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Short Title: Rapist Parental Rights/Open Crim. Discovery.

(Public)

Sponsors:

Referred to:

April 10, 2003

A BILL TO BE ENTITLED

AN ACT TO TERMINATE AS A MATTER OF LAW CERTAIN PARENTAL RIGHTS OF A PERSON CONVICTED OF CERTAIN CRIMES THAT RESULT IN THE VICTIM BECOMING PREGNANT, TO PROVIDE FOR OPEN DISCOVERY IN ALL FELONY CASES, AND TO MAKE CERTAIN OTHER AMENDMENTS TO THE LAWS REGARDING DISCOVERY IN CRIMINAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-27.2 reads as rewritten:

"§ 14-27.2. First-degree rape.

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

- (1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or
- (2) With another person by force and against the will of the other person, and:
 - a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or
 - b. Inflicts serious personal injury upon the victim or another person; or
 - c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

1 (c) Upon conviction, a person convicted under this section has no rights to
2 custody of or rights of inheritance from any child born as a result of the commission of
3 the rape, nor shall the person have any rights related to the child under Chapter 48 or
4 Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection,
5 any person who is convicted under this section and comes within the provisions of
6 G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. shall be entitled to petition for adoption of
7 the child under Chapter 48 of the General Statutes."

8 **SECTION 2.** G.S. 14-27.3 reads as rewritten:

9 **"§ 14-27.3. Second-degree rape.**

10 (a) A person is guilty of rape in the second degree if the person engages in
11 vaginal intercourse with another person:

12 (1) By force and against the will of the other person; or

13 (2) Who is mentally disabled, mentally incapacitated, or physically
14 helpless, and the person performing the act knows or should
15 reasonably know the other person is mentally disabled, mentally
16 incapacitated, or physically helpless.

17 (b) Any person who commits the offense defined in this section is guilty of a
18 Class C felony.

19 (c) Upon conviction, a person convicted under this section has no rights to
20 custody of or rights of inheritance from any child conceived during the commission of
21 the rape, nor shall the person have any rights related to the child under Chapter 48 or
22 Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection,
23 any person who is convicted under this section and comes within the provisions of
24 G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. shall be entitled to petition for adoption of
25 the child under Chapter 48 of the General Statutes."

26 **SECTION 3.** G.S. 14-27.7A reads as rewritten:

27 **"§ 14-27.7A. Statutory rape or sexual offense of person who is 13, 14, or 15 years**
28 **old.**

29 (a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal
30 intercourse or a sexual act with another person who is 13, 14, or 15 years old and the
31 defendant is at least six years older than the person, except when the defendant is
32 lawfully married to the person.

33 (b) A defendant is guilty of a Class C felony if the defendant engages in vaginal
34 intercourse or a sexual act with another person who is 13, 14, or 15 years old and the
35 defendant is more than four but less than six years older than the person, except when
36 the defendant is lawfully married to the person.

37 (c) Upon conviction, a person convicted under this section has no rights to
38 custody of or rights of inheritance from any child conceived during the commission of
39 the rape, nor shall the person have any rights related to the child under Chapter 48 or
40 Subchapter 1 of Chapter 7B of the General Statutes. Notwithstanding this subsection,
41 any person who is convicted under this section and comes within the provisions of
42 G.S. 48-3-601(2)a. or G.S. 48-3-601(2)b.1. or is the biological father of the child, shall
43 be entitled to petition for adoption of the child under Chapter 48 of the General
44 Statutes."

1 **SECTION 4.** G.S. 48-3-603(a) reads as rewritten:

2 "(a) Consent to an adoption of a minor is not required of a person or entity whose
3 consent is not required under G.S. 48-3-601, or:

- 4 (1) An individual whose parental rights and duties have been terminated
5 under Article 11 of Chapter 7B of the General Statutes or by a court of
6 competent jurisdiction in another state;
- 7 (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if
8 (i) the man has been judicially determined not to be the father of the
9 minor to be adopted, or (ii) another man has been judicially
10 determined to be the father of the minor to be adopted;
- 11 (3) Repealed by Session Laws 1997-215, s. 11(a).
- 12 (4) An individual who has relinquished parental rights or guardianship
13 powers, including the right to consent to adoption, to an agency
14 pursuant to Part 7 of this Article;
- 15 (5) A man who is not married to the minor's birth mother and who, after
16 the conception of the minor, has executed a notarized statement
17 denying paternity or disclaiming any interest in the minor;
- 18 (6) A deceased parent or the personal representative of a deceased parent's
19 estate; or
- 20 (7) An individual listed in G.S. 48-3-601 who has not executed a consent
21 or a relinquishment and who fails to respond to a notice of the
22 adoption proceeding within 30 days after the service of the notice.
- 23 (8) An individual notified under G.S. 48-2-206 who does not respond in a
24 timely manner or whose consent is not required as determined by the
25 court.
- 26 (9) An individual whose actions resulted in a conviction under
27 G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the minor to
28 be adopted."

29 **SECTION 5.** G.S. 50-13.1(a) reads as rewritten:

30 "(a) Any parent, relative, or other person, agency, organization or institution
31 claiming the right to custody of a minor child may institute an action or proceeding for
32 the custody of such child, as hereinafter provided. Any person whose actions resulted in
33 a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the minor
34 child may not claim the right to custody of that minor child. Unless a contrary intent is
35 clear, the word "custody" shall be deemed to include custody or visitation or both."

36 **SECTION 6.** G.S. 7B-402 reads as rewritten:

37 "**§ 7B-402. Petition.**

38 The petition shall contain the name, date of birth, address of the juvenile, the name
39 and last known address of the juvenile's parent, guardian, or custodian and shall allege
40 the facts which invoke jurisdiction over the juvenile. A person whose actions resulted in
41 a conviction under G.S. 14-27.2, 14-27.3, 14-27.7, or 14-27.7A and the conception of
42 the juvenile need not be named in the petition. The petition may contain information on
43 more than one juvenile when the juveniles are from the same home and are before the
44 court for the same reason.

1 Sufficient copies of the petition shall be prepared so that copies will be available for
2 each parent if living separate and apart, the guardian, custodian, or caretaker, the
3 guardian ad litem, the social worker, and any person determined by the court to be a
4 necessary party."

5 **SECTION 7.** G.S. 7B-406(a) reads as rewritten:

6 "(a) Immediately after a petition has been filed alleging that a juvenile is abused,
7 neglected, or dependent, the clerk shall issue a summons to the parent, guardian,
8 custodian, or caretaker requiring them to appear for a hearing at the time and place
9 stated in the summons. No summons is required for any person whose actions resulted
10 in a conviction under G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the
11 juvenile. A copy of the petition shall be attached to each summons. Service of the
12 summons shall be completed as provided in G.S. 7B-407, but the parent of the juvenile
13 shall not be deemed to be under a disability even though the parent is a minor."

14 **SECTION 8.** G.S. 7B-1103 is amended by adding a new subsection to read:

15 "(c) No person whose actions resulted in a conviction under G.S. 14-27.2,
16 14-27.3, or 14-27.7A and the conception of the juvenile may file a petition to terminate
17 the parental rights of another with respect to that juvenile."

18 **SECTION 9.** G.S. 7B-1104 reads as rewritten:

19 "§ **7B-1104. Petition or motion.**

20 The petition, or motion pursuant to G.S. 7B-1102, shall be verified by the petitioner
21 or movant and shall be entitled "In Re (last name of juvenile), a minor juvenile"; and
22 shall set forth such of the following facts as are known; and with respect to the facts
23 which are unknown the petitioner or movant shall so state:

- 24 (1) The name of the juvenile as it appears on the juvenile's birth
25 certificate, the date and place of birth, and the county where the
26 juvenile is presently residing.
- 27 (2) The name and address of the petitioner or movant and facts sufficient
28 to identify the petitioner or movant as one authorized by G.S. 7B-1103
29 to file a petition or motion.
- 30 (3) The name and address of the parents of the juvenile. If the name or
31 address of one or both parents is unknown to the petitioner or movant,
32 the petitioner or movant shall set forth with particularity the
33 petitioner's or movant's efforts to ascertain the identity or whereabouts
34 of the parent or parents. The information may be contained in an
35 affidavit attached to the petition or motion and incorporated therein by
36 reference. A person whose actions resulted in a conviction under
37 G.S. 14-27.2, 14-27.3, or 14-27.7A and the conception of the juvenile
38 need not be named in the petition.
- 39 (4) The name and address of any person who has been judicially appointed
40 as guardian of the person of the juvenile.
- 41 (5) The name and address of any person or agency to whom custody of the
42 juvenile has been given by a court of this or any other state; and a copy
43 of the custody order shall be attached to the petition or motion.

- 1 (6) Facts that are sufficient to warrant a determination that one or more of
2 the grounds for terminating parental rights exist.
- 3 (7) That the petition or motion has not been filed to circumvent the
4 provisions of Article 2 of Chapter 50A of the General Statutes, the
5 Uniform Child-Custody Jurisdiction and Enforcement Act."

6 **SECTION 10.** G.S. 14-226 reads as rewritten:

7 **"§ 14-226. Intimidating or interfering with witnesses.**

8 (a) If any person shall by threats, menaces or in any other manner intimidate or
9 attempt to intimidate any person who is summoned or acting as a witness in any of the
10 courts of this State, or prevent or deter, or attempt to prevent or deter any person
11 summoned or acting as such witness from attendance upon such court, he shall be guilty
12 of a Class H felony.

13 (b) A defendant in a criminal proceeding who threatens a witness in the
14 defendant's case with the assertion or denial of parental rights shall be a violation of this
15 section."

16 **SECTION 11.** G.S. 15A-902 reads as rewritten:

17 **"§ 15A-902. Discovery procedure.**

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

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

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

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

- 40 (1) The defendant's consent to be tried upon a bill of information, or the
41 service of notice upon ~~him-the defendant~~ that a true bill of indictment
42 has been found by the grand jury, or
- 43 (2) The appointment of ~~counsel—whichever is later.~~ counsel.

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

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

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

12 **SECTION 12.** G.S. 15A-903 reads as rewritten:

13 **"§ 15A-903. Disclosure of evidence by the State – Information subject to**
14 **disclosure.**

15 (a) ~~Statement of Defendant.~~—~~Upon motion of a defendant, the court must order~~
16 ~~the prosecutor:~~

17 (1) ~~To permit the defendant to inspect and copy or photograph any~~
18 ~~relevant written or recorded statements made by the defendant, or~~
19 ~~copies thereof, within the possession, custody, or control of the State~~
20 ~~the existence of which is known or by the exercise of due diligence~~
21 ~~may become known to the prosecutor; and~~

22 (2) ~~To divulge, in written or recorded form, the substance of any oral~~
23 ~~statement relevant to the subject matter of the case made by the~~
24 ~~defendant, regardless of to whom the statement was made, within the~~
25 ~~possession, custody or control of the State, the existence of which is~~
26 ~~known to the prosecutor or becomes known to him prior to or during~~
27 ~~the course of trial; except that disclosure of such a statement is not~~
28 ~~required if it was made to an informant whose identity is a prosecution~~
29 ~~secret and who will not testify for the prosecution, and if the statement~~
30 ~~is not exculpatory. If the statement was made to a person other than a~~
31 ~~law enforcement officer and if the statement is then known to the~~
32 ~~State, the State must divulge the substance of the statement no later~~
33 ~~than 12 o'clock noon, on Wednesday prior to the beginning of the~~
34 ~~week during which the case is calendared for trial. If disclosure of the~~
35 ~~substance of defendant's oral statement to an informant whose identity~~
36 ~~is or was a prosecution secret is withheld, the informant must not~~
37 ~~testify for the prosecution at trial.~~

38 (b) ~~Statement of a Codefendant.~~—~~Upon motion of a defendant, the court must~~
39 ~~order the prosecutor:~~

40 (1) ~~To permit the defendant to inspect and copy or photograph any written~~
41 ~~or recorded statement of a codefendant which the State intends to offer~~
42 ~~in evidence at their joint trial; and~~

1 ~~(2) To divulge, in written or recorded form, the substance of any oral~~
2 ~~statement made by a codefendant which the State intends to offer in~~
3 ~~evidence at their joint trial.~~

4 ~~(e) Defendant's Prior Record. — Upon motion of the defendant, the court must~~
5 ~~order the State to furnish to the defendant a copy of his prior criminal record, if any, as~~
6 ~~is available to the prosecutor.~~

7 ~~(d) Documents and Tangible Objects. — Upon motion of the defendant, the court~~
8 ~~must order the prosecutor to permit the defendant to inspect and copy or photograph~~
9 ~~books, papers, documents, photographs, motion pictures, mechanical or electronic~~
10 ~~recordings, buildings and places, or any other crime scene, tangible objects, or copies or~~
11 ~~portions thereof which are within the possession, custody, or control of the State and~~
12 ~~which are material to the preparation of his defense, are intended for use by the State as~~
13 ~~evidence at the trial, or were obtained from or belong to the defendant.~~

14 ~~(e) Reports of Examinations and Tests. — Upon motion of a defendant, the court~~
15 ~~must order the prosecutor to provide a copy of or to permit the defendant to inspect and~~
16 ~~copy or photograph results or reports of physical or mental examinations or of tests,~~
17 ~~measurements or experiments made in connection with the case, or copies thereof,~~
18 ~~within the possession, custody, or control of the State, the existence of which is known~~
19 ~~or by the exercise of due diligence may become known to the prosecutor. In addition,~~
20 ~~upon motion of a defendant, the court must order the prosecutor to permit the defendant~~
21 ~~to inspect, examine, and test, subject to appropriate safeguards, any physical evidence,~~
22 ~~or a sample of it, available to the prosecutor if the State intends to offer the evidence, or~~
23 ~~tests or experiments made in connection with the evidence, as an exhibit or evidence in~~
24 ~~the case.~~

25 ~~(f) Statements of State's Witnesses.~~

26 ~~(1) In any criminal prosecution brought by the State, no statement or~~
27 ~~report in the possession of the State that was made by a State witness~~
28 ~~or prospective State witness, other than the defendant, shall be the~~
29 ~~subject of subpoena, discovery, or inspection until that witness has~~
30 ~~testified on direct examination in the trial of the case.~~

31 ~~(2) After a witness called by the State has testified on direct examination,~~
32 ~~the court shall, on motion of the defendant, order the State to produce~~
33 ~~any statement of the witness in the possession of the State that relates~~
34 ~~to the subject matter as to which the witness has testified. If the entire~~
35 ~~contents of that statement relate to the subject matter of the testimony~~
36 ~~of the witness, the court shall order it to be delivered directly to the~~
37 ~~defendant for his examination and use.~~

38 ~~(3) If the State claims that any statement ordered to be produced under this~~
39 ~~section contains matter that does not relate to the subject matter of the~~
40 ~~testimony of the witness, the court shall order the State to deliver that~~
41 ~~statement for the inspection of the court in camera. Upon delivery the~~
42 ~~court shall excise the portions of the statement that do not relate to the~~
43 ~~subject matter of the testimony of the witness. With that material~~
44 ~~excised, the court shall then direct delivery of the statement to the~~

1 defendant for his use. If, pursuant to this procedure, any portion of the
2 statement is withheld from the defendant and the defendant objects to
3 the withholding, and if the trial results in the conviction of the
4 defendant, the entire text of the statement shall be preserved by the
5 State and, in the event the defendant appeals, shall be made available
6 to the appellate court for the purpose of determining the correctness of
7 the ruling of the trial judge. Whenever any statement is delivered to a
8 defendant pursuant to this subsection, the court, upon application of
9 the defendant, may recess proceedings in the trial for a period of time
10 that it determines is reasonably required for the examination of the
11 statement by the defendant and his preparation for its use in the trial.

12 (4) ~~If the State elects not to comply with an order of the court under~~
13 ~~subdivision (2) or (3) to deliver a statement to the defendant, the court~~
14 ~~shall strike from the record the testimony of the witness, and direct the~~
15 ~~jury to disregard the testimony, and the trial shall proceed unless the~~
16 ~~court determines that the interests of justice require that a mistrial be~~
17 ~~declared.~~

18 (5) ~~The term "statement," as used in subdivision (2), (3), and (4) in~~
19 ~~relation to any witness called by the State means~~

20 a. ~~A written statement made by the witness and signed or~~
21 ~~otherwise adopted or approved by him;~~

22 b. ~~A stenographic, mechanical, electrical, or other recording, or a~~
23 ~~transcription thereof, that is a substantially verbatim recital or~~
24 ~~an oral statement made by the witness and recorded~~
25 ~~contemporaneously with the making of the oral statements.~~

26 (g) ~~DNA Laboratory Reports. The defendant shall have the right to obtain a~~
27 ~~copy of DNA laboratory reports provided to the district attorney revealing that there~~
28 ~~was a DNA match to the defendant that was derived from a CODIS match during a~~
29 ~~comparison search involving the defendant's DNA sample, in accordance with the~~
30 ~~procedure set forth in G.S. 15A-902.~~

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

32 (1) Make available to the defendant the complete files of all law
33 enforcement and prosecutorial agencies involved in the investigation
34 of the crimes committed or the prosecution of the defendant. The term
35 "file" includes the defendant's statements, the codefendants'
36 statements, witness statements, investigating officers' notes, results of
37 tests and examinations, or any other matter or evidence obtained
38 during the investigation of the offenses alleged to have been
39 committed by the defendant. Oral statements shall be in written or
40 recorded form. The defendant shall have the right to inspect and copy
41 or photograph any materials contained therein and, under appropriate
42 safeguards, to inspect, examine, and test any physical evidence or
43 sample contained therein.

1 (2) Give notice to the defendant of any expert witnesses that the State
2 reasonably expects to call as a witness at trial. Each such witness shall
3 prepare, and the State shall furnish to the defendant, a report of the
4 results of any examinations or tests conducted by the expert. The State
5 shall also furnish to the defendant the expert's curriculum vitae, the
6 expert's opinion, and the underlying basis for that opinion. The State
7 shall give the notice and furnish the materials required by this
8 subsection within a reasonable time prior to trial, as specified by the
9 court.

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

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

24 **SECTION 13.** G.S. 15A-904 reads as rewritten:

25 "**§ 15A-904. Disclosure of evidence by the State – Certain reports-information not**
26 **subject to disclosure.**

27 (a) ~~Except as provided in G.S. 15A-903(a), (b), (c) and (e), this Article does not~~
28 ~~require the production of reports, memoranda, or other internal documents made by the~~
29 ~~prosecutor, law enforcement officers, or other persons acting on behalf of the State in~~
30 ~~connection with the investigation or prosecution of the case, or of statements made by~~
31 ~~witnesses or prospective witnesses of the State to anyone acting on behalf of the State.~~
32 The State is not required to disclose written materials drafted by the prosecuting
33 attorney or the prosecuting attorney's legal staff for their own use at trial, including
34 witness examinations, voir dire questions, opening statements, and closing arguments.
35 Disclosure is also not required of legal research or of records, correspondence, reports,
36 memoranda, or trial preparation interview notes prepared by the prosecuting attorney or
37 by members of the prosecuting attorney's legal staff to the extent they contain the
38 opinions, theories, strategies, or conclusions of the prosecuting attorney or the
39 prosecuting attorney's legal staff.

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

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

1 **SECTION 14.** G.S. 15A-905 reads as rewritten:

2 "**§ 15A-905. Disclosure of evidence by the defendant – Information subject to**
3 **disclosure.**

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

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

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

28 (1) Give notice to the State of the intent to offer at trial a defense of alibi,
29 duress, entrapment, insanity, mental infirmity, diminished capacity,
30 self-defense, accident, automatism, involuntary intoxication, or
31 voluntary intoxication. Notice of defense as described in this
32 subdivision is inadmissible against the defendant. Notice of defense
33 must be given no later than 20 working days before the date the case is
34 set for trial pursuant to G.S. 7A-49.4, or such other later time as set by
35 the court.

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

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

5 (2) Give notice to the State of any expert witnesses that the defendant
6 reasonably expects to call as a witness at trial. Each such witness shall
7 prepare, and the defendant shall furnish to the State, a report of the
8 results of the examinations or tests conducted by the expert. The
9 defendant shall also furnish to the State the expert's curriculum vitae,
10 the expert's opinion, and the underlying basis for that opinion. The
11 defendant shall give the notice and furnish the materials required by
12 this subdivision within a reasonable time prior to trial, as specified by
13 the court.

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

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

28 **SECTION 15.** G.S. 15A-907 reads as rewritten:

29 "**§ 15A-907. Continuing duty to disclose.**

30 If a party, ~~subject to compliance with an order issued~~ who is required to give or who
31 voluntarily gives discovery pursuant to this Article, discovers prior to or during trial
32 additional evidence or witnesses, or decides to use additional evidence,
33 witnesses, and the evidence or witness is or may be subject to discovery or inspection
34 under this Article, he-the party must promptly notify the attorney for the other party of
35 the existence of the additional evidence-evidence or witnesses."

36 **SECTION 16.** G.S. 15A-908(a) reads as rewritten:

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

1 **SECTION 17.** G.S. 15A-910 reads as rewritten:

2 "**§ 15A-910. Regulation of discovery – Failure to comply.**

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

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

7 (2) Grant a continuance or recess, or

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

9 (3a) Declare a mistrial, or

10 (3b) Dismiss the charge, with or without prejudice, or

11 (4) Enter other appropriate orders.

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

15 **SECTION 18.** G.S. 15A-959 reads as rewritten:

16 "**§ 15A-959. Notice of defense of insanity; pretrial determination of insanity.**

17 (a) If a defendant intends to raise the defense of insanity, ~~he the defendant~~ must
18 ~~within the time provided for the filing of pretrial motions under G.S. 15A-952~~ file a
19 notice of ~~his the defendant's~~ intention to rely on the defense of ~~insanity. insanity as~~
20 provided in G.S. 15A-905(c) and, if the case is not subject to that section, within a
21 reasonable time prior to trial. The court may for cause shown allow late filing of the
22 notice or grant additional time to the parties to prepare for trial or make other
23 appropriate orders.

24 (b) ~~If In cases not subject to the requirements of G.S. 15A-905(c), if~~ a defendant
25 intends to introduce expert testimony relating to a mental disease, defect, or other
26 condition bearing upon the issue of whether ~~he the defendant~~ had the mental state
27 required for the offense charged, ~~he the defendant~~ must ~~within the time provided for the~~
28 filing of pretrial motions under G.S. 15A-952(b) a reasonable time prior to trial file a
29 notice of that intention. The court may for cause shown allow late filing of the notice or
30 grant additional time to the parties to prepare for trial or make other appropriate orders.

31 (c) Upon motion of the defendant and with the consent of the State the court may
32 conduct a hearing prior to the trial with regard to the defense of insanity at the time of
33 the offense. If the court determines that the defendant has a valid defense of insanity
34 with regard to any criminal charge, it may dismiss that charge, with prejudice, upon
35 making a finding to that effect. The court's denial of relief under this subsection is
36 without prejudice to the defendant's right to rely on the defense at trial. If the motion is
37 denied, no reference to the hearing may be made at the trial, and recorded testimony or
38 evidence taken at the hearing is not admissible as evidence at the trial."

39 **SECTION 19.** G.S. 15A-501 is amended by adding a new subdivision to
40 read:

41 "**§ 15A-501. Police processing and duties upon arrest generally.**

42 Upon the arrest of a person, with or without a warrant, but not necessarily in the
43 order hereinafter listed, a law-enforcement officer:

44 ...

1 (6) Must make available to the State on a timely basis all materials and
2 information acquired in the course of all felony investigations. This
3 responsibility is a continuing affirmative duty."

4 **SECTION 20.** Sections 1 through 10 of this act become effective December
5 1, 2004, and apply to offenses committed on or after that date. Sections 11 through 20
6 of this act become effective October 1, 2004, and apply to cases set for trial pursuant to
7 G.S. 7A-49.4 on or after that date.