

Regular Session, 2013

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.

CRIMINAL/DISCOVERY: Provides relative to discovery and inspection of certain types of evidence in criminal cases

1 AN ACT
2 To amend and reenact Code of Criminal Procedure Articles 716, 717, 718, 719(A), 720, 721,
3 722, 723, 724, 725, 725.1, and 728 and to enact Code of Criminal Procedure Article
4 729.7, relative to discovery in criminal cases; to amend provisions relative to the
5 discovery of statements made by defendants to include statements by any
6 codefendant; to provide for protection of the identity of certain witnesses; to provide
7 relative to the disclosure of criminal records of defendants, codefendants, and
8 witnesses; to amend provisions relative to the discovery of documents and other
9 tangible objects; to provide relative to the discovery of reports and results of
10 examinations and tests and the form of disclosure for such information; to provide
11 relative to the discovery of statements of coconspirators; to provide relative to the
12 discovery of confessions and statements of codefendants; to provide relative to the
13 discovery of internal documents made by the state, the defendant, or agents of the
14 state or defendant; to provide for prospective application; and to provide for related
15 matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. Code of Criminal Procedure Articles 716, 717, 718, 719(A), 720, 721,
18 722, 723, 724, 725, 725.1, and 728 are hereby amended and reenacted and Code of Criminal
19 Procedure Article 729.7 is hereby enacted to read as follows:

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

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

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

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

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

1 The state need not provide the defendant any written or recorded statement of its
2 witnesses until immediately prior to the opening statement at trial.

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

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

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

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

14 B. The district attorney shall also disclose any inducement offered by the
15 district attorney, or by any law enforcement officer on behalf of the district attorney,
16 ~~to secure the testimony of the witness in the case in chief of the state to any state~~
17 witness.

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

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

1 Art. 718. Documents and tangible objects

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

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

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

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

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

18 * * *

19 Art. 719. Reports of examinations and tests

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

1 information required of an expert as provided in this Article, the state must produce
2 for the defendant a written summary containing any information required to be
3 produced pursuant to this Article but absent from a written report, if any, including
4 the name of the expert witness, his qualifications, a list of materials upon which his
5 conclusion is based, his opinion, and the reason therefore.

6 * * *

7 Art. 720. Evidence of other crimes

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

16 Art. 721. Statements of coconspirators

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

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

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

1 Art. 723. State reports and other matters not subject to disclosure, favorable
2 evidence

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

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

14 Art. 724. Documents and tangible objects

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

23 Art. 725. Reports of examinations and tests

24 When the court grants the relief sought by the defendant ~~under~~ pursuant to
25 Article 719 of this Code, it shall, upon the written motion of the state, condition its
26 order by requiring ~~that~~ the defendant to disclose to the state, and to permit or
27 authorize the state, or an expert working with the state, to inspect and copy,
28 photograph, or otherwise reproduce ~~disclose to the district attorney~~ any results of
29 reports, or copies thereof, of physical and mental examinations and of scientific tests

1 or experiments, ~~of a similar nature~~, made in connection with the particular case, that
2 are in the possession, custody, ~~or control~~, or knowledge of the defendant, and ~~that the~~
3 ~~defendant intends to~~ intended for use as evidence at the trial ~~or were prepared by a~~
4 ~~witness whom the defendant intends to call at the trial when such results or reports~~
5 ~~relate to his testimony.~~ If the witness preparing the report will be called as an expert,
6 the report shall contain the witness's area of expertise, his qualifications, a list of
7 materials upon which his conclusion is based, his opinion, and the reason therefore.
8 If the expert witness has not reduced his results or reports to writing, or if the expert
9 witness written report does not contain the information required of an expert as
10 provided in this Article, the defendant must produce for the state a written summary
11 containing any information required to be produced pursuant to this Article but
12 absent from a written report, if any, including the name of the expert witness, his
13 qualifications, a list of materials upon which his conclusion is based, his opinion, and
14 the reason therefore.

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

16 A. If the defendant moves, pursuant to Article 717, for disclosure of the
17 records of arrests and convictions of witnesses to be called by the state in its case in
18 chief, the defendant shall disclose to the district attorney, prior to those witnesses
19 being sworn, the name and date of birth of the witnesses to be called by the
20 defendant in his case in chief.

21 B. If the defendant moves, pursuant to Article 716(D), for disclosure of
22 statements of witnesses to be called by the state in its case in chief, the defendant
23 shall, upon motion by the State, disclose to the district attorney, and to permit or
24 authorize the district attorney to inspect and copy any written or recorded statements
25 of any witness the defendant intends to call at trial. For purposes of this Article: (1)
26 "written or recorded statement of a witness" shall mean any audio or audio-video
27 recording of an oral statement or interview of a witness, and any statement a witness
28 writes or signs; and (2) for the purposes of this Paragraph, "trial" shall mean the
29 phase of the case at which the defense responds to the state's attempt to meet its

1 burden as to guilt, and specifically does not extend to pretrial matters or hearings, or
2 to the penalty phase in capital prosecutions.

3 * * *

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

5 Except as ~~to scientific or medical reports~~ specifically provided in this
6 Chapter, this Chapter does not authorize the discovery or inspection of reports,
7 memoranda, notes, or other internal ~~defense~~ documents made by the defendant ~~or his~~
8 ~~attorneys~~ or by agents of the defendant in connection with the investigation or
9 defense of the case; or of ~~statements made by the defendant, or by witnesses or~~
10 ~~prospective witnesses to the defendant, his agents or attorneys; or of the names of~~
11 ~~defense witnesses or prospective defense witnesses.~~ any document, notes, or other
12 items which contain the mental impressions of any attorney for the defendant or any
13 investigator working on behalf of such attorney.

14 Art. 729.7. Protection of witness identity

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

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

27 C. If a judge finds that the party excising or deleting such information has
28 failed to present prima facie proof to support the deletion or excision of information
29 related to a witness, then upon the motion of either party, the court shall order an

1 automatic stay of all matters related to the disclosure of information about the
 2 witness and maintain all proceedings under seal during the time while the moving
 3 party seeks supervisory review to the appropriate reviewing courts with appellate
 4 jurisdiction, including the Louisiana Supreme Court.

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

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

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 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.
- (14) Provides that if a witness preparing a report will be called as an expert, the report shall contain the witness's area of expertise, his qualifications, a list of materials upon which his conclusion is based, his opinion, and the reason therefor.
- (15) Provides that if either the state or defendant moves for the disclosure of statements of witnesses, the court shall order the state and defendant to disclose such statements and to authorize the inspection and copying of any written or recorded statements of any witnesses intended to be called at trial.

(Amends C.Cr.P. Arts. 716, 717, 718, 719(A), 720, 721, 722, 723, 724, 725, 725.1, and 728; Adds C.Cr.P. Art. 729.7)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill.

- 1. Added that expert witness expertise, qualifications, and materials used to reach a conclusion, his opinion and reasons therefor be exchanged between state and defense.
- 2. Added that if either the state or defendant moves for the disclosure of statements of witnesses, the court shall order the state and defendant to disclose such statements and to authorize the inspection and copying of any written or recorded statements of any witnesses intended to be called at trial.