

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court

N.C.G.S.A. Ch. 15A, Subch. IX, Art. 48, Refs & Annos
Currentness

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

The Commission recommends this Article dealing with reciprocal discovery in the belief that jury trials will be more orderly and that ultimately truth will more likely prevail if the parties are prepared to meet the case that the other side will present. Trial by ambush has been generally eliminated, with beneficial effects, in civil cases, and the Commission believes that this philosophy should also extend to criminal cases. Another important benefit of liberal discovery is to enhance the likelihood of honorable and realistic plea negotiations, avoiding trial altogether.

Some persons have protested that discovery in criminal cases may lead defendants and unscrupulous counsel to fabricate defenses custom-tailored to the disclosed weaknesses of the State's case, but the Commission does not believe this risk is great enough to warrant avoidance of the benefits of discovery. There are other methods which may be utilized to prevent abuse of discovery by unscrupulous persons.

Until recently it was widely claimed that discovery of the defendant's case on the part of the State was a violation of the privilege against self-incrimination. These claims have been largely silenced by *Williams v. Florida*, 399 U.S. 78 (1970), upholding a statute requiring the defendant to give notice of alibi. The Commission considered making the State's right to discovery independent of whether the defendant requested discovery, but finally settled upon a reciprocal right to the State on a category-by-category basis. The Commission decided this would be the wisest way to introduce discovery by the State into the law of North Carolina; there was no thought that the reciprocity feature was constitutionally necessary.

The Commission consulted a number of discovery provisions in formulating its proposals, including Article 240 of the New York Criminal Procedure Law and A.B.A. Project on Standards for Criminal Justice, *Standards Relating to Discovery and Procedure Before Trial* (1970). The model used in drafting, however, was Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, *Preliminary Draft of proposed Amendments to the Federal Rules of Criminal Procedure for the United States District Court*, Rule 16 (January 1970).

N.C.G.S.A. Ch. 15A, Subch. IX, Art. 48, Refs & Annos, NC ST Ch. 15A, Subch. IX, Art. 48, Refs & Annos
The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

§ 15A-901. Application of Article, NC ST § 15A-901

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Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court (Refs & Annos)

N.C.G.S.A. § 15A-901

§ 15A-901. Application of Article

[Currentness](#)

This Article applies to cases within the original jurisdiction of the superior court.

Credits

Added by Laws 1973, c. 1286, § 1.

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

As cases in district court are tried before the judge, and usually on a fairly expeditious basis, the Commission decided there was no need at present to provide for discovery procedures prior to trial in district court. As misdemeanors tried in superior court on trial de novo have already had a full trial in district court, there is little reason for requiring discovery after that trial and prior to the new trial in superior court.

This Article, then, applies to felonies and misdemeanors in the original jurisdiction of the superior court. The statute concerning this jurisdiction is not in proposed Chapter 15A. [G.S. 7A-271](#), governing the superior court's criminal jurisdiction, is not affected by the Commission's present proposal.

[Notes of Decisions \(11\)](#)

N.C.G.S.A. § 15A-901, NC ST § 15A-901

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

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§ 15A-902. Discovery procedure, NC ST § 15A-902

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court (Refs & Annos)

N.C.G.S.A. § 15A-902

§ 15A-902. Discovery procedure

Currentness

(a) A party seeking discovery under this Article must, before filing any motion before a judge, request in writing that the other party comply voluntarily with the discovery request. A written request is not required if the parties agree in writing to voluntarily comply with the provisions of Article 48 of Chapter 15A of the General Statutes. Upon receiving a negative or unsatisfactory response, or upon the passage of seven days following the receipt of the request without response, the party requesting discovery may file a motion for discovery under the provisions of this Article concerning any matter as to which voluntary discovery was not made pursuant to request.

(b) To the extent that discovery authorized in this Article is voluntarily made in response to a request or written agreement, the discovery is deemed to have been made under an order of the court for the purposes of this Article.

(c) A motion for discovery under this Article must be heard before a superior court judge.

(d) If a defendant is represented by counsel, the defendant may as a matter of right request voluntary discovery from the State under subsection (a) of this section not later than the tenth working day after either the probable-cause hearing or the date the defendant waives the hearing. If a defendant is not represented by counsel, or is indicted or consents to the filing of a bill of information before the defendant has been afforded or waived a probable-cause hearing, the defendant may as a matter of right request voluntary discovery from the State under subsection (a) of this section not later than the tenth working day after the later of:

(1) The defendant's consent to be tried upon a bill of information, or the service of notice upon the defendant that a true bill of indictment has been found by the grand jury, or

(2) The appointment of counsel.

For the purposes of this subsection a defendant is represented by counsel only if counsel was retained by or appointed for the defendant prior to or during a probable-cause hearing or prior to execution by the defendant of a waiver of a probable-cause hearing.

(e) The State may as a matter of right request voluntary discovery from the defendant, when authorized under this Article, at any time not later than the tenth working day after disclosure by the State with respect to the category of discovery in question.

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(f) A motion for discovery made at any time prior to trial may be entertained if the parties so stipulate or if the judge for good cause shown determines that the motion should be allowed in whole or in part.

Credits

Added by Laws 1973, c. 1286, § 1. Amended by [S.L. 2004-154, § 3, eff. Oct. 1, 2004](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

The Commission contemplates that after the parties become accustomed to discovery procedures they will be followed voluntarily without the necessity of motions before the judge. To facilitate this practice, the section requires that a party seeking discovery first request voluntary discovery. That the request be in writing is simply to make sure there is something tangible in the record if questions arise later. The written request need not be elaborate, but of course should be dated.

If the other party complies with a request for voluntary, discovery, the request and the compliance will for the later procedural provisions of the Article be treated as if effected upon motion and order of the court.

The reference in subsection (c) is to trigger the special definition of superior court judge contained in proposed § 15A-101(10).

Because the request for voluntary discovery must precede any motion for discovery by at least seven days, subsections (d) and (e) in setting out the time limits for discovery speak of the period during which a party “may as a matter of right request voluntary discovery....” If a defendant has counsel the period in which discovery can be requested as a matter of right is three working days following the holding, or waiver, of the probable cause hearing. If he does not have counsel or is charged in the superior court before a probable cause hearing is held or waived, the time is extended to a later period as noted in this section. In implementing this later time period, the complementary provisions of proposed § 15A-630 should be noted.

[Notes of Decisions \(56\)](#)

N.C.G.S.A. § 15A-902, NC ST § 15A-902

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§ 15A-903. Disclosure of evidence by the State--Information..., NC ST § 15A-903

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N.C.G.S.A. § 15A-903

§ 15A-903. Disclosure of evidence by the State--Information subject to disclosure

Effective: December 1, 2011

[Currentness](#)

(a) Upon motion of the defendant, the court must order:

(1) The State to make available to the defendant the complete files of all law enforcement agencies, investigatory agencies, and prosecutors' offices involved in the investigation of the crimes committed or the prosecution of the defendant.

a. The term “file” includes the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. When any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.

b. The term “prosecutor's office” refers to the office of the prosecuting attorney.

b1. The term “investigatory agency” includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor's office in connection with the investigation of the crimes committed or the prosecution of the defendant.

c. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a prosecuting attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is significantly new or different information in the oral statement from a prior statement made by the witness.

d. The defendant shall have the right to inspect and copy or photograph any materials contained therein and, under appropriate safeguards, to inspect, examine, and test any physical evidence or sample contained therein.

(2) The prosecuting attorney to give notice to the defendant of any expert witnesses that the State reasonably expects to call as a witness at trial. Each such witness shall prepare, and the State shall furnish to the defendant, a report of the results of any examinations or tests conducted by the expert. The State shall also furnish to the defendant the expert's curriculum

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vitae, the expert's opinion, and the underlying basis for that opinion. The State shall give the notice and furnish the materials required by this subsection within a reasonable time prior to trial, as specified by the court. Standardized fee scales shall be developed by the Administrative Office of the Courts and Indigent Defense Services for all expert witnesses and private investigators who are compensated with State funds.

- (3) The prosecuting attorney to give the defendant, at the beginning of jury selection, a written list of the names of all other witnesses whom the State reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the prosecuting attorney certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the State did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(b) If the State voluntarily provides disclosure under [G.S. 15A-902\(a\)](#), the disclosure shall be to the same extent as required by subsection (a) of this section.

(c) On a timely basis, law enforcement and investigatory agencies shall make available to the prosecutor's office a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under [G.S. 15A-902\(a\)](#). Investigatory agencies that obtain information and materials listed in subdivision (1) of subsection (a) of this section shall ensure that such information and materials are fully disclosed to the prosecutor's office on a timely basis for disclosure to the defendant.

(d) Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to subdivision (1) of subsection (a) of this section, or required to be provided to the prosecutor's office pursuant to subsection (c) of this section, shall be guilty of a Class H felony. Any person who willfully omits or misrepresents evidence or information required to be disclosed pursuant to any other provision of this section shall be guilty of a Class 1 misdemeanor.

Credits

Added by Laws 1973, c. 1286, § 1. Amended by Laws 1975, c. 166, § 27; Laws 1983, c. 759, §§ 1 to 3; Laws 1983 (1st Ex. Sess.), c. 6, § 1; [S.L. 2001-282, § 5, eff. July 13, 2001](#); [S.L. 2004-154, § 4, eff. Oct. 1, 2004](#); [S.L. 2007-183, § 1, eff. Dec. 1, 2007](#); [S.L. 2007-377, § 1, eff. Aug. 19, 2007](#); [S.L. 2007-393, § 1, eff. Oct. 1, 2007](#); [S.L. 2011-19, § 9, eff. March 31, 2011](#); [S.L. 2011-250, § 1, eff. Dec. 1, 2011](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

Departing from the statutory breakdown, there are eight different categories of discovery of the State's case available to the defendant. They are:

- (1) Written or recorded statements made by the defendant in the State's control. This type of statement is subject to discovery even if the State does not intend to offer it in evidence.

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- (2) Oral statements made by the defendant which the State intends to offer in evidence.
- (3) Written, recorded, or oral statements of a co-defendant which the State intends to offer at their joint trial.
- (4) The prior criminal record of the defendant available to the solicitor. This criterion of availability is less stringent than the one used in several other subsections: "the existence of which is know or by the exercise of due diligence may become known to the solicitor." The subsection thus does not require the solicitor to take extreme pains to search out the criminal record of the defendant from all possible sources, but any sort of record that is normally or easily available to him must be produced. Several defense attorneys on the Commission commented that it is often difficult to find out from the defendant the full particulars of his criminal history, and a number of law enforcement agencies will not provide criminal histories to defense counsel.
- (5) Books, papers, documents, photographs, and tangible objects in the control of the State and which are:
 - a. Material to the preparation of the defense; or
 - b. Intended for use by the State as evidence; or
 - c. Were obtained from or belong to the defendant.
- (6) Results or reports of physical or mental examinations or of scientific tests or experiments made in connection with the case and in the control of the State.
- (7) Physical evidence, or a sample of it, available to the solicitor if the State intends to offer the evidence as an exhibit or evidence in the case, or if the State intends to introduce at trial the results of scientific tests or experiments made in connection with the physical evidence. This provisions is similar to that in present [G.S. 15-155.4](#) and [G.S. 15-155.5](#), except that it does not go as far as those sections. Those sections, which are scheduled for deletion under this proposal, also allow the defendant to interview prospective expert witnesses of the State. The only duty under the proposed discovery Article is to give names and addresses of witnesses, which would include expert witnesses, to the defendant.
- (8) The names and addresses of witnesses the State intends to call and the criminal record of each witness known, or which by the exercise of due diligence may become known, to the solicitor. Because witnesses may easily be subject to harassment or intimidation, a special provision is inserted, in addition to the general one set out in proposed § 15A-908, to empower the judge to deny disclosure or take other appropriate protective measures.

The Commission followed the draft of the proposed amendment to Rule 16 and provided only for discovery of the State's case upon request of the defendant. The American Bar Association Standards would require the State to disclose virtually all of the information covered by this discovery Article automatically, whether requested or not. See A.B.A. Project on Standards for Criminal Justice, *Standards Relating to Discovery and Procedure Before Trial*, § 2.1 (1970). In certain instances, of course, the State may be under an obligation to disclose information discoverable under this Article whether there is a request or not. See [Giles v. Maryland](#), 386 U.S. 66 (1967); [Brady v. Maryland](#), 373 U.S. 83 (1963). The Commission grappled with the question whether to attempt to codify *Giles* and *Brady* and finally decided to leave this matter to case law development. Parenthetically, it should be noted that proposed § 15A-975 does require the State to disclose certain types of evidence, but in doing so the state gains an advantage by forcing the defendant to make any motion to suppress the evidence prior to the trial.

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Another issue concerned the extent to which the solicitor would be chargeable with knowledge of information in police files. The Commission finally decided not to go beyond the language copied from the proposed amendment to Rule 16, and leave further ramifications of the matter to case law. See [Moore v. Illinois, 408 U.S. 786 \(1972\)](#).

[Notes of Decisions \(446\)](#)

N.C.G.S.A. § 15A-903, NC ST § 15A-903

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

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§ 15A-904. Disclosure by the State--Certain information not..., NC ST § 15A-904

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N.C.G.S.A. § 15A-904

§ 15A-904. Disclosure by the State--Certain information not subject to disclosure

Effective: December 1, 2011

[Currentness](#)

(a) The State is not required to disclose written materials drafted by the prosecuting attorney or the prosecuting attorney's legal staff for their own use at trial, including witness examinations, voir dire questions, opening statements, and closing arguments. Disclosure is also not required of legal research or of records, correspondence, reports, memoranda, or trial preparation interview notes prepared by the prosecuting attorney or by members of the prosecuting attorney's legal staff to the extent they contain the opinions, theories, strategies, or conclusions of the prosecuting attorney or the prosecuting attorney's legal staff.

(a1) The State is not required to disclose the identity of a confidential informant unless the disclosure is otherwise required by law.

(a2) The State is not required to provide any personal identifying information of a witness beyond that witness's name, address, date of birth, and published phone number, unless the court determines upon motion of the defendant that such additional information is necessary to accurately identify and locate the witness.

(a3) The State is not required to disclose the identity of any individual providing information about a crime or criminal conduct to a Crime Stoppers organization under promise or assurance of anonymity unless ordered by the court. For purposes of this Article, a Crime Stoppers organization or similarly named entity means a private, nonprofit North Carolina corporation governed by a civilian volunteer board of directors that is operated on a local or statewide level that (i) offers anonymity to persons providing information to the organization, (ii) accepts and expends donations for cash rewards to persons who report to the organization information about alleged criminal activity and that the organization forwards to the appropriate law enforcement agency, and (iii) is established as a cooperative alliance between the news media, the community, and law enforcement officials.

(a4) The State is not required to disclose the Victim Impact Statement or its contents unless otherwise required by law. For purposes of this Chapter, a Victim Impact Statement is a document submitted by the victim or the victim's family to the State pursuant to the Victims' Rights Amendment.

(b) Nothing in this section prohibits the State from making voluntary disclosures in the interest of justice nor prohibits a court from finding that the protections of this section have been waived.

(c) This section shall have no effect on the State's duty to comply with federal or State constitutional disclosure requirements.

§ 15A-904. Disclosure by the State--Certain information not..., NC ST § 15A-904

Credits

Added by Laws 1973, c. 1286, § 1. Amended by Laws 1975, c. 166, § 27; [S.L. 2004-154, § 5, eff. Oct. 1, 2004](#); [S.L. 2007-377, § 2, eff. Aug. 19, 2007](#); [S.L. 2011-250, § 2, eff. Dec. 1, 2011](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

This section is included to emphasize the general rule that the work product or investigative files of the solicitor, law enforcement agencies, and others helping prepare the case are not open to discovery. Subsection (b) is added to indicate that a solicitor in his discretion may make fuller disclosure than is required if he believes this would assist in plea negotiations, otherwise speed the disposition of the case, or be in the interests of justice.

[Notes of Decisions \(93\)](#)

N.C.G.S.A. § 15A-904, NC ST § 15A-904

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§ 15A-905. Disclosure of evidence by the defendant --..., NC ST § 15A-905

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Subchapter IX. Pretrial Procedure
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N.C.G.S.A. § 15A-905

§ 15A-905. Disclosure of evidence by the defendant -- Information subject to disclosure

Effective: December 1, 2011

[Currentness](#)

(a) Documents and Tangible Objects. -- If the court grants any relief sought by the defendant under [G.S. 15A-903](#), the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph books, papers, documents, photographs, motion pictures, mechanical or electronic recordings, tangible objects, or copies or portions thereof which are within the possession, custody, or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of Examinations and Tests. -- If the court grants any relief sought by the defendant under [G.S. 15A-903](#), the court must, upon motion of the State, order the defendant to permit the State to inspect and copy or photograph results or reports of physical or mental examinations or of tests, measurements or experiments made in connection with the case, or copies thereof, within the possession and control of the defendant which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial, when the results or reports relate to his testimony. In addition, upon motion of the State, the court must order the defendant to permit the State to inspect, examine, and test, subject to appropriate safeguards, any physical evidence or a sample of it available to the defendant if the defendant intends to offer such evidence, or tests or experiments made in connection with such evidence, as an exhibit or evidence in the case.

(c) Notice of Defenses, Expert Witnesses, and Witness Lists.--If the court grants any relief sought by the defendant under [G.S. 15A-903](#), or if disclosure is voluntarily made by the State pursuant to [G.S. 15A-902\(a\)](#), the court must, upon motion of the State, order the defendant to:

(1) Give notice to the State of the intent to offer at trial a defense of alibi, duress, entrapment, insanity, mental infirmity, diminished capacity, self-defense, accident, automatism, involuntary intoxication, or voluntary intoxication. Notice of defense as described in this subdivision is inadmissible against the defendant. Notice of defense must be given within 20 working days after the date the case is set for trial pursuant to [G.S. 7A-49.4](#), or such other later time as set by the court.

a. As to the defense of alibi, the court may order, upon motion by the State, the disclosure of the identity of alibi witnesses no later than two weeks before trial. If disclosure is ordered, upon a showing of good cause, the court shall order the State to disclose any rebuttal alibi witnesses no later than one week before trial. If the parties agree, the court may specify different time periods for this exchange so long as the exchange occurs within a reasonable time prior to trial.

b. As to only the defenses of duress, entrapment, insanity, automatism, or involuntary intoxication, notice by the defendant shall contain specific information as to the nature and extent of the defense.

§ 15A-905. Disclosure of evidence by the defendant --..., NC ST § 15A-905

(2) Give notice to the State of any expert witnesses that the defendant reasonably expects to call as a witness at trial. Each such witness shall prepare, and the defendant shall furnish to the State, a report of the results of the examinations or tests conducted by the expert. The defendant shall also furnish to the State the expert's curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The defendant shall give the notice and furnish the materials required by this subdivision within a reasonable time prior to trial, as specified by the court. Standardized fee scales shall be developed by the Administrative Office of the Courts and Indigent Defense Services for all expert witnesses and private investigators who are compensated with State funds.

(3) Give the State, at the beginning of jury selection, a written list of the names of all other witnesses whom the defendant reasonably expects to call during the trial. Names of witnesses shall not be subject to disclosure if the defendant certifies in writing and under seal to the court that to do so may subject the witnesses or others to physical or substantial economic harm or coercion, or that there is other particularized, compelling need not to disclose. If there are witnesses that the defendant did not reasonably expect to call at the time of the provision of the witness list, and as a result are not listed, the court upon a good faith showing shall allow the witnesses to be called. Additionally, in the interest of justice, the court may in its discretion permit any undisclosed witness to testify.

(d) If the defendant voluntarily provides discovery under [G.S. 15A-902\(a\)](#), the disclosure shall be to the same extent as required by subsection (c) of this section.

Credits

Added by Laws 1973, c. 1286, § 1. Amended by Laws 1975, c. 166, § 27; [S.L. 2004-154, § 6, eff. Oct. 1, 2004](#); [S.L. 2011-250, § 3, eff. Dec. 1, 2011](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

Based on the breakdown of categories in the commentary to [§ 15A-903](#), there are four categories of discovery available to the State if the defense has sought discovery with respect to a similar category. The statute lumps two of these categories together, so the State may seek discovery as follows:

(1) If the defendant seeks discovery as to books, papers, documents, photographs, or tangible objects, then the State may seek discovery as to any or all of these items which the defendant intends to introduce as evidence.

(2) If the defendant seeks discovery as to results or reports of the tests noted previously *or* seeks discovery as to physical evidence, then the State may seek discovery as to results or reports of physical or mental examinations or of scientific tests or experiments made in connection with the case, in the control of the defendant, and which:

- a. The defendant intends to introduce into evidence; or
- b. Were prepared by a witness whom the defendant intends to call.

§ 15A-905. Disclosure of evidence by the defendant --..., NC ST § 15A-905

(3) If the defendant seeks discovery as to results or reports of the tests noted previously or seeks discovery as to physical evidence, then the State may seek discovery as to any physical evidence, or a sample of it, available to the defendant if the defendant intends to offer it as an exhibit or evidence, or results of reports of scientific tests of experiments made in connection with the evidence.

(4) If the defendant seeks discovery as to State's witnesses, then the State may seek discovery as to the name and address of each witness the defendant intends to call. Offsetting the special protective provision in the subsection relating to discovery of State's witnesses, a judge is also authorized to deny disclosure or take other appropriate action to prevent physical or substantial economic harm or coercion to defense witnesses.

[Notes of Decisions \(47\)](#)

N.C.G.S.A. § 15A-905, NC ST § 15A-905

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N.C.G.S.A. § 15A-906

§ 15A-906. Disclosure of evidence by the defendant -- Certain evidence not subject to disclosure

[Currentness](#)

Except as provided in [G.S. 15A-905\(b\)](#) this Article does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by prosecution or defense witnesses, or by prospective prosecution witnesses or defense witnesses, to the defendant, his agents, or attorneys.

Credits

Added by Laws 1973, c. 1286, § 1.

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

This section is substantially similar in its purpose to proposed 15A-904.

[Notes of Decisions \(21\)](#)

N.C.G.S.A. § 15A-906, NC ST § 15A-906

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§ 15A-907. Continuing duty to disclose, NC ST § 15A-907

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N.C.G.S.A. § 15A-907

§ 15A-907. Continuing duty to disclose

[Currentness](#)

If a party, who is required to give or who voluntarily gives discovery pursuant to this Article, discovers prior to or during trial additional evidence or witnesses, or decides to use additional evidence or witnesses, and the evidence or witness is or may be subject to discovery or inspection under this Article, the party must promptly notify the attorney for the other party of the existence of the additional evidence or witnesses.

Credits

Added by Laws 1973, c. 1286, § 1. Amended by Laws 1975, c. 166, § 16; [S.L. 2004-154, § 7, eff. Oct. 1, 2004](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

This important provision requires a party subject to a discovery request or order to disclose all additional information of the type requested or ordered that comes to his attention after first compliance with the discovery provisions of this Article.

[Notes of Decisions \(39\)](#)

N.C.G.S.A. § 15A-907, NC ST § 15A-907

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

§ 15A-908. Regulation of discovery -- Protective orders, NC ST § 15A-908

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N.C.G.S.A. § 15A-908

§ 15A-908. Regulation of discovery -- Protective orders

Currentness

(a) Upon written motion of a party and a finding of good cause, which may include, but is not limited to a finding that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, the court may at any time order that discovery or inspection be denied, restricted, or deferred, or may make other appropriate orders. A party may apply *ex parte* for a protective order and, if an *ex parte* order is granted, the opposing party shall receive notice that the order was entered, but without disclosure of the subject matter of the order.

(b) The court may permit a party seeking relief under subsection (a) to submit supporting affidavits or statements to the court for *in camera* inspection. If thereafter the court enters an order granting relief under subsection (a), the material submitted *in camera* must be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

Credits

Added by Laws 1973, c. 1286, § 1. Amended by Laws 1983 (1st Ex. Sess.), c. 6, § 2; [S.L. 2004-154, § 8, eff. Oct. 1, 2004](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

This section gives a superior court judge broad scope to deny, restrict, or defer discovery or to make other appropriate orders of a protective nature for good cause shown. Because sources for believing that harm may occur if full discovery is granted are often confidential, the section provides for submitting supporting affidavits or statements to the court for *in camera* inspection, and for sealing the material submitted.

[Notes of Decisions \(5\)](#)

N.C.G.S.A. § 15A-908, NC ST § 15A-908

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

§ 15A-909. Regulation of discovery--Time, place, and manner of..., NC ST § 15A-909

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court (Refs & Annos)

N.C.G.S.A. § 15A-909

§ 15A-909. Regulation of discovery--Time, place, and manner of discovery and inspection

[Currentness](#)

An order of the court granting relief under this Article must specify the time, place, and manner of making the discovery and inspection permitted and may prescribe appropriate terms and conditions.

Credits

Added by Laws 1973, c. 1286, § 1.

[Notes of Decisions \(29\)](#)

N.C.G.S.A. § 15A-909, NC ST § 15A-909

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

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§ 15A-910. Regulation of discovery -- Failure to comply, NC ST § 15A-910

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court (Refs & Annos)

N.C.G.S.A. § 15A-910

§ 15A-910. Regulation of discovery -- Failure to comply

Effective: December 1, 2011

[Currentness](#)

(a) If at any time during the course of the proceedings the court determines that a party has failed to comply with this Article or with an order issued pursuant to this Article, the court in addition to exercising its contempt powers may

(1) Order the party to permit the discovery or inspection, or

(2) Grant a continuance or recess, or

(3) Prohibit the party from introducing evidence not disclosed, or

(3a) Declare a mistrial, or

(3b) Dismiss the charge, with or without prejudice, or

(4) Enter other appropriate orders.

(b) Prior to finding any sanctions appropriate, the court shall consider both the materiality of the subject matter and the totality of the circumstances surrounding an alleged failure to comply with this Article or an order issued pursuant to this Article.

(c) For purposes of determining whether to impose personal sanctions for untimely disclosure of law enforcement and investigatory agencies' files, courts and State agencies shall presume that prosecuting attorneys and their staffs have acted in good faith if they have made a reasonably diligent inquiry of those agencies under [G.S. 15A-903\(c\)](#) and disclosed the responsive materials.

(d) If the court imposes any sanction, it must make specific findings justifying the imposed sanction.

§ 15A-910. Regulation of discovery -- Failure to comply, NC ST § 15A-910

Credits

Added by Laws 1973, c. 1286, § 1. Amended by Laws 1975, c. 166, § 17; Laws 1983 (1st Ex. Sess.), c. 6, § 3; [S.L. 2004-154, § 9, eff. Oct. 1, 2004](#); [S.L. 2011-250, § 4, eff. Dec. 1, 2011](#).

Editors' Notes

CRIMINAL CODE COMMISSION COMMENTARY

This section gives the judge broad and flexible powers to rectify the situation if a party fails to comply with discovery orders or provisions of the discovery Article. If a party calls a surprise witness in violation of his duty to disclose, the judge must take one of the actions prescribed in subsection (b), except that the defendant must concur in the granting of a mistrial. His concurrence is essential to keep any question of double jeopardy from entering the case upon a new trial.

[Notes of Decisions \(186\)](#)

N.C.G.S.A. § 15A-910, NC ST § 15A-910

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

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§§ 15A-911 to 15A-920. Reserved, NC ST § 15A-911

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court (Refs & Annos)

N.C.G.S.A. § 15A-911

§§ 15A-911 to 15A-920. Reserved

Currentness

N.C.G.S.A. § 15A-911, NC ST § 15A-911

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

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§§ 15A-911 to 15A-920. Reserved, NC ST § 15A-920

West's North Carolina General Statutes Annotated
Chapter 15A. Criminal Procedure Act (Refs & Annos)
Subchapter IX. Pretrial Procedure
Article 48. Discovery in the Superior Court (Refs & Annos)

N.C.G.S.A. § 15A-920

§§ 15A-911 to 15A-920. Reserved

[Currenttness](#)

N.C.G.S.A. § 15A-920, NC ST § 15A-920

The statutes and Constitution are current through Chapters 1-117, excluding 100, 102, 107, 109, 110, and 115, of the 2014 Regular Session of the General Assembly.

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