

1 Art. 716. Statements by the defendant and codefendants

2 A. Upon written motion of the defendant filed pursuant to Article 521 of this
3 Code, the court shall order the district attorney to disclose to the defendant, and to
4 permit or authorize the defendant to inspect and copy, photograph or otherwise
5 reproduce any relevant written or recorded confession or statement of any nature,
6 including recorded testimony before a grand jury, or copy thereof, of the defendant
7 in the possession, custody, control, or knowledge of the district attorney.

8 B. ~~Upon~~ Except as provided by Paragraph C of this Article, upon written
9 motion of the defendant filed pursuant to Article 521 of this Code, the court shall
10 order the district attorney to inform the defendant of the existence, but not the
11 contents, of any oral confession or statement of any nature made by the defendant
12 or any codefendant which the district attorney intends to offer in ~~evidence~~ its case
13 in chief at the trial, with the information as to when, where, and to whom such oral
14 confession or statement was made.

15 C. Upon written motion of the defendant filed pursuant to Article 521 of this
16 Code, the court shall order the district attorney to inform the defendant of the
17 substance of any oral statement made by the defendant or any codefendant which the
18 state intends to offer in ~~evidence made by the defendant~~ its case in chief at the trial,
19 whether before or after arrest, in response to interrogation by any person then known
20 to the defendant or the codefendant to be a law enforcement officer.

21 D. Nothing in this Chapter shall be construed to require that testimony before
22 a grand jury be recorded.

23 E. Nothing contained in this Chapter shall obligate the state to provide to any
24 defendant a witness list for any trial or pretrial matter.

25 Art. 716.1. Protection of witness identity

26 A. Notwithstanding any provision of law to the contrary, the district attorney
27 may delete or excise from any information required to be disclosed herein any
28 information which identifies a witness if the district attorney believes the witness's
29 safety may be compromised by the disclosure. If the defendant objects to the

1 deletion or excision, he shall do so by written motion. The court shall maintain the
2 deletion or excision if, at an ex parte proceeding which shall be recorded and
3 maintained under seal, the state establishes probable cause to believe the witness's
4 safety may be compromised by the disclosure.

5 B. If the information excised by the district attorney includes the substance
6 or any part of any written or recorded statement of the witness, the district attorney
7 shall provide the excised substance, or any part thereof, to the defendant immediately
8 prior to the witness's testimony at the trial.

9 C. If the judge finds no probable cause to support the excision or deletion of
10 information related to a witness, upon motion of the district attorney, the court shall
11 order an automatic stay of all matters related to the disclosure of information about
12 the witness and maintain all proceedings under seal during the time while the district
13 attorney seeks supervisory review to the appropriate reviewing courts with appellate
14 jurisdiction, including the Louisiana Supreme Court.

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

17 A. ~~On~~ Upon written motion of the defendant filed pursuant to Article 521 of
18 this Code, the court shall order the district attorney to disclose, or to direct the
19 appropriate law enforcement agency to disclose, ~~and furnish~~ to the defendant, the
20 record of arrests and convictions of the defendant, any ~~co-defendant~~ codefendant,
21 and any witness ~~to be called by the state in its case in chief~~ calls, or intends to call
22 at trial.

23 * * *

24 C. The time for disclosure provided for by this Article shall be set by the
25 court, provided that the district attorney shall not be required to disclose inducements
26 or records of arrests and convictions until the commencement of trial. For any
27 witness called by the state in its rebuttal case, the record of arrests and convictions
28 of the rebuttal witness, and any inducement offered by the district attorney, or by any
29 law enforcement officer on behalf of the district attorney, to secure testimony of the

1 witness in the state's rebuttal case shall be disclosed immediately prior to the witness
2 being sworn.

3 D. The provisions of Article 716.1 of this Code regarding the protection of
4 a witness's identity shall apply to this Article.

5 Art. 718. Documents and tangible objects

6 Subject to the limitation of Article 723 of this Code, and except as otherwise
7 prohibited by law, ~~on~~ upon written motion of the defendant filed pursuant to Article
8 521 of this Code, the court shall order the district attorney to permit or authorize the
9 defendant to inspect and copy, photograph or otherwise reproduce initial offense
10 reports created and known to the prosecutor made in connection with the particular
11 case, and to permit or authorize the defendant or an expert working with the
12 defendant, to inspect, copy, examine, test scientifically, photograph, or otherwise
13 reproduce books, papers, documents, photographs, tangible objects, buildings,
14 places, or copies or portions thereof that ~~are within the possession, custody, or~~
15 ~~control of the state, and that:~~

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

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

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

20 ~~The court may determine whether evidence is subject to the provisions of~~
21 ~~Paragraph (1) hereof by in camera inspection: were obtained from or belong to the~~
22 ~~defendant, or are intended for use by the state as evidence in its case in chief at trial.~~

23 * * *

24 Art. 719. Reports of examinations and tests

25 A. Upon written motion of the defendant filed pursuant to Article 521 of this
26 Code, the court shall order the district attorney to permit or authorize the defendant
27 to inspect and copy, photograph, or otherwise reproduce any results or reports, or
28 copies thereof, of a physical or mental examination, and of scientific tests or
29 experiments, made in connection with or material to the particular case, that are ~~in~~

1 ~~for use at trial. Exculpatory evidence shall be produced under this article even~~
2 ~~though it is not intended for use at trial.~~

3 Art. 723. State reports and other matters not subject to disclosure, favorable
4 evidence

5 A. Except as specifically provided in Articles 716, 718, 721, and 722 this
6 Chapter, this Chapter does not authorize the discovery or inspection of reports,
7 memoranda, notes, or other internal state documents made by the district attorney or
8 by agents of the state in connection with the investigation or prosecution of the case;
9 or of statements made by witnesses or prospective witnesses, other than the
10 defendant, to the district attorney, or to agents of the state. any document, notes, or
11 other items which contain the mental impressions of any attorney for the state or any
12 investigator working on behalf of such attorney.

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

16 Art. 724. Documents and tangible objects

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

25 Art. 725. Reports of examinations and tests

26 When the court grants the relief sought by the defendant ~~under~~ pursuant to
27 Article 719 of this Code, it shall, upon the written motion of the state, condition its
28 order by requiring ~~that~~ the defendant to disclose to the state, and to permit or
29 authorize the state, or an expert working with the state, to inspect and copy,

1 photograph, or otherwise reproduce disclose to the district attorney any results of
2 reports, or copies thereof, of physical and mental examinations and of scientific tests
3 or experiments, of a similar nature, made in connection with the particular case, that
4 are intended for use at trial ~~in the possession, custody, or control of the defendant,~~
5 ~~and that the defendant intends to use as evidence at the trial~~ or were prepared by a
6 witness whom the defendant intends to call at the trial when such results or reports
7 relate to his testimony. If the witness has not reduced his results or reports to
8 writing, the defendant shall produce for the state a summary including the name of
9 the witness, his qualifications, a list of materials upon which his conclusion is based,
10 his opinion, and the reason therefor.

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

12 If the defendant moves, pursuant to Article 716, 717, 721, or 722 of this
13 Code, for disclosure of the records of arrests and convictions of witnesses to be
14 called by the state in its case in chief, the defendant shall disclose to the district
15 attorney, prior to those witnesses being sworn, the name and date of birth of the
16 witnesses to be called by the defendant in his case in chief.

17 * * *

18 Art. 728. Defense information and other matters not subject to disclosure

19 Except as ~~to scientific or medical reports~~ specifically provided in this
20 Chapter, this Chapter does not authorize the discovery or inspection of reports,
21 memoranda, notes, or other internal ~~defense~~ documents made by the defendant ~~or his~~
22 ~~attorneys~~ or by agents of the defendant in connection with the investigation or
23 defense of the case; or of ~~statements made by the defendant, or by witnesses or~~
24 ~~prospective witnesses to the defendant, his agents or attorneys; or of the names of~~
25 ~~defense witnesses or prospective defense witnesses.~~ any document, notes, or other
26 items which contain the mental impressions of any attorney for the defendant or any
27 investigator working on behalf of such attorney.

28 Section 2. The provisions of this Act shall only be applied prospectively.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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 conspirators.
- (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))