

HOUSE BILL No. 2445

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

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

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

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

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

~~(2)~~(3) Except as provided in subsections (a)(2) and (a)(4), and as otherwise provided by law, this section does not authorize the discovery or inspection of reports, memoranda or other internal government documents made by officers in connection with the investigation or prosecution of the case, or of statements made by state witnesses or prospective state witnesses, other than the defendant.

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

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

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

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

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

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

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

(2) provide for the attorney for the prosecution, ~~no less than 30 days~~

~~prior to trial~~, a summary or written report of what any expert witness intends to testify, including the witness' qualifications; ~~and the witness' opinions and the bases and reasons for such opinions~~, *at a reasonable time prior to trial by agreement of the parties or by order of the court.*

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

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

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

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

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

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

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

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

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

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

(3) For the purpose of this subsection, property or material described in this subsection shall be deemed to be reasonably available to the ~~defendant~~ *defense* if the prosecution provides ample and liberal opportunity for inspection, viewing and examination of such property or material at a government facility, whether inside or outside the state of Kansas, by the

defendant, the defendant's attorney and any individual the defendant may seek to qualify to furnish expert testimony at trial.

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

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

~~(3)~~(c) If the prosecution claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the prosecution to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the ~~defendant~~ defense for his use by the defense. If, pursuant to such procedure, any portion of such statement is withheld from the ~~defendant~~ defense and the ~~defendant~~ defense objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the prosecution and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge. Whenever any statement is delivered to a ~~defendant~~ defense pursuant to this section, the court in its discretion, upon application of ~~said~~ defendant the defense, may recess proceedings in the trial for such time as it may determine to be reasonably required for the examination of such statement by ~~said~~ defendant the defense and his preparation for its use in the trial.

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

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

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

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

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.