

H.R./S. XXXX

To require the attorney for the Government to disclose evidence to the defendant in criminal prosecutions brought by the United States, and for other purposes

IN THE SENATE/HOUSE OF REPRESENTATIVES
OF THE UNITED STATES

A BILL

To require the attorney for the Government to disclose evidence to the defendant in criminal prosecutions brought by the United States and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE

This Act may be cited as the “Federal Prosecutor Integrity Act of 2014.”

SECTION 2. DUTY TO DISCLOSE EVIDENCE

Chapter 201 of title 18, United States Code, is amended by adding at the end the following:

§3014 DUTY TO DISCLOSE

“The prosecutor shall disclose to the Defendant all evidence within the actual and constructive care, custody and control of the prosecutor.”

[a] Definitions---In this section:

[1] Prosecutor and/or Prosecutor Team shall mean the prosecutor for the United States of America, the prosecutor's office and all agents, servants and employees of the prosecutor's office.

[2] Document shall mean all items and/or articles of tangible, physical evidence, written instruments, pictorial reproductions, video tapes, computer and/or electronic data, computer and/or electronic programs, letters, accounting sheets and/or ledgers, reports, memorandum, e-mails, faxes, and all items that exist with physical characteristics and dimensions of every kind, quality or description.

[3] Scientific Reports shall mean all reports, tests, testing protocols, notes of examiner and/or expert, diagrams, computer programs and/or data and/or electronically stored and retrieved data, diagnosis, prognosis, conclusions of examiner, and a statement of all facts considered in the performance of any tests of every kind, quality and description.

[4] Witness Statements shall mean all recorded statements reduced to writing of any witness, all prior testimony of any witness taken at any proceeding including grand jury proceedings, video tapes of any witness interview, all statements of any person giving any information concerning the case, any oral statement given to any law enforcement agency and/or the prosecution team contained, recorded and/or memorialized in any report and/or record within the actual and/or constructive care, custody and control of the prosecution team. The witness statement need not be adopted or signed by the person giving the information and/or statement and is not prohibited from disclosure by 18 USC 3500.

[5] Defendant shall mean any person accused and/or charged with the commission of a crime and/or statute of the United States of America and/or the attorney of record of said Defendant and/or the authorized representative of the Defendant.

[6] Constructive Custody shall mean any document, scientific test, witness statement within the actual custody and/or possession of any law enforcement agency which is known by the prosecution team and/or with the exercise of due diligence by the prosecution team should be known by the prosecution team.

[7] Law Enforcement Agency shall mean any duly certified and/or accredited and/or uncertified and/or unaccredited police officer and/or investigative officer and/or person who in any way conducted any sort of investigation and/or administrative duties concerning the case of the defendant and any organization and/or agency which said person is associated with in any way.

[b] Duty to Disclose:

The prosecutor team shall do the following on or before the arraignment of the Defendant.

[1] File with the court and disclose to the defendant a duly, sworn, executed affidavit stating what was done to discover all evidence, documents, scientific tests, and witness statements within the actual custody, care and control of any law enforcement agency.

[2] File with the court and disclose to the defendant a duly, sworn, executed affidavit signed and executed by all law enforcement agencies who in any way investigated the case of the defendant stating with particularity the evidence, documents, scientific tests and witness statements delivered to the prosecution team and placed into the actual custody of the prosecution team.

[3] Disclose to the Defendant and allow the Defendant to inspect, review, copy and reproduce all documents, scientific tests and witness statements within the actual and/or constructive care, custody and control of the prosecution team.

[4] File with the court and disclose to the Defendant a complete list of witnesses with their addresses where a subpoena can be served.

[5] File with the court and disclose to the Defendant a complete list of expert witnesses with their addresses where a subpoena can be served.

[6] File with the court and disclose to the Defendant the names of any person who might have any information on the case with their addresses where a subpoena can be served.

[c] Protective Order:

[1] The Prosecutor and/or Prosecutor Team may file with the Court a Motion to Secure a Protective Order if the Prosecutor and/or Prosecutor Team can prove by clear and convincing evidence that the disclosure of any document, scientific test and/or witness statement and/or witness identity would pose an immediate and irrevocable threat to the witnesses and/or persons safety, health or well being and/or the disclosure of said documents, scientific test, witness statement and/or identity would unduly and irrevocably compromise or hinder a present, continuing criminal investigation and/or the disclosure of the document, scientific test and/or witness statement is prohibited by the work product rule.

[2] The court must hold an immediate evidentiary hearing on the Motion for a Protective Order and the Prosecutor and/or Prosecutor Team has the burden of proof to show by clear and convincing evidence that the disclosure of any document, scientific test, witness statement and/or witness identity would place the person and/or witness would constitute an immediate danger to their safety, health and/or welfare and/or the disclosure would constitute undue interference with a present, continuing criminal investigation and/or the disclosure would violate the work product rule.

[3] The Prosecution Team must submit the contested documents, scientific tests and/or witness statements subject to be sealed to the Court for an in-camera inspection by the Court.

[4] The Court in its discretion may order the disclosure of the documents, scientific test, and/or witness statement that is the subject of the Motion for a Protective Order to the attorney of record of the Defendant and/or the authorized representative of the Defendant with strict rules of confidentiality.

[d] Time is of the Essence:

[1] The Prosecutor and/or Prosecutor Team duty and obligation to disclose to the Defendant documents, scientific test and/or witness statements and/or witness identities is a continuing duty and obligation applicable and enforceable at every critical stage of a criminal proceeding including all post conviction proceedings.

[2] The Prosecutor and/or Prosecutor Team shall disclose to the Defendant all documents, scientific tests and/or witness statements and/or the identity of any person having information concerning the case within twenty-four (24) hours of receipt of said documents, scientific tests, witness statements and/or witness identities and/or any person who has information on the case.

[e] Discovery Conference:

[1] Within sixty (60) days from the date of the Defendant's arraignment the court shall hold and conduct a discovery conference with all parties to the proceeding to determine:

[a] whether the prosecutor and/or prosecutor team has made a good faith, diligent effort to discover the existence of all documents, scientific tests and witness statements within the actual and constructive care, custody and control of the prosecutor and/or prosecutor team.

[b] to place upon the record any objections of the defendant to the court's order excluding and sealing documents, scientific tests and/or witness statements pursuant to the prosecutor's Motion for Protective Order.

[c] to determine the existence of exculpatory evidence within the actual and/or constructive care, custody and control of the prosecutor and/or prosecutor team.

SECTION 3: RELATIONSHIP TO OTHER LAWS

[a] In General: Except as provided in paragraph 2 [c], the requirements under section 2 [b] shall apply notwithstanding 18 USC 3500 [a] or any other provision of law including any rule, ordinance or statute.

[b] Classified Information. Classified Information as defined in section 1 of the Classified Information Procedures Act [18 USC App.] shall be considered and treated accordingly with the Classified Information Procedures Act.

SECTION 4: DEFENDANT'S WAIVER

[a] A defendant may not waive a provision of this section except in open court under oath.

[b] The Court may accept said waiver of rights under this Act if the Court determines by credible and competent evidence that the waiver is knowingly, intelligently and voluntarily entered into by the defendant in writing and the interests of justice require the proposed waiver of rights.

SECTION 5: REMEDIES

[a] Noncompliance:

[1] In General—Before entry of judgment, upon motion of the defendant or by court sua sponte, if there is reason to believe the Prosecutor and/or Prosecutor Team has failed to comply with the terms and provisions of this Act, the Court shall order the Prosecutor and/or Prosecutor Team to show cause why the court should not find the Prosecutor and/or the Prosecutor Team is not in compliance with the terms and provisions of this Act.

[b] Findings: If the Court determines that the Prosecutor and/or Prosecutor Team is not in compliance with the terms and provisions of this Act the court shall--

- [1] determine the extent of and reason for the noncompliance, and
- [2] enter into the record a factual finding by the court.

[c] Remedies Required:

[1] In General---If the court determines that the Prosecutor and/or Prosecutor Team has violated the requirements of disclosure under the terms and provisions of this Act or has not acted in a timely manner, the court shall order an appropriate remedy.

[2] Types of Remedies---A remedy under this subsection may include:

- [a] postponement or adjournment of the proceedings,
- [b] exclusion or limitation of testimony or evidence,
- [c] granting a motion for a new trial and ordering a new trial,
- [d] entering a directed verdict of not guilty.

[e] dismissal of the information and/or indictment with prejudice,

[f] ordering the imposition on monetary sanctions, or

[g] any other remedy determined to be appropriate by the court.

[3] Factors.---In determining the appropriate remedy for the violation of the terms and provisions of this Act the court shall consider the totality of the facts and circumstances, including---

[a] the seriousness of the violation,

[b] the willfulness of the violation,

[c] the detrimental effect the violation had on the fair trial rights of the defendant

[d] whether the violation resulted from innocent error, negligence, gross negligence, recklessness or knowing, willful conduct, and,

[e] the effectiveness of the remedy to restore the defendants fair trial and due process rights.

[4] Defendants Cost:

[a] In General---If the court grants relief on a finding that the violation of the Act was due to negligence, gross negligence, recklessness and/or knowing, willful conduct by the Prosecutor and/or Prosecutor Team, the court may order sanctions be imposed upon the Prosecutor and/or government that the defendant recover all attorney fees and costs associated with the defense of the information and/or indictment.

[5] Source of Payments for Costs and Expenses---Costs and expensed ordered by the court,

[a] shall be paid by the Executive Agency, as defined in section 105 of title 5 of USC, that brings the criminal prosecution on behalf of the United States, from funds appropriated to that Executive Agency; and

[b] may not be paid from the appropriation under section 1304 of title 31 of the USC.

SECTION 6: DUTY TO DISCLOSE EXCULPATORY EVIDENCE AND/OR INFORMATION

[a] Definition of Exculpatory Information and/or Evidence:

[1] Exculpatory Evidence and/or Information shall mean any document, scientific test, witness statement, as defined in Section 2 [a] [2] [3] [4] and [6] of this Act and/or the identity of any person who has any information and/or fact that exonerates the defendant, tends to exonerate the defendant, or can lead to information and/or facts that could exonerate the defendant and/or any information and/or fact that could be used to determine the credibility of any witness and/or could lead to any information and/or fact that could be used to determine and/or test the credibility and veracity of any witness and/or any information, tangible, intangible and/or testimonial that could affect the outcome of the criminal proceedings within the actual and/or constructive care, custody and control of the Prosecutor and/or the Prosecutor Team.

[b] The Prosecutor's Duty to Disclose---The prosecutor and/or prosecutor team shall disclose to the defendant any and all documents, scientific tests, witness statements, identity of witness, information and facts defined in section 6 [a] [1] of this Act immediately, but no later than twenty four hours, upon receipt of the actual and/or constructive care, custody and control of said documents, scientific tests, witness statements, witness identity, the identity of any person, information and facts.

[c] The Prosecutor's duty to disclose this evidence, documents, scientific tests, witness statements, witness identity, information and facts is a continuing duty and obligation that exists all throughout the criminal proceedings including any post conviction proceeding and appeal proceeding. The duty and obligation of the prosecutor for the disclosure of exculpatory evidence and information, as defined above, begins upon the arrest of the defendant and continues until the last post conviction proceeding is terminated by a court of competent jurisdiction and also includes any civil cause of action that might arise from the failure to disclose.

[d] Civil Action for the Failure to Disclose Exculpatory Evidence---

[1] In General---Every person who, under color of statute, ordinance, regulation, custom or usage of the laws of the United States subjects or causes to be subjected any person charged with a criminal offense or a violation of the laws of the United States to suffer the deprivation of any rights, privileges and immunities established by Section 6 [a] [1] [b] [c] of this Act and the provisions thereof shall be liable for money damages for all damages proximately caused by said deprivation and violation of the terms and provisions of this Act and other relief to the party injured in an action at law, suit in equity, or other proper proceedings for redress, except said action shall not apply to any suit against any judge.

[2] This civil cause of action for money damages directly and proximately caused by a violation of the applicable provisions of this Act and the provisions therein shall apply to all actions that either result in a acquittal of the defendant on the original charges or those convictions overturned and declared naught by a court of competent jurisdiction, including any declaration overturning any conviction due to any post conviction proceeding.

[3] This civil cause of action for money damages shall exist and remain operative and applicable in addition to any other remedy under the terms and provisions of this Act.

[4] Attorney Fees and Cost---Every person who, under color of statute, ordinance, regulation, custom or usage of the laws of the United States held liable for the violation of Section 6 [a] [1] [b] [c] of this Act shall be liable to the injured party not only for monetary damages awarded by judgment, but for all reasonable attorney fees and cost associated with the civil action.

SECTION 7: TECHNICAL AND CONFORMING AMENDMENTS

[a] Table of Sections---The table of sections for chapter 201 of title 18, United States Code, is amended by adding at the end the following:

3014: Duty to Disclose Evidence.

[b] Demands for Production of Statements and Reports of Witnesses---Section 3500 [a] of title 18, United States Code, is amended by striking “in” and inserting “except as provided in section 3014.”