

House Bill 352

By: Representatives Strickland of the 111th, Reeves of the 34th, Pak of the 108th, Trammell of the 132nd, Gravley of the 67th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to
2 discovery, so as to change provisions relating to discovery in misdemeanor cases; to provide
3 for a defendant to opt into reciprocal discovery similar to provisions in felony cases; to
4 require the defendant to provide the prosecuting attorney with a list of witness and alibi
5 information; to provide for procedure; to provide for sanctions; to provide for related matters;
6 to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 16 of Title 17 of the Official Code of Georgia Annotated, relating to discovery, is
10 amended by revising Article 2, relating to discovery in misdemeanor cases, as follows:

11 "ARTICLE 2

12 17-16-20.

13 (a) The provisions of this article shall apply only to misdemeanor cases or to felony cases
14 docketed, indicted, or in which an accusation was returned prior to January 1, 1995, if the
15 prosecuting attorney and the defendant do not agree in writing that the provisions of Article
16 1 of this chapter shall apply when at or prior to arraignment, or at such time the court
17 permits, the defendant provides written notice to the prosecuting attorney that such
18 defendant elects to have this article apply to the defendant's case. When one defendant in
19 a multidefendant case demands discovery under this article, the provisions of this article
20 shall apply to all defendants in the case, unless a severance is granted.

21 (b) Except as provided in subsection (c) of this Code section, this article shall not apply
22 to juvenile court proceedings.

23 (c) This article shall be deemed to have been automatically invoked, without the written
24 notice provided for in subsection (a) of this Code section, when a defendant has sought

25 discovery pursuant to Chapter 11 of Title 9, the 'Georgia Civil Practice Act,' pursuant to
 26 Part 8 of Article 6 of Chapter 11 of Title 15, or pursuant to the Uniform Rules for the
 27 Juvenile Courts of Georgia when such discovery material is the same as the discovery
 28 material that may be provided under this article when a written notice is filed pursuant to
 29 subsection (a) of this Code section.

30 (d) This article is not intended to authorize discovery or inspection of attorney work
 31 product.

32 17-16-21.

33 (a) Prior to or at arraignment, every person charged with a criminal offense the defendant
 34 shall be furnished with a copy of the indictment or accusation and, on demand, with a list
 35 of the witnesses on whose testimony the charge against such person is founded. Without
 36 the consent of the defendant, no witness shall be permitted to testify for the state whose
 37 name does not appear on the list of witnesses as furnished to the defendant unless the
 38 prosecuting attorney shall state that the evidence sought to be presented is newly
 39 discovered evidence which the state was not aware of at the time of its furnishing the
 40 defendant with a list of the witnesses.

41 (b) If a defendant elects to have this article apply, the prosecuting attorney, not later than
 42 ten days before trial, or as otherwise ordered by the court, shall provide the defendant with
 43 a list of witnesses that the state intends to call as witnesses at trial.

44 (c) Within ten days after the prosecuting attorney provides a list of witnesses, but no later
 45 than five days prior to trial, or as otherwise ordered by the court, the defendant shall furnish
 46 the prosecuting attorney a list of witnesses that the defendant intends to call at trial, unless
 47 for good cause the court allows an exception to this requirement, in which event the
 48 prosecuting attorney shall be afforded an opportunity to interview such witnesses prior to
 49 the witnesses being called to testify.

50 (d) If prior to or during trial the prosecuting attorney or defendant learns of additional
 51 witnesses whose identity, if known, should have been included in the information furnished
 52 pursuant to this Code section, the discovering party shall notify the other party of the
 53 existence and identity of such additional witnesses.

54 (e) The prosecuting attorney or defendant may call as a witness any individual listed on
 55 either witness list.

56 17-16-22.

57 (a) At If the defendant elects to have this article apply, the prosecuting attorney shall, at
 58 least ten days prior to the trial of the case, disclose to the defendant shall be entitled to have
 59 a copy of any statement given by the defendant while in police custody. The defendant

60 ~~may make such request for a copy of any such statement, in writing, within any reasonable~~
 61 ~~period of time prior to trial.~~

62 (b) If the defendant's statement is oral or partially oral, the prosecution shall furnish, in
 63 writing, all relevant and material portions of the defendant's statement.

64 ~~(c) Failure of the prosecution to comply with a defendant's timely written request for a~~
 65 ~~copy of such defendant's statement, whether written or oral, shall result in such statement~~
 66 ~~being excluded and suppressed from the prosecution's use in its case-in-chief or in rebuttal.~~

67 If the defendant elects to have this article apply, the prosecuting attorney shall, at least ten
 68 days prior to the trial of the case, make available for inspection or copying by the defendant
 69 copies of the police incident report and supplemental report, if any, regarding the
 70 occurrence which forms the basis of the charges.

71 ~~(d) If the defendant's statement is oral, no relevant and material, incriminating or~~
 72 ~~inculpatory, portion of the statement of the defendant may be used against the defendant~~
 73 ~~unless it has been previously furnished to the defendant, if a timely written request for a~~
 74 ~~copy of the statement has been made by the defendant.~~

75 ~~(e)(d)~~ This Code section shall not apply to evidence information subject to disclosure
 76 pursuant to this Code section which is discovered after a request has been filed. If a
 77 request has been filed, such evidence information shall be produced as soon as possible
 78 after it has been discovered.

79 17-16-23.

80 (a) As used in this Code section, the term 'written scientific reports' includes, but is not
 81 limited to, reports from the Division of Forensic Sciences of the Georgia Bureau of
 82 Investigation; an autopsy report by the coroner of a county or by a private pathologist;
 83 blood alcohol test results done by a law enforcement agency or a private physician; and
 84 similar types of reports that would be used as scientific evidence by the prosecution in its
 85 case-in-chief or in rebuttal against the defendant.

86 ~~(b) In all criminal trials the defendant shall be entitled to have~~ If the defendant elects to
 87 have this article apply, the prosecuting attorney shall, at least ten days prior to trial of the
 88 case, disclose to the defendant a complete copy of any written scientific reports in the
 89 possession of the prosecution which will be introduced in whole or in part against the
 90 defendant by the prosecution in its case-in-chief or in rebuttal. ~~The request for a copy of~~
 91 ~~any written scientific reports shall be made by the defendant in writing at arraignment or~~
 92 ~~within any reasonable time prior to trial. If such written request is not made at~~
 93 ~~arraignment, it shall be within the sound discretion of the trial judge to determine in each~~
 94 ~~case what constitutes a reasonable time prior to trial. If the scientific report is in the~~

95 ~~possession of or available to the prosecuting attorney, the prosecuting attorney must~~
96 ~~comply with this Code section at least ten days prior to the trial of the case.~~

97 ~~(c) Failure by the prosecution to furnish the defendant with a copy of any written scientific~~
98 ~~report, when a proper and timely written demand has been made by the defendant, shall~~
99 ~~result in such report being excluded and suppressed from evidence in the prosecution's~~
100 ~~case-in-chief or in rebuttal.~~

101 17-16-24.

102 If the defendant elects to have this article apply, the prosecuting attorney shall, at least ten
103 days prior to trial, or at such time as the court orders, permit the defendant at a time agreed
104 to by the parties or ordered by the court to inspect and copy or photograph books, papers,
105 documents, photographs, tangible objects, audio and visual tapes, films and recordings, or
106 copies or portions thereof which are within the possession, custody, or control of the state
107 or prosecution and are intended for use by the prosecuting attorney as evidence in the
108 prosecution's case-in-chief or rebuttal at the trial.

109 17-16-25.

110 (a) If the defendant elects to have this article apply, within ten days after arraignment, or
111 at such time as the court permits, stating the time, date, and place at which the alleged
112 offense was committed, the defendant shall serve within ten days of the demand of the
113 prosecuting attorney or ten days prior to trial, whichever is later, or as otherwise ordered
114 by the court, upon the prosecuting attorney a written notice of the defendant's intention to
115 offer a defense of alibi. Such notice by the defendant shall state the specific place or places
116 at which the defendant claims to have been at the time of the alleged offense and the
117 names, addresses, dates of birth, and telephone numbers of the witnesses, if known to the
118 defendant, upon whom the defendant intends to rely to establish such alibi unless
119 previously supplied.

120 (b) The prosecuting attorney shall serve upon the defendant within five days of the
121 defendant's written notice but no later than five days before trial, whichever is later, a
122 written notice stating the names, addresses, dates of birth, and telephone numbers of the
123 witnesses, if known to the state, upon whom the state intends to rely to rebut the
124 defendant's evidence of alibi unless previously supplied.

125 (c) If prior to or during trial a party learns of an additional witness whose identity, if
126 known, should have been included in the information furnished under subsection (a) or (b)
127 of this Code section, the party shall promptly notify the other party of the existence and
128 identity of such additional witness.

129 (d) Upon a showing that a disclosure required by this Code section would create a
130 substantial threat of physical or economic harm to a witness, the court may grant an
131 exception to any of the requirements of subsections (a) through (c) of this Code section.

132 (e) If the defendant withdraws the notice of intention to rely upon an alibi defense, the
133 notice and intention to rely upon an alibi defense are not admissible. However, the
134 prosecuting attorney may offer any other evidence regarding alibi.

135 17-16-26.

136 If at any time during the course of the proceedings it is brought to the attention of the court
137 that the state has failed to comply with the requirements of this article, the court may order
138 the state to permit the discovery or inspection, grant a continuance, or, upon a showing of
139 prejudice and bad faith, prohibit the state from introducing the evidence not disclosed or
140 presenting the witness not disclosed, or may enter such other order as it deems just under
141 the circumstances. If at any time during the course of the proceedings it is brought to the
142 attention of the court that the defendant has failed to comply with the requirements of this
143 article, the court may order the defendant to permit the discovery or inspection, interview
144 of the witness, grant a continuance, or, upon a showing of prejudice and bad faith, prohibit
145 the defendant from introducing the evidence not disclosed or presenting the witness not
146 disclosed, or may enter such other order as it deems just under the circumstances. The
147 court may specify the time, place, and manner of making the discovery, inspection, and
148 interview and may prescribe such terms and conditions as are just.

149 17-16-27.

150 Nothing in this article shall supersede the prosecuting attorney's duty to disclose all
151 evidence, known or that may become known to him or her, favorable to the defendant and
152 material either to guilt or punishment."

153 **SECTION 2.**

154 All laws and parts of laws in conflict with this Act are repealed.