

As Amended by House Committee

Session of 2014

HOUSE BILL No. 2445

By Committee on Corrections and Juvenile Justice

1-16

1 AN ACT concerning criminal procedure; relating to discovery; amending
2 K.S.A. 22-3213 and K.S.A. 2013 Supp. 22-3212 and repealing the
3 existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2013 Supp. 22-3212 is hereby amended to read as
7 follows: 22-3212.(a) Upon request, the prosecuting attorney shall permit
8 the ~~defendant~~ defense to inspect and copy or photograph the following, if
9 relevant: (1) Written or recorded statements or confessions made by the
10 defendant, or copies thereof, which are or have been in the possession,
11 custody or control of the prosecution, the existence of which is known, or
12 by the exercise of due diligence may become known, to the prosecuting
13 attorney; (2) results or reports of physical or mental examinations, and of
14 scientific tests or experiments made in connection with the particular case,
15 or copies thereof, the existence of which is known, or by the exercise of
16 due diligence may become known, to the prosecuting attorney; (3)
17 recorded testimony of the defendant before a grand jury or at an
18 inquisition; and (4) memoranda of any oral confession made by the
19 defendant and a list of the witnesses to such confession, the existence of
20 which is known, or by the exercise of due diligence may become known to
21 the prosecuting attorney.

22 (b) (1) Except as provided in subsection (1), upon request, the
23 prosecuting attorney shall permit the ~~defendant~~ defense to inspect and copy
24 or photograph books, papers, documents, tangible objects, buildings or
25 places, or copies, or portions thereof, which are or have been within the
26 possession, custody or control of the prosecution, and which are material
27 to the case and will not place an unreasonable burden upon the
28 prosecution.

29 **(2) The prosecuting attorney shall also provide a summary or**
30 **written report of what any expert witness intends to testify to on direct**
31 **examination, including the witness' qualifications and the witness'**
32 **opinions, at a reasonable time prior to trial by agreement of the**
33 **parties or by order of the court.**

34 ~~(2)~~ **(3)** Except as provided in subsections (a)(2) and (a)(4), and as
35 otherwise provided by law, this section does not authorize the discovery or
36 inspection of reports, memoranda or other internal government documents

1 made by officers in connection with the investigation or prosecution of the
2 case, or of statements made by state witnesses or prospective state
3 witnesses, other than the defendant.

4 ~~(3)~~ (4) Except as provided in subsection (g), this section does not
5 require the prosecuting attorney to provide unredacted vehicle
6 identification numbers or personal identifiers of persons mentioned in such
7 books, papers or documents.

8 ~~(4)~~ (5) As used in this subsection, personal identifiers include, but are
9 not limited to, birthdates, social security numbers, taxpayer identification
10 numbers, drivers license numbers, account numbers of active financial
11 accounts, home addresses and personal telephone numbers of any victims
12 or material witnesses.

13 ~~(5)~~ (6) If the prosecuting attorney does provide the defendant's
14 counsel with unredacted vehicle identification numbers or personal
15 identifiers, the defendant's counsel shall not further disclose the unredacted
16 numbers or identifiers to the defendant or any other person, directly or
17 indirectly, except as authorized by order of the court.

18 ~~(6)~~ (7) If the prosecuting attorney provides books, papers or
19 documents to the defendant's counsel with vehicle identification numbers
20 or personal identifiers redacted by the prosecuting attorney, the
21 prosecuting attorney shall provide notice to the defendant's counsel that
22 such books, papers or documents had such numbers or identifiers redacted
23 by the prosecuting attorney.

24 ~~(7)~~ (8) Any redaction of vehicle identification numbers or personal
25 identifiers by the prosecuting attorney shall be by alteration or truncation
26 of such numbers or identifiers and shall not be by removal.

27 (c) If the ~~defendant~~ defense seeks discovery and inspection under
28 subsection (a)(2) or subsection (b), the ~~defendant~~ defense shall:

29 (1) Permit the attorney for the prosecution to inspect and copy or
30 photograph scientific or medical reports, books, papers, documents,
31 tangible objects, or copies or portions thereof, which the ~~defendant~~ defense
32 intends to produce at any hearing, are material to the case and will not
33 place an unreasonable burden on the defense; and

34 (2) provide for the attorney for the prosecution, ~~no less than 30 days~~
35 ~~prior to trial~~, a summary or written report of what any expert witness
36 intends to testify, including the witness' qualifications; **and** the witness'
37 opinions ~~and the bases and reasons for such opinions~~, **at a reasonable**
38 **time prior to trial by agreement of the parties or by order of the court.**

39 (d) Except as to scientific or medical reports, subsection (c) does not
40 authorize the discovery or inspection of reports, memoranda or other
41 internal defense documents made by the defendant, or the defendant's
42 attorneys or agents in connection with the investigation or defense of the
43 case, or of statements made by the defendant, or by prosecution or defense

1 witnesses, or by prospective prosecution or defense witnesses, to the
2 defendant, the defendant's agents or attorneys.

3 (e) All disclosures shall be made at the times and in the sequence
4 directed by the court. In the absence of other directions from the court or
5 stipulation by the parties, such disclosures shall be made as provided in
6 this section.

7 (f) The prosecuting attorney and the ~~defendant~~ defense shall cooperate
8 in discovery and reach agreement on the time, place and manner of making
9 the discovery and inspection permitted, so as to avoid the necessity for
10 court intervention.

11 (g) Upon a sufficient showing the court may at any time order that the
12 discovery or inspection be denied, restricted, enlarged or deferred or make
13 such other order as is appropriate. Upon motion, the court may permit
14 either party to make such showing, in whole or in part, in the form of a
15 written statement to be inspected privately by the court. If the court enters
16 an order granting relief following such a private showing, the entire text of
17 the statement shall be sealed and preserved in the records of the court to be
18 made available to the appellate court in the event of an appeal.

19 (h) Discovery under this section must be completed no later than 21
20 days after arraignment or at such reasonable later time as the court may
21 permit.

22 (i) If, subsequent to compliance with an order issued pursuant to this
23 section, and prior to or during trial, a party discovers additional material
24 previously requested or ordered which is subject to discovery or inspection
25 under this section, the party shall promptly notify the other party or the
26 party's attorney or the court of the existence of the additional material. If at
27 any time during the course of the proceedings it is brought to the attention
28 of the court that a party has failed to comply with this section or with an
29 order issued pursuant to this section, the court may order such party to
30 permit the discovery or inspection of materials not previously disclosed,
31 grant a continuance, or prohibit the party from introducing in evidence the
32 material not disclosed, or it may enter such other order as it deems just
33 under the circumstances.

34 (j) For crimes committed on or after July 1, 1993, the prosecuting
35 attorney shall provide all prior convictions of the defendant known to the
36 prosecuting attorney that would affect the determination of the defendant's
37 criminal history for purposes of sentencing under a presumptive
38 sentencing guidelines system as provided in K.S.A. 21-4701 et seq., prior
39 to their repeal, or the revised Kansas sentencing guidelines act, article 68
40 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

41 (k) The prosecuting attorney and ~~defendant~~ defense shall be permitted
42 to inspect and copy any juvenile files and records of the defendant for the
43 purpose of discovering and verifying the criminal history of the defendant.

1 (1) (1) In any criminal proceeding, any property or material that
2 constitutes a visual depiction, as defined in subsection (a)(2) of K.S.A.
3 2013 Supp. 21-5510, and amendments thereto, shall remain in the care,
4 custody and control of either the prosecution, law enforcement or the
5 court.

6 (2) Notwithstanding subsection (b), if the state makes property or
7 material described in this subsection reasonably available to the
8 ~~defendant~~defense, the court shall deny any request by the
9 ~~defendant~~defense to copy, photograph, duplicate or otherwise reproduce
10 any such property or material submitted as evidence.

11 (3) For the purpose of this subsection, property or material described
12 in this subsection shall be deemed to be reasonably available to the
13 ~~defendant~~defense if the prosecution provides ample and liberal opportunity
14 for inspection, viewing and examination of such property or material at a
15 government facility, whether inside or outside the state of Kansas, by the
16 defendant, the defendant's attorney and any individual the defendant may
17 seek to qualify to furnish expert testimony at trial.

18 Sec. 2. K.S.A. 22-3213 is hereby amended to read as follows: 22-
19 3213. ~~(1)~~(a) In any criminal prosecution brought by the state of Kansas, no
20 statement or report in the possession of the prosecution which was made
21 by a state witness or prospective state witness ~~(, other than the defendant),~~
22 shall be the subject of subpoena, discovery, or inspection until ~~said~~such
23 witness has testified on direct examination at the preliminary hearing or in
24 the trial of the case.

25 ~~(2)~~(b) After a witness called by the state has testified on direct
26 examination, the court shall, on motion of the defendant, order the
27 prosecution to produce any statement ~~(, as hereinafter defined)~~in subsection
28 (d), of the witness in the possession of the prosecution which relates to the
29 subject matter as to which the witness has testified. If the entire contents of
30 any such statement relate to the subject matter of the testimony of the
31 witness, the court shall order it to be delivered directly to the
32 ~~defendant~~defense for ~~his~~ examination and use *by the defense*.

33 ~~(3)~~(c) If the prosecution claims that any statement ordered to be
34 produced under this section contains matter which does not relate to the
35 subject matter of the testimony of the witness, the court shall order the
36 prosecution to deliver such statement for the inspection of the court in
37 camera. Upon such delivery the court shall excise the portions of such
38 statement which do not relate to the subject matter of the testimony of the
39 witness. With such material excised, the court shall then direct delivery of
40 such statement to the ~~defendant~~defense for ~~his~~ use *by the defense*. If,
41 pursuant to such procedure, any portion of such statement is withheld from
42 the ~~defendant~~defense and the ~~defendant~~defense objects to such
43 withholding, and the trial is continued to an adjudication of the guilt of the

1 defendant, the entire text of such statement shall be preserved by the
2 prosecution and, in the event the defendant appeals, shall be made
3 available to the appellate court for the purpose of determining the
4 correctness of the ruling of the trial judge. Whenever any statement is
5 delivered to a ~~defendant~~*defense* pursuant to this section, the court in its
6 discretion, upon application of ~~said defendant~~*the defense*, may recess
7 proceedings in the trial for such time as it may determine to be reasonably
8 required for the examination of such statement by ~~said defendant~~*the*
9 *defense* and ~~his~~ preparation for its use in the trial.

10 ~~(4)(d)~~ The term "statement," as used in subsections ~~(2)(b)~~ and ~~(3)(c)~~
11 ~~of this section~~ in relation to any witness called by the prosecution means
12 —:

13 ~~(a)(1)~~ A written statement made by ~~said~~*such* witness and signed or
14 otherwise adopted or approved by ~~him~~*such witness*; or

15 ~~(b)(2)~~ a stenographic, mechanical, electrical, or other recording, or a
16 transcription thereof, which is a substantially verbatim recital of an oral
17 statement made by ~~said~~*such* witness and recorded contemporaneously with
18 the making of such oral statement.

19 Sec. 3. K.S.A. 22-3213 and K.S.A. 2013 Supp. 22-3212 are hereby
20 repealed.

21 Sec. 4. This act shall take effect and be in force from and after its
22 publication in the statute book.