

The Senate Committee on Judiciary Non-Civil offered the following substitute to HB 352:

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. Such list shall include
44 the names, address and current locations, dates of birth, and telephone numbers of the
45 state's witnesses, unless for good cause the court allows an exception to this requirement,
46 in which event the defendant shall be afforded an opportunity to interview such witnesses
47 prior to the witnesses being called to testify. If the witness is a law enforcement officer,
48 the prosecuting attorney shall furnish the defendant with such officer's current work
49 location and work phone number.

50 (c) Within ten days after the prosecuting attorney provides a list of witnesses, but no later
51 than five days prior to trial, or as otherwise ordered by the court, the defendant shall furnish
52 the prosecuting attorney with a list of witnesses that the defendant intends to call at trial.
53 Such list shall include the names, address and current locations, dates of birth, and
54 telephone numbers of the defendant's witnesses, unless for good cause the court allows an
55 exception to this requirement, in which event the prosecuting attorney shall be afforded an
56 opportunity to interview such witnesses prior to the witnesses being called to testify.

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

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

63 17-16-22.

64 (a) ~~At~~ If the defendant elects to have this article apply, the prosecuting attorney shall, at
 65 least ten days prior to the trial of the case, disclose to the defendant shall be entitled to have
 66 a copy of any statement given by the defendant while in police custody. The defendant
 67 may make such request for a copy of any such statement, in writing, within any reasonable
 68 period of time prior to trial.

69 (b) If the defendant's statement is oral or partially oral, the ~~prosecution~~ prosecuting
 70 attorney shall furnish, in writing, all relevant and material portions of the defendant's
 71 statement.

72 (c) ~~Failure of the prosecution to comply with a defendant's timely written request for a~~
 73 ~~copy of such defendant's statement, whether written or oral, shall result in such statement~~
 74 ~~being excluded and suppressed from the prosecution's use in its case-in-chief or in rebuttal.~~
 75 If the defendant elects to have this article apply, the prosecuting attorney shall, at least ten
 76 days prior to the trial of the case, make available for inspection or copying by the defendant
 77 copies of the police incident report and all supplemental police reports, if any, regarding
 78 the occurrence which forms the basis of the charges.

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

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

87 17-16-23.

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

94 (b) ~~In all criminal trials the defendant shall be entitled to have~~ If the defendant elects to
 95 have this article apply, the prosecuting attorney shall, at least ten days prior to trial of the

96 case, disclose to the defendant a complete copy of any written scientific reports in the
 97 possession of the prosecution which will be introduced in whole or in part against the
 98 defendant by the prosecution in its prosecuting attorney in the prosecution's case-in-chief
 99 or in rebuttal. ~~The request for a copy of any written scientific reports shall be made by the~~
 100 ~~defendant in writing at arraignment or within any reasonable time prior to trial. If such~~
 101 ~~written request is not made at arraignment, it shall be within the sound discretion of the~~
 102 ~~trial judge to determine in each case what constitutes a reasonable time prior to trial. If the~~
 103 ~~scientific report is in the possession of or available to the prosecuting attorney, the~~
 104 ~~prosecuting attorney must comply with this Code section at least ten days prior to the trial~~
 105 ~~of the case.~~

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

110 17-16-24.

111 If the defendant elects to have this article apply, the prosecuting attorney shall permit the
 112 defendant at a time agreed to by the parties or ordered by the court to inspect and copy or
 113 photograph books, papers, documents, photographs, tangible objects, or copies or portions
 114 thereof and to inspect audio and visual tapes or copies or portions thereof that are within
 115 the possession, custody, or control of the state or prosecution and are intended for use by
 116 the prosecuting attorney as evidence in the prosecution's case-in-chief or rebuttal at the
 117 trial.

118 17-16-25.

119 (a) If the defendant elects to have this article apply, when the prosecuting attorney
 120 provides a discovery response that includes the time, date, and place at which the alleged
 121 offense was committed, the defendant shall serve upon the prosecuting attorney, within ten
 122 days of the discovery response from the prosecuting attorney or ten days prior to trial,
 123 whichever is later or as ordered by the court, a written notice of the defendant's intention
 124 to offer a defense of alibi. Such notice by the defendant shall state the specific place or
 125 places at which the defendant claims to have been at the time of the alleged offense and the
 126 names, addresses, dates of birth, and telephone numbers of the witnesses, if known to the
 127 defendant, upon whom the defendant intends to rely to establish such alibi unless
 128 previously supplied.

129 (b) The prosecuting attorney shall serve upon the defendant within five days of the
 130 defendant's written notice but no later than five days before trial, whichever is later, a

131 written notice stating the names, addresses, dates of birth, and telephone numbers of the
 132 witnesses, if known to the state, upon whom the state intends to rely to rebut the
 133 defendant's evidence of alibi unless previously supplied.

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

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

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

144 17-16-26.

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

158 17-16-27.

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

162 **SECTION 2.**

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