
DIGEST

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HB 124 Original

2017 Regular Session

Billiot

Abstract: Provides for the issuance of a nondisclosure order for material obtained through discovery or compulsory processes, and creates the crime of violation of a nondisclosure order.

Proposed law authorizes the court, upon motion of the district attorney and for good cause shown, to issue a nondisclosure order that does all of the following:

- (1) Prohibits the defense, and persons acting on behalf of or in concert with the defense, from transferring, disseminating, distributing, copying, or otherwise reproducing or supplying discovery material provided to the defense by the district attorney and any material obtained by the defense through the issuance of a subpoena duces tecum.
- (2) Prohibits any person acting on behalf of or in concert with the defense from reviewing, possessing, transferring, disseminating, distributing, copying, or otherwise reproducing or receiving the material subject to the nondisclosure order.
- (3) Except during trial, prohibits the defense from filing into the court record any material subject to the disclosure order without also filing an accompanying motion to seal. Proposed law provides that any member of the defense who violates this provision may be subject to punishment for contempt of court.
- (4) Imposes any other reasonable requirements and limitations regulating the defense's possession and use of the material.

In any case involving a victim under the age of 18 years, a victim of a sex offense, a victim of a human trafficking-related offense, or a victim of a crime of violence, proposed law requires the issuance of the nondisclosure order upon motion of the district attorney.

Proposed law provides that it does not do any of the following:

- (1) Preclude the defense from reviewing the material subject to the nondisclosure order with any witness or with any attorney for any co-defendant charged in the case for purposes of investigation of the case or preparation for a hearing or trial. However, no copy or other reproduction of the material subject to the nondisclosure order shall be provided to or made by any person reviewing the material, unless the district attorney consents in writing or in open court or after a contradictory hearing with the state and the defendant pursuant to the

procedures set forth in proposed law.

- (2) Negate or modify the requirements of any other provision of present law that may be applicable to the material that is subject to the nondisclosure order.
- (3) Relieve the defendant of his duty to comply with present law discovery obligations under Code of Criminal Procedure Article 724 et seq.

Proposed law provides that the nondisclosure order remains in effect, and the material subject to the order is not a public record, until the material becomes public record as to all defendants in the case pursuant to the Public Records Law, R.S. 44:1 et seq.

Proposed law defines "the defense" and "member of the defense" as the defendant, defendant's attorney, such attorney's regularly employed staff, and any experts or licensed investigators retained by such attorney on behalf of the defendant.

Proposed law creates the crime of violation of a nondisclosure order. Provides that any member of the defense who willfully or knowingly disobeys a nondisclosure order is subject to the following penalties:

- (1) If issuance of the order was mandatory as provided by proposed law, the person shall be fined not more than \$10,000 and imprisoned at hard labor for not less than two years nor more than five years without benefit of parole, probation, or suspension of sentence.
- (2) If issuance of the order was discretionary as provided by proposed law, the person shall be fined not more than \$5,000 and imprisoned with or without hard labor for not more than three years.

Proposed law provides that service of the nondisclosure order upon an offender is not required for an offender to be in violation of the provisions of proposed law.

Proposed law provides an affirmative defense to prosecution for the proposed law crime that the material was a public record under the Public Records Law, R.S. 44:1 et seq., at the time of the commission of the offense.

(Adds R.S. 14:129.3 and C.Cr.P. Art. 729.8)