

2018 -- H 7595

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2018

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A N A C T

RELATING TO CRIMINAL PROCEDURE - TRIAL

Introduced By: Representatives Knight, Blazejewski, Craven, McEntee, and Filippi

Date Introduced: February 14, 2018

Referred To: House Judiciary

(Public Defender)

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-17 of the General Laws entitled "Trial" is hereby amended to by
2 adding thereto the following section:

3 **12-17-17. Fact disclosure.**

4 (a) Short title. This section shall be known and may be cited as the "Fair, Complete and
5 Timely Disclosure Act" or "Fact Disclosure Act."

6 (b) Legislative findings and intent. In addition to the defendant's right to discovery set
7 forth in § 12-17-16, the general assembly hereby finds that the obligation to disclose discoverable
8 information in a timely fashion required by criminal court rules and decisions, when observed in
9 the breach, infringes upon the rights of the state, defendant, and victims of crime, the fair,
10 efficient, and orderly administration of justice, and negatively impacts the primary function of the
11 court to discern the truth and arrive at a fair and just result in a timely fashion. It is the intent of
12 the legislature in enacting this section to ensure compliance with criminal court rules and
13 decisions in order that criminal cases may proceed to a fair and just result in an orderly and timely
14 fashion and not to create additional rights or negate those rights already in place.

15 (c) Compliance and certification.

16 (1) Upon the filing of a motion for discovery by either the defense or state under court
17 rules and upon the request of the party filing the motion, the court may set a date for compliance
18 consistent with the amount of material sought, the anticipated difficulty in obtaining it, and what
19 person, organization, or entity is thought to be in possession of the material. Reasonable

1 extensions of time for compliance may be granted by the court upon the request of either party.

2 (2) Upon the filing of a motion for exculpatory evidence under court decisions and
3 request by the defendant, the court may set a date for compliance consistent with the amount of
4 material sought, the difficulty in obtaining it, and what person, organization, or entity is in
5 possession of the material. In making such requests, the defense should specify as much as
6 possible the nature of the material sought and why it is thought to be exculpatory. Reasonable
7 extensions of time for compliance may be granted by the court upon the request of either party.

8 (3) Prior to the expiration of the date set by the court for compliance under this section,
9 the state and defense must certify in writing that they have exercised due diligence in complying
10 with their obligations to disclose the information requested pursuant to court rule or decisions
11 after which either party may request a hearing before the court to address issues of compliance,
12 privilege, and protective orders.

13 (4) If at any time after the expiration of the date set by the court for compliance under this
14 section, counsel discovers additional material required to be disclosed by court rules or decisions,
15 counsel shall promptly notify the court and the other party of the existence of the additional
16 material and shall provide it forthwith. Thereafter and upon request of either party, the court may
17 hold a hearing after which it may grant a continuance, prohibit the introduction of materials not
18 previously disclosed, or grant such other relief as it deems just.

19 (d) Fact disclosure task force.

20 (1) In order to:

21 (i) Encourage the timely disclosure of discoverable information as required by criminal
22 court rules and decisions;

23 (ii) Promote the fair, efficient, and orderly administration of justice;

24 (iii) Enhance the primary function of the court to discern the truth and arrive at a fair and
25 just result in a timely fashion; and

26 (iv) Further improve upon the already high quality of criminal justice in our state, the
27 general assembly creates the fact disclosure task force. It shall be the duty of the task force to
28 investigate and make recommendations for any changes it deems necessary to the law, court
29 rules, or to policies and procedures currently in place to enhance the timely and complete
30 disclosure of discoverable material in criminal cases.

31 (2) The task force shall be comprised of the following or their designees:

32 (i) The attorney general;

33 (ii) The public defender;

34 (iii) The president of the Rhode Island Police Chiefs' Association;

- 1 (iv) The president of the Rhode Island Bar Association;
- 2 (v) The president of the Rhode Island Association of Criminal Defense Lawyers;
- 3 (vi) A representative from the Roger Williams University School of Law;
- 4 (vii) The executive director of the Rhode Island commission for human rights;
- 5 (viii) The superintendent of the Rhode Island state police; and
- 6 (ix) The public safety commissioner for the city of Providence.

7 (3) The attorney general and public defender shall serve as co-chairpersons of the task
8 force and have the authority to call for and designate the time and place of meetings. A majority
9 of members shall constitute a quorum, but a lesser number may hold meetings. The task force
10 shall act only on an affirmative vote of a majority of those voting. All departments and agencies
11 of the state shall furnish such advice and information, documentary and otherwise, to the task
12 force and its agents as is deemed necessary or desirable by the task force to facilitate the purposes
13 of this section.

14 (4) The task force, in consultation with judges, practitioners, and appropriate experts in
15 the field, shall study and make recommendations for any changes it deems necessary to the law,
16 court rules, or to policies and procedures currently in place to enhance the timely and complete
17 disclosure of discoverable material in criminal cases. The task force may also consider and make
18 recommendations that include, but are not limited to, additional in-house or outside training for
19 attorneys and law enforcement personnel, promulgation of protocols to enhance inter-agency
20 cooperation, standardization of procedures, the sharing of information via the internet or other
21 secure electronic means and the potential use of sanctions to ensure compliance.

22 (5) The task force shall submit a report on its recommendations. The report shall be
23 presented to the governor, the chief justice of the Rhode Island supreme court, the presiding
24 justice of the superior court, the chief judge of the district court, the chief judge of the family
25 court, the speaker of the house of representatives, the president of the senate, and the chairpersons
26 of the judiciary committees of both the house of representatives and the senate no later than
27 January 1, 2020. The task force shall meet periodically thereafter in order to assess the impact of
28 its recommendations. Said meetings shall be called by agreement of the attorney general and
29 public defender. A supplemental report from the task force may be delivered in the same manner
30 as its initial report. The task force shall cease to exist as of January 1, 2022.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL PROCEDURE - TRIAL

1 This act would establish a compliance and certification procedure relating to criminal
2 pre-trial discovery and would create a fact disclosure task force consisting of nine (9) members to
3 investigate and make recommendations to enhance the timely and complete disclosure of
4 discoverable material in criminal cases.

5 This act would require the task force to file a report containing its recommendations to
6 the governor, the general assembly and the courts by January 1, 2020 with subsequent meetings
7 to assess the impact of its recommendations and the filing of supplemental reports up to its
8 dissolution date of January 1, 2022.

9 This act would take effect upon passage.

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