

2017 Regular Session

HOUSE BILL NO. 124

BY REPRESENTATIVE BILLIOT

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Provides relative to the dissemination of material obtained through discovery or compulsory processes

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AN ACT

To enact R.S. 14:129.3 and Code of Criminal Procedure Article 729.8, relative to the regulation of discovery materials; to provide for the issuance of a nondisclosure order relative to certain material obtained through discovery or compulsory processes; to prohibit the dissemination of such material to certain persons; to provide for certain exceptions; to provide the procedure by which such orders are modified, vacated, and appealed; to provide with respect to applicability of nondisclosure orders relative to other provisions of law regarding discovery and public records; to create the crime of violation of a nondisclosure order; to provide civil and criminal penalties for violations of nondisclosure orders; to provide for an affirmative defense; to provide for definitions; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 729.8 is hereby enacted to read as follows:

Art. 729.8. Nondisclosure order for material obtained through discovery or compulsory process

A.(1) Except as provided in Subparagraph (2) of this Paragraph, upon motion of the district attorney and for good cause shown, the court may issue a nondisclosure order relative to discovery material provided to the defense by the

1 district attorney and to any material obtained by the defense through the issuance of
2 a subpoena duces tecum.

3 (2) Upon motion of the district attorney in any case involving a victim under
4 the age of eighteen years, a victim of a sex offense as defined by R.S. 46:1844(W),
5 a victim of a human trafficking-related offense as defined in R.S. 46:1844(W), or a
6 victim of a crime of violence as enumerated in R.S. 14:2(B), the court shall issue a
7 nondisclosure order relative to discovery material provided to the defense by the
8 district attorney and to any material obtained by the defense through the issuance of
9 a subpoena duces tecum.

10 B.(1) A nondisclosure order issued pursuant to Paragraph A of this Article
11 shall prohibit the defense from transferring, disseminating, distributing, copying, or
12 otherwise reproducing or supplying the material subject to the nondisclosure order
13 to any person, agency, or entity, other than the court, a member of the defense, and
14 the district attorney.

15 (2) Except as provided in Subparagraph (C)(1) of this Article, no person
16 acting on behalf of or in concert with the defense may review, possess, transfer,
17 disseminate, distribute, copy, or otherwise reproduce or receive the material subject
18 to the nondisclosure order. The court in its discretion may impose any other
19 reasonable requirements and limitations regulating the defense's possession and use
20 of the material.

21 (3) The nondisclosure order shall further provide that, except during trial, the
22 defense shall not file into the court record any material subject to the nondisclosure
23 order without also filing an accompanying motion to seal.

24 C.(1) Nothing in this Article precludes the defense from reviewing the
25 material subject to the nondisclosure order with any witness or with any attorney for
26 any co-defendant charged in the case for purposes of investigation of the case or
27 preparation for a hearing or trial. No copy or other reproduction of the material
28 subject to the nondisclosure order shall be provided to or made by any person

1 reviewing the material, unless authorized by the court pursuant to the procedures set
2 forth in Paragraph D of this Article.

3 (2) Nothing in this Article negates or modifies the requirements of any other
4 provision of law that may be applicable to the material that is subject to the
5 nondisclosure order.

6 (3) Nothing in this Article relieves the defendant of his duty to comply with
7 his discovery obligations under Code of Criminal Procedure Article 724 et seq.

8 D.(1) Unless the district attorney consents in writing or in open court, the
9 court shall not modify nor vacate any nondisclosure order issued pursuant to
10 Paragraph A of this Article without first conducting a contradictory hearing with the
11 state and the defendant. Upon motion of the district attorney or the defense, the
12 court shall grant an automatic seventy-two hour stay as to any ruling that would grant
13 or deny the issuance, setting aside, or modification of a nondisclosure order for the
14 district attorney or the defendant to take an emergency writ application to the
15 appropriate reviewing court with appellate jurisdiction, including the Louisiana
16 Supreme Court. The district attorney shall not be required to produce discovery
17 material to the defense, and any return on a subpoena duces tecum shall be placed
18 under seal pending final disposition of the writ application.

19 (2) A nondisclosure order issued pursuant to Paragraph A of this Article
20 remains in effect, and the material subject to the order is not a public record, until the
21 material subject to and forming the basis of the nondisclosure order becomes public
22 record as to all defendants in the case pursuant to the Public Records Law, R.S. 44:1
23 et seq. Notwithstanding, material relative to the medical, psychological,
24 employment, or educational records of any victim or witness other than the
25 defendant, as well as any material in which the name, address, or identity of a victim
26 protected pursuant to R.S. 46:1844(W) has not been redacted, shall remain protected
27 until the nondisclosure order is modified or vacated by the issuing court pursuant to
28 the provisions of Subparagraph (1) of this Paragraph.

1 E. For purposes of this Article, "the defense" and "member of the defense"
2 means the defendant, defendant's attorney, such attorney's regularly employed staff,
3 and any experts or licensed investigators retained by such attorney on behalf of the
4 defendant.

5 F. Any member of the defense who violates Subparagraph (B)(3) of this
6 Article may be subject to punishment for contempt of court. Any member of the
7 defense who violates any other term of the nondisclosure order issued pursuant to
8 Paragraph A of this Article shall be subject to criminal prosecution as authorized by
9 R.S. 14:129.3.

10 Section 2. R.S. 14:129.3 is hereby enacted to read as follows:

11 §129.3. Violation of a nondisclosure order

12 A. Violation of a nondisclosure order is the willful and knowing disobedience
13 of a nondisclosure order issued pursuant to Code of Criminal Procedure Article
14 729.8.

15 B. Service of the nondisclosure order upon an offender is not required for an
16 offender to be in violation of the provisions of this Section. It is sufficient that the
17 offender knew or should have known that a nondisclosure order had been granted by
18 the court.

19 C. It shall be an affirmative defense to prosecution for a violation of this
20 Section that the material was a public record under the Public Records Law, R.S.
21 44:1 et seq., at the time of the commission of the offense.

22 D.(1) Whoever commits the crime of violation of a nondisclosure order
23 where issuance of the nondisclosure order is mandatory under Code of Criminal
24 Procedure Article 729.8(A)(2) shall be fined not more than ten thousand dollars and
25 imprisoned at hard labor for not less than two years nor more than five years without
26 benefit of parole, probation, or suspension of sentence.

27 (2) Whoever commits the crime of violation of a nondisclosure order where
28 issuance of the nondisclosure order is discretionary under Code of Criminal

- 1 Procedure Article 729.8(A)(1) shall be fined not more than five thousand dollars and
2 imprisoned with or without hard labor for not more than three years.

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)]

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)