

SENATE BILL 1727

By Burks

AN ACT to amend Tennessee Code Annotated, Title 40, Chapter 17, Part 1 and Title 40, Chapter 38, relative to criminal procedure.

WHEREAS, there is presently no requirement under the law requiring the defendant or defendant's attorney to disclose the names of the witnesses that the defendant intends to summon in the cause, and

WHEREAS, this lack of reciprocity places the victims of crime at a disadvantage and thereby denies them a fair trial due to the inability of the district attorney general to interview defense witnesses prior to trial and to prepare effective cross examinations or summon rebuttal witnesses, and

WHEREAS, victims of crimes in this state have an equal interest to that of the defendant in seeking justice through the jury trial process; now, therefore

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Section 40-17-106, is amended by deleting the current language and inserting the following language:

(a) It is the duty of the district attorney general to disclose in writing to the defendant the names of the witnesses that the district attorney general intends to call in the cause.

(b) It is the duty of defendant's attorney, or of the defendant if pro se, to disclose in writing to the district attorney general the names of the witnesses that the defendant intends to call in the cause.

(c) The disclosures referenced in subsections (a) and (b) shall occur in a reasonable time before trial in order to permit investigation and preparation by the parties.

(d) The trial judge may prohibit the testimony of any witness whose name was not disclosed in compliance with this section; provided, however, if, in the interest of justice, and for good cause shown, the party seeking to call the witness demonstrates reasonable grounds why the name of such witness was not disclosed, the trial judge may, in lieu of prohibiting the testimony of the witness, grant sufficient recesses during the trial to permit the opposing party an opportunity to prepare for the testimony of the undisclosed witness in order to remedy the disadvantage.

(e) If the witness is to be summoned as an expert witness, the disclosure required by subsections (a) and (b) shall also contain an indication that the particular witness is an expert witness, stating the field of expertise in which the witness will offer an opinion. If a party discloses that an expert witness may be summoned, the opposing party shall be given an opportunity by the court to seek its own expert witness in the same field of expertise.

(f) Disclosure under subsection (a) or (b) may be made by providing to the opposing party documents containing the witnesses names, such as police reports, laboratory reports, reports of expert witnesses, or any other document or record provided by one party to the other containing the witnesses' name. If no documents are provided by a party, or if none of the documents provided contain the name of the prospective witness, disclosure must be made by providing a list of the witnesses' names to the opposing party. In the event that a party provides both documents and a witness list, the name of the witness is disclosed within the meaning of subsection (a) or (b) if the witness' name appears on either the witness list or in the documents or records provided.

(g) Disclosure under subsection (a) or (b) is not made by reliance on the fact that the name of a party's witness appears on the opposing parties' witness list or in the opposing parties' documents or records.

(h) Nothing in this section shall be interpreted to require the defendant to make a pretrial election of whether to testify in the defendant's own defense or invoke the privilege against self-incrimination. The defendant shall be permitted to testify regardless of whether the defendant's name has been disclosed as a possible witness by the defense to the district attorney general.

(l) Nothing in this section shall be interpreted to apply to any court that is not a court of record.

SECTION 2. Tennessee Code Annotated Title 40, Chapter 38, is amended by inserting the following as a new part:

(a) It is the duty of the district attorney general to disclose in writing to the defendant the names of the witnesses that the district attorney general may summon in the cause.

(b) It is the duty of defendant's attorney, or of the defendant if pro se, to disclose in writing to the district attorney general the names of the witnesses that the defendant may summon in the cause.

(c) The disclosures referenced in subsections (a) and (b) shall occur in a reasonable time before trial in order to permit investigation and preparation by the parties.

(d) The trial judge may prohibit the testimony of any witness whose name was not disclosed in compliance with this section; provided, however, if, in the interest of justice, and for good cause shown, the party seeking to call the witness demonstrates reasonable grounds why the name of such witness was not disclosed, the trial judge

may, in lieu of prohibiting the testimony of the witness, grant sufficient recesses during the trial to permit the opposing party an opportunity to prepare for the testimony of the undisclosed witness in order to remedy the disadvantage.

(e) If the witness is to be summoned as an expert witness, the disclosure required by subsections (a) and (b) shall also contain an indication that the particular witness is an expert witness, and stating the field of expertise in which the witness will offer an opinion. If a party discloses that an expert witness may be summoned, the opposing party shall be given an opportunity by the court to seek its own expert witness in the same field of expertise.

(f) Disclosure under subsection (a) or (b) may be made by providing to the opposing party documents containing the witnesses' names, such as police reports, laboratory reports, reports of expert witnesses, or any other document or record provided by one party to the other containing the witness' name. If no documents are provided by a party, or if none of the documents provided contain the name of the prospective witness, disclosure must be made by providing a list of the witnesses' names to the opposing party. In the event that a party provides both documents and a witness list, the name of the witness is disclosed within the meaning of subsection (a) or (b) if the witness' name appears on either the witness list or in the documents or records provided.

(g) Disclosure under subsection (a) or (b) is not made by reliance on the fact that the name of a party's witness appears on the opposing parties' witness list or in the opposing parties' documents or records.

(h) Nothing in this section shall be interpreted to require the defendant to make a pretrial election of whether to testify in the defendant's own defense or invoke the privilege against self-incrimination. The defendant shall be permitted to testify

regardless of whether the defendant's name has been disclosed as a possible witness by the defense to the district attorney general.

(i) Nothing in this section shall be interpreted to apply to any court that is not a court of record.

SECTION 3. This act shall take effect July 1, 2014, the public welfare requiring it.