

SENATE BILL 3565

By Faulk

AN ACT to amend Tennessee Code Annotated, Title 40,
Chapter 17, relative to requiring reciprocal
disclosure of witnesses prior to trial.

WHEREAS, present law requires that the district attorney general disclose to the defendant the names of the witnesses that the district attorney general intends to summon in the cause; and

WHEREAS, there is presently no legal requirement that the defendant or the defendant's attorney 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 all of the language in the section and substituting instead the following:

(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 required by 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 a sufficient recess 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. In the event that no recess during the course of the trial could properly remedy the disadvantage, but the testimony of the undisclosed witness is so material that the just resolution of the cause would be jeopardized by the prohibition of the testimony, the trial judge may declare a mistrial and reset the matter for a future trial. The decision of the trial judge in prohibiting the testimony or allowing the testimony shall not be deemed error unless the aggrieved party demonstrates that the result of the trial would have been different but for the admission or exclusion of the testimony in question.

(e) The fact that a witness is called to rebut the testimony of another witness is not, in and of itself, reasonable grounds for failing to disclosing the name of the witness under subsection (d). In addition to demonstrating the rebuttal nature of the testimony, the party seeking to call the rebuttal witness must prove to the satisfaction of the trial

judge genuine surprise as to the testimony to which the rebuttal witness is relevant in order to establish reasonable grounds under subsection (d).

(f) 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 the witness' 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.

(g) 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 the provision of 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 for purposes of satisfying the notice requirement of subsection (a) or (b) if the witness' name appears on either the witness list or in the documents or records provided.

(h) 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 party's witness list or in the opposing party's documents or records.

(i) 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.

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

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it.