

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 974
Judiciary

(Delegate Rosenberg, *et al.*)

Criminal Procedure - Discoverable Material and Information - State's Attorney Certification

This bill requires a State's Attorney to make specified certifications regarding "discoverable material and information" to the court a minimum of five days prior to trial. The certification must contain a specified written statement from the designated lead investigator. If the court finds that the State's Attorney's certification or lead investigator's statement was given in bad faith, in addition to any other remedy, the court may impose a fine on the offending party.

Fiscal Summary

State Effect: Potential minimal increase in hearings and appeals based on the procedural requirements of this bill. Any additional hearings could be handled using existing resources.

Local Effect: Minimal – see above.

Small Business Effect: None.

Analysis

Bill Summary: At least five days before trial, a State's Attorney must certify to the court in writing that:

- the State's Attorney has provided defense counsel with all discoverable material and information;

- the State's Attorney has exercised due diligence in locating all discoverable material and information known to the State's Attorney and all participants in the investigation, evaluation, or prosecution of the offense;
- to the best of the State's Attorney's knowledge, all participants in the investigation, evaluation, or prosecution of the offense have exercised due diligence in locating all discoverable material in their possession and have provided that material to the State's Attorney; and
- all participants in the investigation, evaluation, or prosecution of the offense acknowledge their continuing obligation to exercise due diligence in disclosing discoverable material and information as soon as the information is known to the individual.

The certification must include a written statement from the designated lead investigator of each law enforcement agency involved in the investigation of the offense that confirms that all discoverable material and information in the agency's possession has been provided to the State's Attorney.

If the court finds that the certification or statement was given in bad faith, in addition to any other remedy available to the court, the court must impose a fine on the offending party. The court must consider the nature and seriousness of the violation when determining the amount of the fine.

Current Law: Maryland Rules 4-262 and 4-263 govern discovery in criminal cases in the District Court and circuit courts.

In District Court cases, a State's Attorney must provide to the defendant any material or information that tends to negate or mitigate the defendant's guilt or punishment. Upon request of the defendant, the State's Attorney must permit the inspection and copying of (1) any portion of a document containing a statement or containing the substance of a statement made by the defendant to a State agent that the State intends to use at trial or at any hearing other than a preliminary hearing; and (2) each written report or statement made by an expert whom the State expects to call as a witness at a hearing, other than a preliminary hearing, or trial.

In the circuit court, the State's Attorney must provide the following information without the necessity of a request:

- any material or information tending to negate or mitigate the defendant's guilt or punishment; and
- any relevant material or information regarding: (1) specific searches and seizures, wire taps, or eavesdropping; (2) the acquisition of statements made by the

defendant to a State agent that the State intends to use at a hearing or trial, and (3) pretrial identification of the defendant by a witness for the State.

Upon request of the defendant, the State's Attorney must:

- disclose the name and address of each person then known whom the State intends to call as a witness to prove its case in chief or to rebut alibi testimony;
- furnish a copy of each written or recorded statement made by the defendant to a State agent, and the substance of each oral statement and a copy of all reports of each oral statement made by the defendant to a State agent that the State intends to use at a hearing or trial;
- furnish a copy of each written or recorded statement made by a codefendant to a State agent, and the substance of each oral statement and a copy of all reports of each oral statement made by a codefendant to a State agent which the State intends to use at a joint hearing or trial;
- produce and permit the inspection and copying of all written reports or statements made by each expert consulted by the State, including the results of any physical or mental examination, scientific test, experiment, or comparison, and furnish the defendant with the substance of any oral report and conclusion;
- produce and permit the inspection, copying, and photographing of any documents, computer-generated evidence, recordings, photographs, or other tangible things that the State intends to use at the hearing or trial; and
- produce and permit the inspection, copying, and photographing of any item obtained from or belonging to the defendant, whether or not the State intends to use the item at the hearing or trial.

If the court finds that a party has failed to comply with the requirements of the Rule, the court may order that party to permit the discovery of the matters not previously disclosed; strike the testimony to which the undisclosed matter relates; grant a reasonable continuance; prohibit the party from introducing in evidence the matter not disclosed; grant a mistrial; or enter any other order appropriate under the circumstances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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mp/jr

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