



HOUSE BILL 704: Right to Appeal Giglio Notification.

This Bill Analysis reflects the contents of the bill as it was presented in committee.

2023-2024 General Assembly

Committee:	House Judiciary 3. If favorable, re-refer to Rules, Calendar, and Operations of the House	Date:	April 25, 2023
Introduced by:	Reps. Blackwell, John, Greene, Carson Smith	Prepared by:	Kara McCraw
Analysis of:	First Edition		Staff Attorney

OVERVIEW: *HB 704 would create a process for notification, due process, and appeal of a notification that a law enforcement officer may not be called to testify at trial based on bias, interest, or lack of credibility.*

CURRENT LAW: The United States Supreme Court, in Giglio v. United States, 405 U.S. 150 (1972), held that due process requires disclosure of evidence that may impact a witness's credibility when the reliability of that witness may be determinative of guilt or innocence.

G.S. 17C-16 and G.S. 17E-16 create a reporting mechanism for written notifications that law enforcement officials receive stating that they may not be called to testify at trial based on bias, interest, or lack of credibility by a judge, district attorney or United States attorney, or agency head (Giglio notification). Any person certified by either the North Carolina Criminal Justice Education and Trainings Standards Commission or the North Carolina Education and Training Standards Commission (Commissions) or who has received conditional offers of employment must provide notice of the Giglio notification to the following:

- The relevant Criminal Justice Standards Division or the Justice Officers' Standards Division (Standards Divisions).
- The person's agency head.

The agency head and notifying authority must also report the Giglio notification to the Standards Divisions. Reports must also be made to the Standards Divisions if the notification is rescinded.

When transferring a person's certification, the Standards Divisions must notify the new agency head and elected district attorneys in the relevant prosecutorial districts of the Giglio notification.

Persons who receive a Giglio notification may apply for a hearing before the superior court for a judicial determination as to whether the person received a notification that the person may not be called to testify based on bias, interest or lack of credibility.

BILL ANALYSIS: HB 704 would create a process for review of Giglio notifications, as follows:

- Before a judge, district attorney or United States attorney, or agency head (notifying authority) could issue a notification to a person that they may not be called to testify based on bias, interest, or lack of credibility (notification), the notifying authority would be required to give the person 30 days' preliminary notice. The preliminary notice would include the evidence for this determination, and information on when the person could present material in defense of the determination, with assistance of counsel in the person's discretion. A person may appeal the adequacy of the preliminary notice to superior court.

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- If after the opportunity to be heard, the notifying authority issues the notification, written notice would be provided of the opportunity to appeal the notification in superior court. The person receiving the notification could either provide the notifying authority written notice of the intent to appeal or report the notification to the Division and agency head within 30 days of receipt of the notification.
- A person would appeal to superior court by filing a notice of hearing form developed by the Commissions with the clerks of courts as to (i) determination of disclosure of credibility, and (ii) adequacy of notice. The notice of hearing form would be served upon the notifying authority and the appropriate Division within 30 days of filing the notice of hearing with the clerk of court.
- The superior court would review the issue of whether law requires disclosure of the person's credibility to the defense based on the preponderance of the evidence. If the superior court determines disclosure is required, the person would provide the required notice to the Standards Division and agency head, along with the court's findings. If the superior court determines that disclosure is not required, the notification would be rescinded by the notifying authority.
- The superior court would review the issue of sufficiency of the preliminary notice and notification in compliance with the statute based on the preponderance of the evidence. If the court finds the notice requirements were not complied with, the person would have the right to present a defense to the notifying authority. If the court finds the notice was sufficient, the person would provide the required notice to the Standards Division and agency head.
- A notifying authority could remove a notification based on receipt of additional information, changes in circumstances, or other reasons, and would provide written notice of the removal to the person, relevant Division, and agency head.
- Beginning one year after a notification is received by the Division, a person could petition to be exempt from the reporting requirements for transfer to a new agency. The petition would be granted if additional supporting or corroborating information or a change in factual circumstances establish by a preponderance of the evidence that law did not require disclosure of a person's credibility to the defense.

HB 704 would also clarify the following:

- Reports and notifications received by a person or the agency head would not be public records.
- The requirements of the act do not limit the constitutional obligations of prosecutors or judges to make disclosures as to a witness's credibility to criminal defendants.

HB 704 would prohibit an employer from using a notification as the sole reason for taking or denying certain employment actions, including demotions, suspensions, and terminations, but would allow the use of the underlying facts for the notification in those actions.

HB 704 would allow any individual who received a notification from a notifying authority prior to enactment of the act to apply for a hearing in superior court for review of the notification by the preponderance of the evidence.

EFFECTIVE DATE: HB 704 would become effective when it becomes law.