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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: Senators Archambault, Metts, Jabour, Lynch Prata, and Lombardi

Date Introduced: February 15, 2018

Referred To: Senate Judiciary

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

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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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