosure and requires the prosecutor on the case to file a certificate of compliance with the Court. The bill provides a process by which the State can seek a protective order relating to the disclosure of

information it must disclose if the State can show that disclosure would create a substantial risk of physical harm, intimidation, bribery, economic reprisals or unnecessary annoyance or embarrassment.