

GRAND JURY PROTECTIVE ORDER STATUTES

All statutes provided by LexisNexis and current as of May 22, 2015



TABLE OF CONTENT

Table of Contents

Colorado.....	2
Connecticut	13
Florida.....	13
Hawaii.....	23
Illinois	28
Indiana.....	31
Iowa	35
Minnesota.....	38
New Hampshire.....	38
New Jersey.....	39
New York.....	44
Pennsylvania	45
Rhode Island.....	48
Vermont	52

COLORADO

Colo Crim P 16 (2015)

Rule 16. Discovery and Procedure Before Trial

Disclosure to the Defense

(a)

Prosecutor's Obligations.

(1) The prosecuting attorney shall make available to the defense the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case:

(I) Police, arrest and crime or offense reports, including statements of all witnesses;

(II) With consent of the judge supervising the grand jury, all transcripts of grand jury testimony and all tangible evidence presented to the grand jury in connection with the case;

(III) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(IV) Any books, papers, documents, photographs or tangible objects held as evidence in connection with the case;

(V) Any record of prior criminal convictions of the accused, any codefendant or any person the prosecuting attorney intends to call as a witness in the case;

(VI) All tapes and transcripts of any electronic surveillance (including wiretaps) of conversations involving the accused, any codefendant or witness in the case;

(VII) A written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call at trial;

(VIII) Any written or recorded statements of the accused or of a codefendant, and the substance of any oral statements made to the police or prosecution by the accused or by a codefendant, if the trial is to be a joint one.

(2) The prosecuting attorney shall disclose to the defense any material or

information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor.

(3) The prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.

(b)

Prosecutor's Performance of Obligations.

(1) The prosecuting attorney shall perform his or her obligations under subsections (a)(1)(I), (IV), (VII), and with regard to written or recorded statements of the accused or a codefendant under (VIII) as soon as practicable but not later than 21 days after the defendant's first appearance at the time of or following the filing of charges, except that portions of such reports claimed to be nondiscoverable may be withheld pending a determination and ruling of the court under Part III but the defense must be notified in writing that information has not been disclosed.

(2) The prosecuting attorney shall request court consent and provide the defense with all grand jury transcripts made in connection with the case as soon as practicable but not later than 35 days after indictment.

(3) The prosecuting attorney shall perform all other obligations under subsection (a)(1) as soon as practicable but not later than 35 days before trial.

(4) The prosecuting attorney shall ensure that a flow of information is maintained between the various investigative personnel and his or her office sufficient to place within his or her possession or control all material and information relevant to the accused and the offense charged.

(c)

Material Held by Other Governmental Personnel.

(1) Upon the defense's request and designation of material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel, the prosecuting attorney shall use diligent good faith efforts to cause such material to be made available to the defense.

(2) The court shall issue suitable subpoenas or orders to cause such material to be made available to the defense, if the prosecuting attorney's efforts are unsuccessful

and such material or other governmental personnel are subject to the jurisdiction of the court.

(d)

Discretionary Disclosures.

(1) The court in its discretion may, upon motion, require disclosure to the defense of relevant material and information not covered by Parts I (a), (b), and (c), upon a showing by the defense that the request is reasonable.

(2) The court may deny disclosure authorized by this section if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defense.

(3) Where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons. The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross-examination under CRE 705.

(e)

Matters not Subject to Disclosure.

(1) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or members of his legal staff.

(2) Informants. Disclosure shall not be required of an informant's identity where his or her identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

Part II.

Disclosure to Prosecution /P

(a)

The Person of the Accused.

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, upon request of the prosecuting attorney, the court may require the accused to give any nontestimonial identification as provided in Rule 41.1(h)(2).

(2) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the prosecuting attorney to the accused and his or her counsel. Provision may be made for appearance for such purposes in an order admitting the accused to bail or providing for his or her release.

(b)

Medical and Scientific Reports.

(1) Subject to constitutional limitations, the trial court may require that the prosecuting attorney be informed of and permitted to inspect and copy or photograph any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(2) Subject to constitutional limitations, and where the interests of justice would be served, the court may order the defense to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examinations and of scientific tests, experiments, or comparisons. The intent of this section is to allow the prosecution sufficient meaningful information to conduct effective cross-examination under CRE 705.

(c)

Nature of Defense.

Subject to constitutional limitations, the defense shall disclose to the prosecution the nature of any defense, other than alibi, which the defense intends to use at trial. The defense shall also disclose the names and addresses of persons whom the defense intends to call as witnesses at trial. At the entry of the not guilty plea, the court shall set a deadline for such disclosure. In no case shall such disclosure be less than 35 days before trial for a felony trial, or 7 days before trial for a non-felony trial, except for good cause shown. Upon receipt of the information required by this

subsection (c), the prosecuting attorney shall notify the defense of any additional witnesses which the prosecution intends to call to rebut such defense within a reasonable time after their identity becomes known.

(d)

Notice of Alibi.

The defense, if it intends to introduce evidence that the defendant was at a place other than the location of the offense, shall serve upon the prosecuting attorney as soon as practicable but not later than 35 days before trial a statement in writing specifying the place where he or she claims to have been and the names and addresses of the witnesses he or she will call to support the defense of alibi. Upon receiving this statement, the prosecuting attorney shall advise the defense of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after their names become known. Neither the prosecuting attorney nor the defense shall be permitted at the trial to introduce evidence inconsistent with the specification, unless the court for good cause and upon just terms permits the specification to be amended. If the defense fails to make the specification required by this section, the court shall exclude evidence in his behalf that he or she was at a place other than that specified by the prosecuting attorney unless the court is satisfied upon good cause shown that such evidence should be admitted.

Part III.

Regulation of Discovery /P

(a)

Investigation Not to be Impeded.

Subject to the provisions of Parts I (d) and III (d), neither the prosecuting attorney, the defense counsel, the defendant nor other prosecution or defense personnel shall advise persons having relevant material or information (except the defendant) to refrain from discussing the case or with showing any relevant material to any party, counsel or their agent, nor shall they otherwise impede counsel's investigation of the case. The court shall determine that the parties are aware of the provision.

(b)

Continuing Duty to Disclose.

If, subsequent to compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, including the names and addresses of any additional witnesses who have become

known or the materiality of whose testimony has become known to the district attorney after making available the written list required in part I (a)(1)(VII), he or she shall promptly notify the other party or his or her counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(c)

Custody of Materials.

Materials furnished in discovery pursuant to this rule may only be used for purposes of preparation and trial of the case and may only be provided to others and used by them for purposes of preparation and trial of the case, and shall be subject to such other terms, conditions or restrictions as the court, statutes or rules may provide. Defense counsel is not required to provide actual copies of discovery to his or her client if defense counsel reasonably believes that it would not be in the client's interest, and other methods of having the client review discovery are available. An attorney may also use materials he or she receives in discovery for the purposes of educational presentations if all identifying information is first removed.

(d)

Protective Orders.

With regard to all matters of discovery under this rule, upon a showing of cause, the court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party to make beneficial use thereof.

(e)

Excision.

(1) When some parts of certain material are discoverable under the provisions of these court rules, and other parts are not discoverable, the nondiscoverable material may be excised and the remainder made available in accordance with the applicable provisions of these rules.

(2) Material excised pursuant to judicial order 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.

(f)

In Camera Proceedings.

Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing 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.

(g)

Failure to Comply; Sanctions.

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 rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances.

Part IV.

Procedure /P

(a)

General Procedural Requirements.

(1) In all criminal cases, in procedures prior to trial, there may be a need for one or more of the following three stages:

(I) An exploratory stage, initiated by the parties and conducted without court supervision to implement discovery required or authorized under this rule;

(II) An omnibus stage, when ordered by the court, supervised by the trial court and court appearance required when necessary;

(III) A trial planning stage, requiring pretrial conferences when necessary.

(2) These stages shall be adapted to the needs of the particular case and may be modified or eliminated as appropriate.

(b)

Setting of Omnibus Hearing.

(1) If a plea of not guilty or not guilty by reason of insanity is entered at the time the

accused is arraigned, the court may set a time for and hold an omnibus hearing in all felony and misdemeanor cases.

(2) In determining the date for the omnibus hearing, the court shall allow counsel sufficient time:

(I) To initiate and complete discovery required or authorized under this rule;

(II) To conduct further investigation necessary to the defendant's case;

(III) To continue plea discussion.

(3) The hearing shall be no later than 35 days after arraignment.

(c)

Omnibus Hearing.

(1) If an omnibus hearing is held, the court on its own initiative, utilizing an appropriate checklist form, should:

(I) Ensure that there has been compliance with the rule regarding obligations of the parties;

(II) Ascertain whether the parties have completed the discovery required in Part I (a), and if not, make orders appropriate to expedite completion;

(III) Ascertain whether there are requests for additional disclosures under Part I (d);

(IV) Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;

(V) Ascertain whether there are any procedural or constitutional issues which should be considered; and

(VI) Upon agreement of the parties, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference.

(2) Unless the court otherwise directs, all motions and other requests prior to trial should be reserved for and presented orally or in writing at the omnibus hearing. All issues presented at the omnibus hearing may be raised without prior notice by either party or by the court. If discovery, investigation, preparation, and evidentiary hearing, or a formal presentation is necessary for a fair determination of any issue, the omnibus hearing should be continued until all matters are properly disposed of.

(3) Any pretrial motion, request, or issue which is not raised at the omnibus hearing shall be deemed waived, unless the party concerned did not have the information necessary to make the motion or request or raise the issue.

(4) Stipulations by any party or his or her counsel should be binding upon the parties at trial unless set aside or modified by the court in the interests of justice.

(5) A verbatim record of the omnibus hearing shall be made. This record shall include the disclosures made, all rulings and orders of the court, stipulations of the parties, and an identification of other matter determined or pending.

(d)

Omnibus Hearing Forms.

(1) The forms set out in the Appendix to Chapter 29 shall be utilized by the court in conducting the omnibus hearing. These forms shall be made available to the parties at the time of the defendant's first appearance.

(2) Nothing in the forms shall be construed to make substantive changes of these rules.

(e)

Pretrial Conference.

(1) Whenever a trial is likely to be protracted or otherwise unusually complicated, or upon request by agreement of the parties, the trial court may (in addition to the omnibus hearing) hold one or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. Matters which might be considered include:

(I) Making stipulations as to facts about which there can be no dispute;

(II) Marking for identification various documents and other exhibits of the parties;

(III) Excerpting or highlighting exhibits;

(IV) Waivers of foundation as to such documents;

(V) Issues relating to codefendant statements;

(VI) Severance of defendants or offenses for trial;

(VII) Seating arrangements for defendants and counsel;

(VIII) Conduct of jury examination, including any issues relating to confidentiality of juror locating information;

(IX) Number and use of peremptory challenges;

(X) Procedure on objections where there are multiple counsel or defendants;

(XI) Order of presentation of evidence and arguments when there are multiple counsel or defendants;

(XII) Order of cross-examination where there are multiple defendants;

(XIII) Temporary absence of defense counsel during trial;

(XIV) Resolution of any motions or evidentiary issues in a manner least likely to inconvenience jurors to the extent possible; and

(XV) Submission of items to be included in a juror notebook.

(2) At the conclusion of the pretrial conference, a memorandum of the matters agreed upon should be signed by the parties, approved by the court, and filed. Such memorandum shall be binding upon the parties at trial, on appeal and in postconviction proceedings unless set aside or modified by the court in the interests of justice. However, admissions of fact by an accused if present should bind the accused only if included in the pretrial order and signed by the accused as well as his or her attorney.

(f)

Juror Notebooks.

Juror notebooks shall be available during all felony trials and deliberations to aid jurors in the performance of their duties. The parties shall confer about the items to be included in juror notebooks and, by the pre-trial conference or other date set by the court, shall make a joint submission to the court of items to be included in a juror notebook. In non-felony trials, juror notebooks shall be optional.

Part V.

Time Schedules and Discovery Procedures

(a)

Mandatory Discovery.

The furnishing of the items discoverable, referred to in Part I (a), (b) and (c) and Part II (b)(1), (c) and (d) herein, is mandatory and no motions for discovery with respect to such items may be filed.

(b)

Time Schedule.

(1) In the event the defendant enters a plea of not guilty or not guilty by reason of insanity, or asserts the defense of impaired mental condition, the court shall set a deadline for such disclosure to the prosecuting attorney of those items referred to in Parts II (b) (1) and (c) herein, subject to objections which may be raised by the defense within that period pursuant to Part III (d) of this rule. In no case shall such disclosure be less than 35 days before trial for a felony trial, or 7 days before trial for a non-felony trial, except for good cause shown.

(2) If either the prosecuting attorney or the defense claims that discoverable material under this rule was not furnished, was incomplete, was illegible or otherwise failed to satisfy this rule, or if claim is made that discretionary disclosures pursuant to Part I (d) should be made, the prosecuting attorney or the defense may file a motion concerning these matters and the motion shall be promptly heard by the court.

(3) For good cause, the court may, on motion of either party or its own motion, alter the time for all matters relating to discovery under this rule.

(c)

Cost and Location of Discovery.

The cost of duplicating any material discoverable under this rule shall be borne by the party receiving the material, based on the actual cost of copying the same to the party furnishing the material. Copies of any discovery provided to a defendant by court appointed counsel shall be paid for by the defendant. The place of discovery and furnishing of materials shall be at the office of the party furnishing it, or at a mutually agreeable location.

(d)

Compliance Certificate.

(1) When deemed necessary by the trial court, the prosecuting attorney and the defense shall furnish to the court a compliance certificate signed by all counsel listing specifically each item furnished to the other party. The court may, in its discretion, refuse to admit into evidence items not disclosed to the other party if such evidence was required to be disclosed under Parts I and II of this rule.

(2) If discoverable matters are obtained after the compliance certificate is filed, copies thereof shall be furnished forthwith to the opposing party and, upon application to the court, the court may either permit such evidence to be offered at trial or grant a continuance in its discretion.

CONNECTICUT

Conn Practice Book § 40-41 (2015)

Sec. 40-41. Ground for Protective Order

In deciding the motion for a protective order the judicial authority may consider the following:

- (1) The timeliness of the motion;
- (2) The protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation;
- (3) The maintenance of secrecy regarding informants as required for effective investigation of criminal activity;
- (4) The protection of confidential relationships, privileges and communications recognized by law; and
- (5) Any other relevant considerations.

FLORIDA

Fla R Crim P 3.220 (2015)

Rule 3.220. Discovery

(a) Notice of Discovery. --After the filing of the charging document, a defendant may elect to participate in the discovery process provided by these rules, including

the taking of discovery depositions, by filing with the court and serving on the prosecuting attorney a "Notice of Discovery" which shall bind both the prosecution and defendant to all discovery procedures contained in these rules. Participation by a defendant in the discovery process, including the taking of any deposition of a defendant or the filing of a public records request under chapter 119, Florida Statutes, for law enforcement records relating to the defendant's pending prosecution, which are nonexempt as a result of a codefendant's participation in discovery, shall be an election to participate in discovery and triggers a reciprocal discovery obligation for the defendant. If any defendant knowingly or purposely shares in discovery obtained by a codefendant, the defendant shall be deemed to have elected to participate in discovery.

(b) Prosecutor's Discovery Obligation.

(1) Within 15 days after service of the Notice of Discovery, the prosecutor shall serve a written Discovery Exhibit which shall disclose to the defendant and permit the defendant to inspect, copy, test, and photograph the following information and material within the state's possession or control, except that any property or material that portrays sexual performance by a child or constitutes child pornography may not be copied, photographed, duplicated, or otherwise reproduced so long as the state attorney makes the property or material reasonably available to the defendant or the defendant's attorney:

(A) a list of the names and addresses of all persons known to the prosecutor to have information that may be relevant to any offense charged or any defense thereto, or to any similar fact evidence to be presented at trial under section 90.404(2), Florida Statutes. The names and addresses of persons listed shall be clearly designated in the following categories:

(i) Category A. --These witnesses shall include (1) eye witnesses, (2) alibi witnesses and rebuttal to alibi witnesses, (3) witnesses who were present when a recorded or unrecorded statement was taken from or made by a defendant or codefendant, which shall be separately identified within this category, (4) investigating officers, (5) witnesses known by the prosecutor to have any material information that tends to negate the guilt of the defendant as to any offense charged, (6) child hearsay witnesses, (7) expert witnesses who have not provided a written report and a curriculum vitae or who are going to testify, and (8) informant witnesses, whether in custody, who offer testimony concerning the statements of a defendant about the issues for which the defendant is being tried.

(ii) Category B. --All witnesses not listed in either Category A or Category C.

(iii) Category C. --All witnesses who performed only ministerial functions or whom the prosecutor does not intend to call at trial and whose involvement with and knowledge of the case is fully set out in a police report or other statement furnished to the defense;

(B) the statement of any person whose name is furnished in compliance with the preceding subdivision. The term "statement" as used herein includes a written statement made by the person and signed or otherwise adopted or approved by the person and also includes any statement of any kind or manner made by the person and written or recorded or summarized in any writing or recording. The term "statement" is specifically intended to include all police and investigative reports of any kind prepared for or in connection with the case, but shall not include the notes from which those reports are compiled;

(C) any written or recorded statements and the substance of any oral statements made by the defendant, including a copy of any statements contained in police reports or report summaries, together with the name and address of each witness to the statements;

(D) any written or recorded statements and the substance of any oral statements made by a codefendant;

(E) those portions of recorded grand jury minutes that contain testimony of the defendant;

(F) any tangible papers or objects that were obtained from or belonged to the defendant;

(G) whether the state has any material or information that has been provided by a confidential informant;

(H) whether there has been any electronic surveillance, including wiretapping, of the premises of the defendant or of conversations to which the defendant was a party and any documents relating thereto;

(I) whether there has been any search or seizure and any documents relating thereto;

(J) reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons; and

(K) any tangible papers or objects that the prosecuting attorney intends to use in the hearing or trial and that were not obtained from or that did not belong to the defendant.

(L) any tangible paper, objects or substances in the possession of law enforcement that could be tested for DNA.

(M) whether the state has any material or information that has been provided by

an informant witness, including:

(i) the substance of any statement allegedly made by the defendant about which the informant witness may testify;

(ii) a summary of the criminal history record of the informant witness;

(iii) the time and place under which the defendant's alleged statement was made;

(iv) whether the informant witness has received, or expects to receive, anything in exchange for his or her testimony;

(v) the informant witness' prior history of cooperation, in return for any benefit, as known to the prosecutor.

(2) If the court determines, in camera, that any police or investigative report contains irrelevant, sensitive information or information interrelated with other crimes or criminal activities and the disclosure of the contents of the police report may seriously impair law enforcement or jeopardize the investigation of the other crimes or activities, the court may prohibit or partially restrict the disclosure.

(3) The court may prohibit the state from introducing into evidence any of the foregoing material not disclosed, so as to secure and maintain fairness in the just determination of the cause.

(4) As soon as practicable after the filing of the charging document the prosecutor shall disclose to the defendant any material information within the state's possession or control that tends to negate the guilt of the defendant as to any offense charged, regardless of whether the defendant has incurred reciprocal discovery obligations.

(c) Disclosure to Prosecution.

(1) After the filing of the charging document and subject to constitutional limitations, the court may require a defendant to:

(A) appear in a lineup;

(B) speak for identification by witnesses to an offense;

(C) be fingerprinted;

(D) pose for photographs not involving re-enactment of a scene;

(E) try on articles of clothing;

- (F) permit the taking of specimens of material under the defendant's fingernails;
- (G) permit the taking of samples of the defendant's blood, hair, and other materials of the defendant's body that involves no unreasonable intrusion thereof;
- (H) provide specimens of the defendant's handwriting; and
- (I) submit to a reasonable physical or medical inspection of the defendant's body.

(2) If the personal appearance of a defendant is required for the foregoing purposes, reasonable notice of the time and location of the appearance shall be given by the prosecuting attorney to the defendant and his or her counsel. Provisions may be made for appearances for such purposes in an order admitting a defendant to bail or providing for pretrial release.

(d) Defendant's Obligation.

(1) If a defendant elects to participate in discovery, either through filing the appropriate notice or by participating in any discovery process, including the taking of a discovery deposition, the following disclosures shall be made:

(A) Within 15 days after receipt by the defendant of the Discovery Exhibit furnished by the prosecutor pursuant to subdivision (b)(1)(A) of this rule, the defendant shall furnish to the prosecutor a written list of the names and addresses of all witnesses whom the defendant expects to call as witnesses at the trial or hearing. When the prosecutor subpoenas a witness whose name has been furnished by the defendant, except for trial subpoenas, the rules applicable to the taking of depositions shall apply.

(B) Within 15 days after receipt of the prosecutor's Discovery Exhibit the defendant shall serve a written Discovery Exhibit that shall disclose to and permit the prosecutor to inspect, copy, test, and photograph the following information and material that is in the defendant's possession or control:

(i) the statement of any person listed in subdivision (d)(1)(A), other than that of the defendant;

(ii) reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons; and

(iii) any tangible papers or objects that the defendant intends to use in the hearing or trial.

(2) The prosecutor and defendant shall perform their obligations under this rule in

a manner mutually agreeable or as ordered by the court.

(3) The filing of a motion for protective order by the prosecutor will automatically stay the times provided for in this subdivision. If a protective order is granted, the defendant may, within 2 days thereafter, or at any time before the prosecutor furnishes the information or material that is the subject of the motion for protective order, withdraw the defendant's notice of discovery and not be required to furnish reciprocal discovery.

(e) Restricting Disclosure. --The court on its own initiative or on motion of counsel shall deny or partially restrict disclosures authorized by this rule if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to either party.

(f) Additional Discovery. --On a showing of materiality, the court may require such other discovery to the parties as justice may require.

(g) Matters Not Subject to Disclosure.

(1) Work Product. --Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting or defense attorney or members of their legal staffs.

(2) Informants. --Disclosure of a confidential informant shall not be required unless the confidential informant is to be produced at a hearing or trial or a failure to disclose the informant's identity will infringe the constitutional rights of the defendant.

(h) Discovery Depositions.

(1) Generally. --At any time after the filing of the charging document any party may take the deposition upon oral examination of any person authorized by this rule. A party taking a deposition shall give reasonable written notice to each other party and shall make a good faith effort to coordinate the date, time, and location of the deposition to accommodate the schedules of other parties and the witness to be deposed. The notice shall state the time and the location where the deposition is to be taken, the name of each person to be examined, and a certificate of counsel that a good faith effort was made to coordinate the deposition schedule. After notice to the parties the court may, for good cause shown, extend or shorten the time and may change the location of the deposition. Except as provided herein, the procedure for taking the deposition, including the scope of the examination, and the issuance of a subpoena (except a subpoena duces tecum) for deposition by an attorney of record in the action, shall be the same as that provided in the Florida Rules of Civil Procedure. Any deposition taken pursuant to this rule may be used by any party for

the purpose of contradicting or impeaching the testimony of the deponent as a witness. The trial court or the clerk of the court may, upon application by a pro se litigant or the attorney for any party, issue subpoenas for the persons whose depositions are to be taken. In any case, including multiple defendants or consolidated cases, no person shall be deposed more than once except by consent of the parties or by order of the court issued on good cause shown. A witness who refuses to obey a duly served subpoena may be adjudged in contempt of the court from which the subpoena issued.

(A) The defendant may, without leave of court, take the deposition of any witness listed by the prosecutor as a Category A witness or listed by a co-defendant as a witness to be called at a joint trial or hearing. After receipt by the defendant of the Discovery Exhibit, the defendant may, without leave of court, take the deposition of any unlisted witness who may have information relevant to the offense charged. The prosecutor may, without leave of court, take the deposition of any witness listed by the defendant to be called at a trial or hearing.

(B) No party may take the deposition of a witness listed by the prosecutor as a Category B witness except upon leave of court with good cause shown. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexities of the issues involved, the complexity of the testimony of the witness (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition.

(C) A witness listed by the prosecutor as a Category C witness shall not be subject to deposition unless the court determines that the witness should be listed in another category.

(D) No deposition shall be taken in a case in which the defendant is charged only with a misdemeanor or a criminal traffic offense when all other discovery provided by this rule has been complied with unless good cause can be shown to the trial court. In determining whether to allow a deposition, the court should consider the consequences to the defendant, the complexity of the issues involved, the complexity of the witness' testimony (e.g., experts), and the other opportunities available to the defendant to discover the information sought by deposition. However, this prohibition against the taking of depositions shall not be applicable if following the furnishing of discovery by the defendant the state then takes the statement of a listed defense witness pursuant to section 27.04, Florida Statutes.

(2) Transcripts. --No transcript of a deposition for which the state may be obligated to expend funds shall be ordered by a party unless it is in compliance with general law.

(3) Location of Deposition. --Depositions of witnesses residing in the county in which the trial is to take place shall be taken in the building in which the trial shall

be held, such other location as is agreed on by the parties, or a location designated by the court. Depositions of witnesses residing outside the county in which the trial is to take place shall be taken in a court reporter's office in the county or state in which the witness resides, such other location as is agreed on by the parties, or a location designated by the court.

(4) Depositions of Sensitive Witnesses. --Depositions of children under the age of 16 shall be videotaped unless otherwise ordered by the court. The court may order the videotaping of a deposition or the taking of a deposition of a witness with fragile emotional strength to be in the presence of the trial judge or a special magistrate.

(5) Depositions of Law Enforcement Officers. --Subject to the general provisions of subdivision (h)(1), law enforcement officers shall appear for deposition, without subpoena, upon written notice of taking deposition delivered at the address of the law enforcement agency or department, or an address designated by the law enforcement agency or department, five days prior to the date of the deposition. Law enforcement officers who fail to appear for deposition after being served notice as required by the rule may be adjudged in contempt of court.

(6) Witness Coordinating Office/Notice of Taking Deposition. --If a witness coordinating office has been established in the jurisdiction pursuant to applicable Florida Statutes, the deposition of any witness should be coordinated through that office. The witness coordinating office should attempt to schedule the depositions of a witness at a time and location convenient for the witness and acceptable to the parties.

(7) Defendant's Physical Presence. --A defendant shall not be physically present at a deposition except on stipulation of the parties or as provided by this rule. The court may order the physical presence of the defendant on a showing of good cause. The court may consider (A) the need for the physical presence of the defendant to obtain effective discovery, (B) the intimidating effect of the defendant's presence on the witness, if any, (C) any cost or inconvenience which may result, and (D) any alternative electronic or audio/visual means available.

(8) Telephonic Statements. --On stipulation of the parties and the consent of the witness, the statement of any witness may be taken by telephone in lieu of the deposition of the witness. In such case, the witness need not be under oath. The statement, however, shall be recorded and may be used for impeachment at trial as a prior inconsistent statement pursuant to the Florida Evidence Code.

(i) Investigations Not to Be Impeded. --Except as is otherwise provided as to matters not subject to disclosure or restricted by protective orders, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons having relevant material or information (except the defendant) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation

of the case.

(j) Continuing Duty to Disclose. --If, subsequent to compliance with the rules, a party discovers additional witnesses or material that the party would have been under a duty to disclose or produce at the time of the previous compliance, the party shall promptly disclose or produce the witnesses or material in the same manner as required under these rules for initial discovery.

(k) Court May Alter Times. --The court may alter the times for compliance with any discovery under these rules on good cause shown.

(l) Protective Orders.

(1) Motion to Restrict Disclosure of Matters. --On a showing of good cause, the court shall at any time order that specified disclosures be restricted, deferred, or exempted from discovery, that certain matters not be inquired into, that the scope of the deposition be limited to certain matters, that a deposition be sealed and after being sealed be opened only by order of the court, or make such other order as is appropriate to protect a witness from harassment, unnecessary inconvenience, or invasion of privacy, including prohibiting the taking of a deposition. All material and information to which a party is entitled, however, must be disclosed in time to permit the party to make beneficial use of it.

(2) Motion to Terminate or Limit Examination. --At any time during the taking of a deposition, on motion of a party or of the deponent, and upon a showing that the examination is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the circuit court where the deposition is being taken may (1) terminate the deposition, (2) limit the scope and manner of the taking of the deposition, (3) limit the time of the deposition, (4) continue the deposition to a later time, (5) order the deposition to be taken in open court, and, in addition, may (6) impose any sanction authorized by this rule. If the order terminates the deposition, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of any party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(m) In Camera and Ex Parte Proceedings.

(1) Any person may move for an order denying or regulating disclosure of sensitive matters. The court may consider the matters contained in the motion in camera.

(2) Upon request, the court shall allow the defendant to make an ex parte showing of good cause for taking the deposition of a Category B witness.

(3) A record shall be made of proceedings authorized under this subdivision. If the

court enters an order granting relief after an in camera inspection or ex parte showing, the entire record of the proceeding shall be sealed and preserved and be made available to the appellate court in the event of an appeal.

(n) Sanctions.

(1) 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 an applicable discovery rule or with an order issued pursuant to an applicable discovery rule, the court may order the party to comply with the discovery or inspection of materials not previously disclosed or produced, grant a continuance, grant a mistrial, prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed, or enter such other order as it deems just under the circumstances.

(2) Willful violation by counsel or a party not represented by counsel of an applicable discovery rule, or an order issued pursuant thereto, shall subject counsel or the unrepresented party to appropriate sanctions by the court. The sanctions may include, but are not limited to, contempt proceedings against the attorney or unrepresented party, as well as the assessment of costs incurred by the opposing party, when appropriate.

(3) Every request for discovery or response or objection, including a notice of deposition made by a party represented by an attorney, shall be signed by at least 1 attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and list his or her address. The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection and that to the best of the signer's knowledge, information, or belief formed after a reasonable inquiry it is:

(A) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) not unreasonable or unduly burdensome or expensive, given the needs of the case and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of this rule, the court, on motion or on its own initiative, shall impose on the person who made the certification, the firm or agency

with which the person is affiliated, the party on whose behalf the request, response, or objection is made, or any or all of the above an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(o) Pretrial Conference.

(1) The trial court may hold 1 or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. The defendant shall be present unless the defendant waives this in writing.

(2) The court may set, and upon the request of any party shall set, a discovery schedule, including a discovery cut-off date, at the pretrial conference.

HAWAII

Haw R Penal P Rule 16 (2015)

Rule 16. Discovery

(a) Applicability.

Subject to subsection (d) of this rule, discovery under this rule may be obtained in and is limited to cases in which the defendant is charged with a felony, and may commence upon the filing in circuit court of an indictment, an information, or a complaint.

(b) Disclosure by the prosecution.

(1) Disclosure of matters within prosecution's possession.

The prosecutor shall disclose to the defendant or the defendant's attorney the following material and information within the prosecutor's possession or control:

(i) the names and last known addresses of persons whom the prosecutor intends to call as witnesses in the presentation of the evidence in chief, together with any relevant written or recorded statements, provided that statements recorded by the prosecutor shall not be subject to disclosure;

(ii) any written or recorded statements and the substance of any oral statements made by the defendant, or made by a co-defendant if intended to be used in a joint

trial, together with the names and last known addresses of persons who witnessed the making of such statements;

(iii) any reports or statements of experts, which were made in connection with the particular case or which the prosecutor intends to introduce, or which are material to the preparation of the defense and are specifically designated in writing by defense counsel, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(iv) any books, papers, documents, photographs, or tangible objects which the prosecutor intends to introduce, or which were obtained from or which belong to the defendant, or which are material to the preparation of the defense and are specifically designated in writing by defense counsel;

(v) a copy of any Hawai'i criminal record of the defendant and, if so ordered by the court, a copy of any criminal record of the defendant outside the State of Hawai'i;

(vi) whether there has been any electronic surveillance (including wiretapping) of conversations to which the defendant was a party or occurring on the defendant's premises; and

(vii) any material or information which tends to negate the guilt of the defendant as to the offense charged or would tend to reduce the defendant's punishment therefor.

(2) Disclosure of matters not within prosecution's possession.

Upon written request of defense counsel and specific designation by defense counsel of material or information which would be discoverable if in the possession or control of the prosecutor and which is in the possession or control of other governmental personnel, the prosecutor shall use diligent good faith efforts to cause such material or information to be made available to defense counsel; and if the prosecutor's efforts are unsuccessful the court shall issue suitable subpoenas or orders to cause such material or information to be made available to defense counsel.

(3) Definition.

The term "statement" as used in subsection (b)(1)(i) and (c)(2)(i) of this rule means:

(i) a written statement made by the witness and signed or otherwise adopted or approved by the witness; or

(ii) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by the

witness and recorded contemporaneously with the making of such oral statement.

(c) Disclosure by the defendant.

(1) Submission to tests, examinations or inspections.

Upon written request of the prosecutor, the court may require the defendant:

(i) to perform reasonable acts or undergo reasonable tests for purposes of identification; and

(ii) to submit to reasonable physical or medical inspection or examination of the defendant's body.

Reasonable notice of the time and place for such tests, inspections or examinations shall be given by the prosecutor to the defendant and the defendant's counsel who shall have the right to be present.

(2) Disclosure of materials and information.

The defendant shall disclose to the prosecutor the following material and information within the defendant's possession or control:

(i) the names and last known addresses of persons whom the defendant intends to call as witnesses, in the presentation of the evidence in chief, together with their relevant written or recorded statements, provided that discovery of alibi witnesses is governed by Rule 12.1, and provided further that statements recorded by the defendant's counsel shall not be subject to disclosure;

(ii) any reports or statements of experts, including results of physical or mental examinations and of scientific tests, experiments or comparisons, which the defendant intends to introduce as evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that witness' testimony;

(iii) any books, papers, documents, photographs, or tangible objects which the defendant intends to introduce as evidence at the trial.

(3) Disclosure of defenses.

The court may require that the prosecutor be informed of the nature of any defense which defense counsel intends to use at trial; provided, that the defense of alibi is governed by Rule 12.1.

(d) Discretionary disclosure.

Upon a showing of materiality and if the request is reasonable, the court in its discretion may require disclosure as provided for in this Rule 16 in cases other than those in which the defendant is charged with a felony, but not in cases involving violations.

(e) Regulation of discovery.

(1) Performance of obligations.

Except for matters which are to be specifically designated in writing by defense counsel under this rule, the prosecution shall disclose all materials subject to disclosure pursuant to subsection (b)(1) of this rule to the defendant or the defendant's attorney within ten (10) calendar days following arraignment and plea of the defendant. The parties may perform their obligations of disclosure in any manner mutually agreeable to the parties or by notifying the attorney for the other party that material and information, described in general terms, may be inspected, obtained, tested, copied or photographed at specified reasonable times and places.

(2) Continuing duty to disclose.

If subsequent to compliance with these rules or orders entered pursuant to these rules, a party discovers additional material or information which would have been subject to disclosure pursuant to this Rule 16, that party shall promptly disclose the additional material or information, and if the additional material or information is discovered during trial, the court shall also be notified.

(3) Custody of materials.

Except as otherwise provided in this subsection, any discovery material furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody and be used only for the purposes of conducting the attorney's side of the case, and shall be subject to such other terms and conditions as the court may provide. The attorney may provide the defendant with a copy of any discovery material obtained if the attorney notifies the prosecutor in writing and files a copy of such intention with the court, and the prosecutor does not file a motion for protective order within 10 days of the receipt of the notice.

(4) Protective orders.

Upon a showing of cause, the court may at any time order that specified disclosures or investigatory procedures be denied, restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit counsel to make beneficial use thereof. If a prosecution request for a protective order allowing the nondisclosure of witnesses for their personal safety is denied the prosecution shall have the right to an immediate appeal prior to trial of such denial, or in the alternative at its option, a

right to take a deposition under Rule 15 of these Rules.

(5) Matters not subject to disclosure.

(i) Work product.

Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of a party's attorney or members of the attorney's legal staff, provided that the foregoing shall not be construed to prohibit the disclosures required under section (c)(3) of this rule and Rule 12.1.

(ii) Informants.

Disclosure of an informant's identity shall not be required where the informant's identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure shall not be denied hereunder of the identity of a witness intended to be produced at a hearing or trial.

(6) In camera proceedings.

Upon request of any person, the court may permit any showing of cause for a denial or regulation of disclosures or any portion of such a showing to be made in camera. When some parts of certain material are discoverable under these rules and other parts are not discoverable, as much of the material shall then be disclosed as is consistent with these rules. If the court enters an order granting relief following a showing in camera, the entire record of such a showing, including any material excised pursuant to court order, shall be sealed, impounded and preserved in the records of the court to be made available to the reviewing court in the event of an appeal.

(7) Impeding investigations.

Except as is otherwise provided as to matters not subject to disclosure and protective orders, a party's attorney, the attorney's staff or agents shall not advise persons having relevant material or information (except the defendant) to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(8) Duty to confer and requirement for filing of written stipulation.

Counsel are required to confer concerning all disputed issues under this rule. Counsel for the moving party shall attach a certification of compliance with this requirement to any motion filed pursuant to this rule and shall also file a written stipulation of all pertinent matters agreed to as a result of the conferral.

(9) Sanctions.

(i) 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 rule or an order issued pursuant thereto, the court may order such party to permit the discovery, grant a continuance, or it may enter such other order as it deems just under the circumstances.

(ii) Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

ILLINOIS

Ill Sup Ct R 412 (2015)

Rule 412. Disclosure to Accused

(a) Except as is otherwise provided in these rules as to matters not subject to disclosure and protective orders, the State shall, upon written motion of defense counsel, disclose to defense counsel the following material and information within its possession or control:

(i) The names and last known addresses of persons whom the State intends to call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements, and a list of memoranda reporting or summarizing their oral statements. Upon written motion of defense counsel memoranda reporting or summarizing oral statements shall be examined by the court in camera and if found to be substantially verbatim reports of oral statements shall be disclosed to defense counsel;

(ii) Any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant, and a list of witnesses to the making and acknowledgment of such statements;

(iii) A transcript of those portions of grand jury minutes containing testimony of the accused and relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial;

(iv) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons, and a statement of qualifications of the expert;

(v) Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused; and

(vi) Any record of prior criminal convictions, which may be used for impeachment, of persons whom the State intends to call as witnesses at the hearing or trial.

If the State has obtained from the defendant pursuant to Rule 413(d) information regarding defenses the defendant intends to make, it shall provide to defendant not less than 7 days before the date set for the hearing or trial, or at such other time as the court may direct, the names and addresses of witnesses the State intends to call in rebuttal, together with the information required to be disclosed in connection with other witnesses by subdivisions (i), (iii), and (vi), above, and a specific statement as to the substance of the testimony such witnesses will give at the trial of the cause.

(b) The State shall inform defense counsel if there has been any electronic surveillance (including wiretapping) of conversations to which the accused was a party, or of his premises.

(c) Except as is otherwise provided in these rules as to protective orders, the State shall disclose to defense counsel any material or information within its possession or control which tends to negate the guilt of the accused as to the offense charged or which would tend to reduce his punishment therefor. The State shall make a good-faith effort to specifically identify by description or otherwise any material disclosed pursuant to this section based upon the information available to the State at the time the material is disclosed to the defense. At trial, the defendant may not offer evidence or otherwise communicate to the trier of fact the State's identification of any material or information as tending to negate the guilt of the accused or reduce his punishment.

(d) The State shall perform its obligations under this rule as soon as practicable following the filing of a motion by defense counsel.

(e) The State may perform these obligations in any manner mutually agreeable to itself and defense counsel or by:

(i) Notifying defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed, during specified reasonable times; and

(ii) Making available to defense counsel at the time specified such material and information, and suitable facilities or other arrangements for inspection, testing, copying and photographing of such material and information.

(f) The State should ensure that a flow of information is maintained between the various investigative personnel and its office sufficient to place within its possession or control all material and information relevant to the accused and the offense charged.

(g) Upon defense counsel's request and designation of material or information which would be discoverable if in the possession or control of the State, and which is in the possession or control of other governmental personnel, the State shall use diligent good faith efforts to cause such material to be made available to defense counsel; and if the State's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(h) Discretionary Disclosures. Upon a showing of materiality to the preparation of the defense, and if the request is reasonable, the court in its discretion may require disclosure to defense counsel of relevant material and information not covered by this rule.

(i) Denial of Disclosure. The court may deny disclosure authorized by this rule and Rule 413 if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.

(j) Matters Not Subject to Disclosure.

(i) Work Product. Disclosure under this rule and Rule 413 shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the State or members of its legal or investigative staffs, or of defense counsel or his staff.

(ii) Informants. Disclosure of an informant's identity shall not be required where his identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

(iii) National Security. Disclosure shall not be required where it involves a substantial risk of grave prejudice to national security and where a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not thus be denied hereunder regarding witnesses or material to be produced at a hearing or trial.

INDIANA

Ind Allen Super & Ct Ct 13 (2015)

Rule LR02-TR26-1. Pre-trial Discovery.

In all felony cases, the court has entered the following General Order concerning pre-trial discovery:

(A) The State shall disclose to the defendant the following material and information on or before thirty (30) days following the Initial Hearing.

(1) The names and last known addresses of persons whom the State may call as witnesses, together with

(a) their relevant written or recorded statements;

(b) memoranda containing substantially verbatim reports of their oral statements (if any memoranda exist);

(c) memoranda reporting or summarizing oral statements (if such memoranda exist);

(d) a brief statement indicating the nature of each witness' involvement in the case; such statements may be no more than a reference to statements described in paragraphs (A)(1), (a), (b), or (c) above.

(2) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgement of such statements.

(3) A transcript of the recorded grand jury testimony of persons whom the prosecuting attorney may call as witnesses at a hearing or trial. A typed transcript of said testimony shall be provided if it is available.

(4) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

(5) Any books, papers, documents, photographs, or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused, together with the location of such items and an indication of appropriate means for defense counsel's examination of same. Under circumstances where chain of custody issues are readily apparent, such as drug

cases, such chain shall be provided to the extent available on the disclosure date provided above and shall be supplemented:

- (a) upon defendant's written request;
- (b) by pre-trial conference; and
- (c) thereafter as ordered to complete such chain.

(6) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.

(7) A copy of any written agreement and the complete substance of any oral agreement made by the State with

- (a) any witnesses to secure their testimony or
- (b) any co-defendant or other person charged arising out of the same incident.

(8) Any evidence which tends to negate the guilt of the accused as to the crime charged or tends to reduce the class of the act alleged or which would tend to mitigate his punishment.

(9) Evidence of other crimes which the State intends to use at trial, pursuant to Rule 404, Indiana Rules of Evidence.

(10) Newly discovered material within the above categories shall be provided to opposing counsel as soon as reasonably possible following discovery of same.

(B) (1) The State shall perform these obligations in any manner mutually agreeable to the Prosecutor's Office and to defense counsel. The State shall provide legible copies of existing written statements described in paragraphs (A)(1), (2), (3), and (7). Other items shall be provided for examination, testing, copying, photographing, or other proper use either by agreement or at specified reasonable times and places. Defense counsel shall provide reasonable notice of such examination and shall schedule these examinations in cooperation with the State. An application to the court shall be made to obtain copies of audio or videotape. Said application shall state in specific terms the necessity for such copies.

(2) The State shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (A) above by filing with the court:

- (a) its witness list together with the statement described in (A)(1)(d);
- (b) a suitable description of memoranda and items provided, but not necessarily by providing copies of all such items to the court; and

(c) an indication of arrangements made for inspection, if any.

(C) Subject to constitutional limitations, and not later than thirty (30) days following the date that the State has provided to the defense the information required under this rule, defense counsel shall inform the State of any defense which counsel intends to present at a hearing or trial and shall furnish the State with the following information within counsel's possession and control:

(1) The names, last known addresses, dates of birth and social security numbers of persons defense counsel intends to call as witnesses.

(2) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.

(D) (1) The defense shall perform these obligations in any manner mutually agreeable to the Prosecutor's Office and to defense counsel. Defense shall provide the same documents in a fashion similar to the State's obligations described in (B)(1).

(2) The defense shall make a record of compliance with this order not more than five (5) days after the date set out in paragraph (C) above by filing with the court:

(a) its witness list together with the statement described in (C)(1)(a);

(b) a suitable description of items provided for examination, etc.; and

(c) the statement of defense described in (C).

(E) The court anticipates that compliance will be deemed satisfactory unless failure to comply is brought to the court's attention by Motion to Compel. Sanctions for failure of compliance or violations of orders on Motion to Compel shall be pursuant to Trial Rule 37. Prior to the filing of a Motion to Compel counsel shall comply with the provisions of Trial Rule 26(F).

(F) Nothing herein shall limit any party's right to seek protective orders to avoid destruction or other loss of evidence, or to seek deposition at such times as they may desire.

(G) The court may deny disclosure upon showing that:

(1) There is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweighs any usefulness of the disclosure to counsel.

(2) There is a paramount interest in non-disclosure of an informant's identity

and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure of the identity of witnesses to be produced at a hearing or trial will be required.

(3) Such determination of non-disclosure shall be by the court and shall not be within the discretion of the State or defense. Such non-disclosure shall be sought by motion for protective order.

(H) Disclosure shall not be required of:

(1) Any matter otherwise protected by law (however disclosing the identity of juvenile codefendants or witnesses shall not be barred because of delinquency non-disclosure statutes).

(2) Work product of counsel including memoranda of opinions, theories, or research for themselves or from their legal or in-house investigative staff.

(I) This discovery order is a continuing order through the trial of this cause and no written motion shall normally be required except to compel discovery, for a protective order, or for an extension of time.

(J) Failure of either party to engage in and comply with discovery shall not be excused by the parties' unsuccessful or incomplete efforts to enter into a plea agreement or other resolution of the case unless both parties waive in writing

(1) compliance with this order for a specified period of time and

(2) any speedy trial requirements.

(K) Any cost for reproduction or transcripts under this order shall be borne by the party to whom the information is provided except that as to pauper counsel defendants the costs shall be borne by the State or County.

(L) The time limits for providing discovery materials to opposing counsel set out at (A) and (B) herein shall be reduced to fifteen (15) days in the event that the defendant requests a speedy trial.

(M) Depositions should be scheduled for, and taken at, the Office of the Allen Prosecuting Attorney.

(N) Nothing in this Order shall be in contravention of case law or statute.

IOWA

Iowa R Crim P 2.14 (2015)

Rule 2.14 Discovery

2.14(1) Witnesses examined by the prosecuting attorney. When a witness subpoenaed by the prosecuting attorney pursuant to rule 2.5 is summoned by the prosecuting attorney after complaint, indictment or information, the defendant shall have a right to be present and have the opportunity to cross-examine any witnesses whose appearance before the county attorney is required by this rule.

2.14(2) Disclosure of evidence by the state upon defense motion or request.

a. Disclosure required upon request.

(1) Upon a filed pretrial request by the defendant the attorney for the state shall permit the defendant to inspect and copy or photograph: Any relevant written or recorded statements made by the defendant or copies thereof, within the possession, custody or control of the state, unless same shall have been included with the minutes of evidence accompanying the indictment or information; the substance of any oral statement made by the defendant which the state intends to offer in evidence at the trial, including any voice recording of same; and the transcript or record of testimony of the defendant before a grand jury, whether or not the state intends to offer same in evidence upon trial.

(2) When two or more defendants are jointly charged, upon the filed request of any defendant the attorney for the state shall permit the defendant to inspect and copy or photograph any written or recorded statement of a codefendant which the state intends to offer in evidence at the trial, and the substance of any oral statement which the state intends to offer in evidence at the trial made by a codefendant whether before or after arrest in response to interrogation by any person known to the codefendant to be a state agent.

(3) Upon the filed request of the defendant, the state shall furnish to defendant such copy of the defendant's prior criminal record, if any, as is then available to the state.

b. Discretionary discovery.

(1) Upon motion of the defendant the court may order the attorney for the state to permit the defendant to inspect, and where appropriate, to subject to scientific tests, items seized by the state in connection with the alleged crime. The court may further allow the defendant to inspect and copy books, papers, documents, statements, photographs or tangible objects which are within the possession, custody or control of the state, and which are material to the preparation of the

defense, or are intended for use by the state as evidence at the trial, or were obtained from or belong to the defendant.

(2) Upon motion of a defendant the court may order the attorney for the state to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, within the possession, custody or control of the state.

2.14(3) Disclosure of evidence by the defendant.

a. Documents and tangible objects. If the court grants the relief sought by the defendant under rule 2.14(2)(b)(1), the court may, upon motion of the state, order the defendant to permit the state to inspect and copy books, papers, documents, statements other than those of the accused, photographs or tangible objects which are not privileged and are within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at trial.

b. Reports of examinations and tests. If the court grants relief sought by the defendant under rule 2.14(2)(b)(2), the court may, upon motion of the state, order the defendant to permit the state to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant and which the defendant intends to introduce in evidence at the trial or which were prepared by a witness whom the defendant intends to call at the trial when such results or reports relate to the witness's testimony.

c. Time of motion. A motion for the relief provided under rule 2.14(3) shall be made, if at all, within five days after any order granting similar relief to the defendant.

2.14(4) Failure to employ evidence. When evidence intended for use and furnished under this rule is not actually employed at the trial, that fact shall not be commented upon at trial.

2.14(5) Continuing duty to disclose. If, subsequent to compliance with an order issued pursuant to this rule, either party discovers additional evidence, or decides to use evidence which is additional to that originally intended for use, and such additional evidence is subject to discovery under this rule, the party shall promptly file written notice of the existence of the additional evidence to allow the other party to make an appropriate motion for additional discovery.

2.14(6) Regulation of discovery.

a. Protective orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. In addition to any other grounds for issuing an order

pursuant to this paragraph, the court may limit or deny discovery or inspection, or limit the number of depositions to be taken if the court determines that any of the following exist:

(1) That granting the motion will unfairly prejudice the nonmoving party and will deny that party a fair trial.

(2) That the motion is intended only as a fishing expedition and that granting the motion will unduly delay the trial and will result in unjustified expense.

(3) That the granting of the motion will result in the disclosure of privileged information.

b. Time, place and manner of discovery and inspection. An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted and may prescribe such terms and conditions as are just.

c. Failure to comply. 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 rule or with an order issued pursuant to this rule, the court may upon timely application order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing any evidence not disclosed, or it may enter such other order as it deems just under the circumstances.

d. Secrecy of grand jury. Except where specific provisions require otherwise, grand jury proceedings remain confidential. However, any member of the grand jury and the clerk thereof, and any officer of the court, may be required by the court or any legislative committee duly authorized to inquire into the conduct or acts of any state officer which might be the basis for impeachment proceedings, to disclose the testimony of a witness examined before the grand jury for the purpose of ascertaining whether it is consistent with that given by the witness before the court or legislative committee, or to disclose the same upon a charge of perjury against the witness, or when in the opinion of the court or legislative committee such disclosure is necessary in the administration of justice.

No grand juror shall be questioned for anything the juror may say or any vote the juror may give in the grand jury relative to a matter legally pending before it, except for perjury of which the juror may have been guilty in making an accusation, or in giving testimony to any fellow jurors.

MINNESOTA

Minn R Crim P 18.04 (2015)

Rule 18.04 Record of Proceedings

Subd. 1. Verbatim Record. --A verbatim record must be made of all statements made, evidence taken, and events occurring before the grand jury except deliberations and voting.

The record must not include any grand juror's name. The record may be disclosed only to the court or prosecutor unless the court, on the defendant's motion for good cause, or on a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury, orders disclosure of the record or designated portions of it to the defendant or defense counsel.

Subd. 2. Transcript. --On the defendant's motion, and with notice to the prosecutor, the court at any time before trial must, subject to a protective order as may be granted under Rule 9.03, subd. 5, order that defense counsel may obtain a transcript or copy of:

(1) defendant's grand jury testimony;

(2) the grand jury testimony of witnesses the prosecutor intends to call at the defendant's trial; or

(3) the grand jury testimony of any witness, if defense counsel makes an offer of proof that a witness the defendant expects to call at trial will give relevant and favorable testimony for the defendant.

NEW HAMPSHIRE

NH Sup Ct RULE 52 (2015)

Rule 52. Grand Jury Transcripts

(1) Upon application of the Attorney General or upon the Court's own motion, a Justice of the Superior Court may authorize a stenographic record of the testimony of any witness before a grand jury to be taken by a sworn and qualified reporter. Upon the request of the Attorney General, a transcript of any recorded grand jury

proceedings shall be prepared and delivered to him for use only in the enforcement of the State's criminal laws. Without further authorization from the Court, the Attorney General shall not exhibit the transcript or disclose its contents to anyone except a member of his office or a law enforcement officer specifically assigned by him to perform duties to which the contents of the transcript are relevant.

(2) No later than five days before trial, or later for good cause shown, the Attorney General may petition the Court for authority to use at trial any transcript that has been delivered to him under § 1, above. The Court may grant such a petition upon a showing of particularized need for such use. The State shall not use the transcript of testimony of a witness to impeach, refresh recollection or otherwise without first providing a transcript of the entire testimony of that witness to opposing counsel at such reasonable time as the Court may order.

(3) Where any record of grand jury proceedings is authorized, the Justice authorizing the records shall make every effort to recognize and protect the rights and physical well-being of witnesses who testify before the grand jury, by issuing protective orders where necessary to prevent harm to a witness by the disclosure of his testimony.

(4) Upon application from a county attorney or the Attorney General, a Justice of the Superior Court may authorize bailiffs, interpreters, or other court personnel to be present while the grand jury is taking evidence, subject to the obligation to preserve the secrecy of the proceedings.

(5) Within ten days of a plea of not guilty to an indictment in support of which a grand jury has heard testimony that has been transcribed, the State shall inform defense counsel that transcription of testimony was authorized, provided that nothing in this subsection shall be deemed to require the State to reveal the identity of any witness before a grand jury.

(6) Upon application made no later than 30 days before trial, or later for good cause shown, a defendant, upon a showing of particularized need, may be authorized to examine and copy relevant parts of the stenographic record.

NEW JERSEY

NJ Court Rules R 3:13-3 (2015)

Rule 3:13-3. Discovery and Inspection

(a) Pre-Indictment Discovery. Unless the defendant agrees to more limited

discovery, where the prosecutor has made a pre-indictment plea offer, the prosecutor shall, at the time the plea offer is made, provide defense counsel with all available relevant material that would be discoverable at the time of indictment pursuant to paragraph (b)(1) of this rule, except that:

(1) where the prosecutor determines that pre-indictment delivery of all discoverable material would hinder or jeopardize a prosecution or investigation, the prosecutor, consistent with the intent of this rule, shall provide to defense counsel at the time the plea offer is made such relevant material as would not hinder or jeopardize the prosecution or investigation and shall advise defense counsel that complete discovery has not been provided; or

(2) where the prosecutor determines that physical or electronic delivery of the discoverable material would impose an unreasonable administrative burden on the prosecutor's office given the nature, format, manner of collation or volume of discoverable material, the prosecutor may in his or her discretion make discovery available by permitting defense counsel to inspect and copy or photograph such material at the prosecutor's office.

Notwithstanding the exceptions contained in paragraphs (a)(1) and (a)(2) of this rule, the prosecutor shall provide defense counsel with any exculpatory information or material.

(b) Post Indictment Discovery.

(1) Discovery by the Defendant. Except for good cause shown, the prosecutor's discovery for each defendant named in the indictment shall be delivered to the criminal division manager's office, or shall be available through the prosecutor's office, within seven days of the return or unsealing of the indictment. Good cause shall include, but is not limited to, circumstances in which the nature, format, manner of collation or volume of discoverable materials would involve an extraordinary expenditure of time and effort to copy. In such circumstances, the prosecutor may make discovery available by permitting defense counsel to inspect and copy or photograph discoverable materials at the prosecutor's office, rather than by copying and delivering such materials. The prosecutor shall also provide defense counsel with a listing of the materials that have been supplied in discovery. If any discoverable materials known to the prosecutor have not been supplied, the prosecutor shall also provide defense counsel with a listing of the materials that are missing and explain why they have not been supplied.

If the defendant is represented by the public defender, defendant's attorney shall obtain a copy of the discovery from the prosecutor's office or the criminal division manager's office prior to, or at, the pre-arraignment conference. However, if the defendant has retained private counsel, upon written request of counsel submitted along with a copy of counsel's entry of appearance and received by the prosecutor's office prior to the date of the pre-arraignment conference, the prosecutor shall,

within three business days, send the discovery to defense counsel either by U.S. mail at the defendant's cost or by e-mail without charge, with the manner of transmittal at the prosecutor's discretion. Defense counsel shall simultaneously send a copy of the request for mail or e-mail discovery, along with any request for waiver of the pre-arraignment conference under R. 3:9-1(a), to the criminal division manager's office.

If the defendant is unrepresented at the prearraignment conference, a copy of the discovery shall be provided to defense counsel upon request as provided for in the preceding paragraph, or at the arraignment/status conference, which shall occur no later than 28 days after the return or unsealing of the indictment.

A defendant who does not seek discovery from the State shall so notify the criminal division manager's office and the prosecutor, and the defendant need not provide discovery to the State pursuant to sections (b)(2) or (f), except as required by Rule 3:12-1 or otherwise required by law.

Discovery shall include exculpatory information or material. It shall also include, but is not limited to, the following relevant material:

(A) books, tangible objects, papers or documents obtained from or belonging to the defendant, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(B) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded. The prosecutor also shall provide the defendant with transcripts of all electronically recorded statements or confessions by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(C) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of the prosecutor;

(D) reports or records of prior convictions of the defendant;

(E) books, papers, documents, or copies thereof, or tangible objects, buildings or places which are within the possession, custody or control of the prosecutor, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained

and translated, if necessary, into reasonably usable form;

(F) names, addresses, and birthdates of any persons whom the prosecutor knows to have relevant evidence or information including a designation by the prosecutor as to which of those persons may be called as witnesses;

(G) record of statements, signed or unsigned, by such persons or by co-defendants which are within the possession, custody or control of the prosecutor and any relevant record of prior conviction of such persons. The prosecutor also shall provide the defendant with transcripts of all electronically recorded co-defendant and witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference, but only if the prosecutor intends to call that co-defendant or witness as a witness at trial.

(H) police reports that are within the possession, custody, or control of the prosecutor;

(I) names and addresses of each person whom the prosecutor expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(J) all records, including notes, reports and electronic recordings relating to an identification procedure, as well as identifications made or attempted to be made.

(2) Discovery by the State. Defense counsel shall forward a copy of the discovery materials to the prosecuting attorney no later than seven days before the arraignment/status conference. If, however, the arraignment/status conference was held within 28 days of indictment pursuant to R. 3:9-1(c), defense counsel shall provide a copy of the discovery materials to the prosecuting attorney by a date to be determined by the trial judge, except in no event later than 14 days after the date of the arraignment/status conference. Defense counsel shall also provide the prosecuting attorney with a listing of the materials that have been supplied in discovery. If any discoverable materials known to defense counsel have not been supplied, defense counsel also shall provide the prosecuting attorney with a listing of the materials that are missing and explain why they have not been supplied. A defendant shall provide the State with all relevant material, including, but not limited to, the following:

(A) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies thereof, which are within the possession, custody or control of defense counsel;

(B) any relevant books, papers, documents or tangible objects, buildings or places or copies thereof, which are within the possession, custody or control of defense counsel, including, but not limited to, writings, drawings, graphs, charts, photographs, video and sound recordings, images, electronically stored information, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form;

(C) the names, addresses, and birthdates of those persons known to defendant who may be called as witnesses at trial and their written statements, if any, including memoranda reporting or summarizing their oral statements;

(D) written statements, if any, including any memoranda reporting or summarizing the oral statements, made by any witnesses whom the State may call as a witness at trial. The defendant also shall provide the State with transcripts of all electronically recorded witness statements by a date to be determined by the trial judge, except in no event later than 30 days before the trial date set at the pretrial conference.

(E) names and address of each person whom the defense expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify, and a copy of the report, if any, of such expert witness, or if no report is prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is not furnished 30 days in advance of trial the expert may, upon application by the prosecutor, be barred from testifying at trial.

(3) Discovery Provided through Electronic Means. Unless otherwise ordered by the court, the parties may provide discovery pursuant to paragraphs (a) and (b) of this rule through the use of CD, DVD, e-mail, internet or other electronic means. Documents provided through electronic means shall be in PDF format. All other discovery shall be provided in an open, publicly available (non-proprietary) format that is compatible with any standard operating computer. If discovery is not provided in a PDF or open, publicly available format, the transmitting party shall include a self-extracting computer program that will enable the recipient to access and view the files that have been provided. Upon motion of the recipient, and for good cause shown, the court shall order that discovery be provided in the format in which the transmitting party originally received it. In all cases in which an Alcotest device is used, any Alcotest data shall, upon request, be provided for any Alcotest 7110 relevant to a particular defendant's case in a readable digital database format generally available to consumers in the open market. In all cases in which discovery is provided through electronic means, the transmitting party shall also include a list of the materials that were provided and, in the case of multiple disks, the specific disk on which they can be located.

(c) Motions for Discovery. No motion for discovery shall be filed unless the moving party certifies that the prosecutor and defense counsel have satisfied the discovery meet and confer requirements of R. 3:9-1(b).

(d) Documents Not Subject to Discovery. This rule does not require discovery of a party's work product consisting of internal reports, memoranda or documents made by that party or the party's attorney or agents, in connection with the investigation, prosecution or defense of the matter nor does it require discovery by the State of records or statements, signed or unsigned, of defendant made to defendant's attorney or agents.

(e) Protective Orders.

(1) Grounds. Upon motion and for good cause shown the court may at any time order that the discovery sought pursuant to this rule be denied, restricted, or deferred or make such other order as is appropriate. In determining the motion, the court may consider the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; confidential information recognized by law, including protection of confidential relationships and privileges; or any other relevant considerations.

(2) Procedure. The court may permit the showing of good cause to be made, in whole or in part, in the form of a written statement to be inspected by the court alone, and if the court thereafter enters a protective order, the entire text of the statement shall be sealed and preserved in the records of the court, to be made available only to the appellate court in the event of an appeal.

(f) Continuing Duty to Disclose; Failure to Comply. There shall be a continuing duty to provide discovery pursuant to this rule. 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 rule or with an order issued pursuant to this rule, it may order such party to permit the discovery of materials not previously disclosed, grant a continuance or delay during trial, or prohibit the party from introducing in evidence the material not disclosed, or it may enter such other order as it deems appropriate.

NEW YORK

NY CLS CPL 240.90 (2015)

240.90. Discovery; motion procedure

1. A motion by a prosecutor for discovery shall be made within forty-five days after

arraignment, but for good cause shown may be made at any time before commencement of trial.

2. A motion by a defendant for discovery shall be made as prescribed in section 255.20 of this chapter.

3. Where the interests of justice so require, the court may permit a party to a motion for an order of discovery or a protective order, or other affected person, to submit papers or to testify *ex parte* or *in camera*. Any such papers and transcript of such testimony shall be sealed, but shall constitute a part of the record on appeal.

PENNSYLVANIA

Pa R Crim P (2015)

Procedures Following Filing of Information

(A) Informal. Before any disclosure or discovery can be sought under these rules by either party, counsel for the parties shall make a good faith effort to resolve all questions of discovery, and to provide information required or requested under these rules as to which there is no dispute. When there are items requested by one party which the other party has refused to disclose, the demanding party may make appropriate motion. Such motion shall be made within 14 days after arraignment, unless the time for filing is extended by the court. In such motion the party must set forth the fact that a good faith effort to discuss the requested material has taken place and proved unsuccessful. Nothing in this provision shall delay the disclosure of any items agreed upon by the parties pending resolution of any motion for discovery.

(B) Disclosure by the Commonwealth.

(1) Mandatory. In all court cases, on request by the defendant, and subject to any protective order which the Commonwealth might obtain under this rule, the Commonwealth shall disclose to the defendant's attorney all of the following requested items or information, provided they are material to the instant case. The Commonwealth shall, when applicable, permit the defendant's attorney to inspect and copy or photograph such items.

(a) Any evidence favorable to the accused that is material either to guilt or to punishment, and is within the possession or control of the attorney for the Commonwealth;

(b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made that is in the possession or control of the attorney for the Commonwealth;

(c) the defendant's prior criminal record;

(d) the circumstances and results of any identification of the defendant by voice, photograph, or in-person identification;

(e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the defendant that are within the possession or control of the attorney for the Commonwealth;

(f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence; and

(g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained.

(2) Discretionary With the Court.

(a) In all court cases, except as otherwise provided in Rules 230 (Disclosure of Testimony Before Investigating Grand Jury) and 556.10 (Secrecy; Disclosure), if the defendant files a motion for pretrial discovery, the court may order the Commonwealth to allow the defendant's attorney to inspect and copy or photograph any of the following requested items, upon a showing that they are material to the preparation of the defense, and that the request is reasonable:

(i) the names and addresses of eyewitnesses;

(ii) all written or recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial;

(iii) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices, whether such individuals have been charged or not; and

(iv) any other evidence specifically identified by the defendant, provided the defendant can additionally establish that its disclosure would be in the interests of justice.

(b) If an expert whom the attorney for the Commonwealth intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare, and that the attorney for the Commonwealth disclose, a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(C) Disclosure by the Defendant.

(1) In all court cases, if the Commonwealth files a motion for pretrial discovery, upon a showing of materiality to the preparation of the Commonwealth's case and that the request is reasonable, the court may order the defendant, subject to the defendant's rights against compulsory self-incrimination, to allow the attorney for the Commonwealth to inspect and copy or photograph any of the following requested items:

(a) results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case, or copies thereof, within the possession or control of the defendant, that the defendant intends to introduce as evidence in chief, or were prepared by a witness whom the defendant intends to call at the trial, when results or reports relate to the testimony of that witness, provided the defendant has requested and received discovery under paragraph (B)(1)(e); and

(b) the names and addresses of eyewitnesses whom the defendant intends to call in its case-in-chief, provided that the defendant has previously requested and received discovery under paragraph (B)(2)(a)(i).

(2) If an expert whom the defendant intends to call in any proceeding has not prepared a report of examination or tests, the court, upon motion, may order that the expert prepare and the defendant disclose a report stating the subject matter on which the expert is expected to testify; the substance of the facts to which the expert is expected to testify; and a summary of the expert's opinions and the grounds for each opinion.

(D) Continuing Duty to Disclose. If, prior to or during trial, either party discovers additional evidence or material previously requested or ordered to be disclosed by it, which is subject to discovery or inspection under this rule, or the identity of an additional witness or witnesses, such party shall promptly notify the opposing party or the court of the additional evidence, material, or witness.

(E) Remedy. 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 rule, the court may order such party to permit discovery or inspection, may grant a continuance, or may prohibit such party from introducing evidence not disclosed, other than testimony of the defendant, or it may enter such other order as it deems just under the circumstances.

(F) Protective Orders. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. Upon motion of any party, the court may permit the showing to be made, in whole or in part, in the form of a written statement to be inspected by the court in camera. If the court enters an order granting relief following a showing in camera, 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(s) in the event of an appeal.

(G) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the attorney for the Commonwealth or the attorney for the defense, or members of their legal staffs.

RHODE ISLAND

RI Super R Crim P Rule 16 (2015)

Rule 16. Discovery and inspection

(a) Discovery by Defendant. Upon written request by a defendant, the attorney for the State shall permit the defendant to inspect or listen to and copy or photograph any of the following items within the possession, custody, or control of the State, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the State:

(1) all relevant written or recorded statements or confessions, signed or unsigned, or written summaries of oral statements or confessions made by the defendant, or copies thereof;

(2) all relevant recorded testimony before a grand jury of the defendant, or in the case of a corporate defendant, of any present or former officer or employee of the defendant corporation concerning activities carried on, or knowledge acquired, within the scope of or reasonably relating to his or her employment;

(3) all written or recorded statements or confessions which were made by a co-defendant who is to be tried together with the moving defendant and which the

State intends to offer in evidence at the trial, and written summaries of oral statements or confessions of such a co-defendant in the event the State intends at the trial to offer evidence of such oral statements or confessions;

(4) all books, papers, documents, photographs, sound recordings, or copies thereof, or tangible objects, buildings, or places which are intended for use by the State as evidence at the trial or were obtained from or belong to the defendant;

(5) all results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and, subject to an appropriate protective order under paragraph (f), any tangible objects still in existence that were the subject of such tests or experiments;

(6) a written summary of testimony that the State intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence during its case-in-chief at trial, which describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(7) a written list of the names and addresses of all persons whom the attorney for the State expects to call as witnesses at the trial in support of the State's direct case;

(8) as to those persons whom the State expects to call as witnesses at the trial, all relevant recorded testimony before a grand jury of such persons and all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such testimony or statement of a witness is in the possession of the State, a summary of the testimony such person is expected to give at the trial;

(9) all reports or records of prior convictions of the defendant, or of persons whom the attorney for the State expects to call as witnesses at the trial, and within fifteen (15) days after receipt from the defendant of a list produced pursuant to paragraph (b)(3) of persons whom the defendant expects to call as witnesses all reports or records of prior convictions of such persons;

(10) all warrants which have been executed in connection with the particular case and the papers accompanying them, including affidavits, transcripts of oral testimony, returns and inventories.

(b) Discovery by the State. A defendant who seeks any discovery under subdivision (a) of this rule shall permit the State, upon receipt of written request, to inspect or listen to and copy or photograph any of the following items within the possession, custody or control of the defendant or the defendant's attorney:

(1) all books, papers, documents, photographs, sound recordings or copies thereof, or tangible objects, buildings, or places which are intended for use by the defendant as evidence at the trial;

(2) all results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and prepared by a person whom the defendant intends to call as a witness at the trial and, subject to an appropriate protective order under paragraph (f), any tangible objects still in existence that were the subject of such tests or experiments;

(3) a written summary of testimony that the defendant intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence as evidence at trial, which describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(4) a written list of the names and addresses of all persons other than the defendant whom the defendant expects to call as witnesses at the trial in the event the State presents a prima facie case;

(5) as to those persons other than the defendant whom the defendant expects to call as witnesses at the trial, all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such statement of a witness is in the possession of the defendant, a summary of the testimony such person is expected to give at the trial.

(c) Notice of Alibi. In the event a defendant seeks any discovery under subdivision (a) of this rule, then upon demand by the attorney for the State and delivery by him or her to the defendant of a written statement describing with specificity the date and time when and the place where the offense charged is alleged to have occurred, the defendant, within twenty-one (21) days after receipt of such demand and particulars, shall give written notification whether he or she intends to rely in any way on the defense of alibi. If the defendant does so intend, the notice shall state with specificity the place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call at the trial to establish such alibi. Within twenty-one (21) days after receipt of written notification of intent to rely on the defense of alibi, together with particulars thereof, the attorney for the State shall furnish to the defendant written notice of the names and addresses of the witnesses whom the State intends to call at the trial to establish defendant's presence at the place where and the time when the offense is alleged to have occurred.

(d) Material Not Subject to Discovery. Except as provided in subdivisions (a) and (b), this rule does not authorize discovery of internal reports, memoranda, or other documents made by a defendant, or his or her attorney or agent, or by the attorney for the State, or by officers or agents of the State, in connection with or in preparation for the prosecution or defense of a criminal proceeding.

(e) Failure to Call a Witness. The fact that a person was designated by a party

pursuant to subdivision (a)(6) or subdivision (b)(3) as an intended witness but was not called to testify shall not be commented upon at the trial by any party.

(f) Protective Orders. Upon motion and a sufficient showing the court may at any time order that the discovery or inspection sought pursuant to this rule be denied, restricted or deferred, or make such other order as is appropriate. In determining the motion, the court may consider, among other things, the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; and protection of confidential relationships and privileges recognized by law; the need to safeguard from loss or to preserve the condition of tangible objects sought to be discovered under paragraphs (a)(4), (a)(5), (b)(1) and (b)(2). The court may permit a party to make a showing of good cause, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court thereafter enters a protective order, the entire text of the party's statement shall be sealed and preserved in the records of the court, to be made available only to an appellate court in the event of an appeal. Upon application of a party who has, pursuant to subdivision (a)(6) or subdivision (b)(3), been requested to designate the names of persons who will be called as witnesses at the trial, the court may order that the testimony of one or more persons so designated be perpetuated by oral deposition pursuant to Rule 15 at a time and place and before an officer ordered by the court. Examination and cross-examination shall proceed as permitted at the trial. A record of the testimony of such a witness shall be made and shall be admissible at the trial as part of the case of the party who requested the taking of the deposition in the event the witness becomes unavailable without fault of such party or if the witness changes his or her testimony materially.

(g) Procedure and Timing.

(1) Defendant's Request. A request by a defendant for discovery and inspection shall be made within thirty (30) days after arraignment. The attorney for the state shall respond in writing within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time defendant may inspect the items being made available.

(2) State's Request. Within twenty-one (21) days after serving a response to a defendant's request for discovery and inspection, the attorney for the State may serve a defendant with a request for discovery and inspection. The defendant shall respond within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time the attorney for the State may inspect the items being made available.

(3) Discovery or Inspection Withheld. In the event a party refuses to comply with a request for discovery or inspection, the party who served the request may move for an order to compel compliance with his request.

(4) Extensions of Time. The court may on motion of a party and for good cause shown extend the time for serving requests or responses permitted or required under this rule.

(h) Continuing Duty to Disclose. If, subsequent to compliance with a request for discovery or with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, he or she shall promptly notify the other party of the existence thereof.

(i) Failure to Comply. 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 rule or with an order issued pursuant to this rule, it may order such party to provide the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material which or testimony of a witness whose identity or statement were not disclosed, or it may enter such other order as it deems appropriate.

VERMONT

VR Cr P Rule 16 (2015)

Rule 16. Discovery by Defendant

(a) Discovery by Defendant. Upon written request by a defendant, the attorney for the State shall permit the defendant to inspect or listen to and copy or photograph any of the following items within the possession, custody, or control of the State, the existence of which is known, or by the exercise of due diligence may become known to the attorney for the State:

(1) all relevant written or recorded statements or confessions, signed or unsigned, or written summaries of oral statements or confessions made by the defendant, or copies thereof;

(2) all relevant recorded testimony before a grand jury of the defendant, or in the case of a corporate defendant, of any present or former officer or employee of the defendant corporation concerning activities carried on, or knowledge acquired, within the scope of or reasonably relating to his or her employment;

(3) all written or recorded statements or confessions which were made by a co-defendant who is to be tried together with the moving defendant and which the

State intends to offer in evidence at the trial, and written summaries of oral statements or confessions of such a co-defendant in the event the State intends at the trial to offer evidence of such oral statements or confessions;

(4) all books, papers, documents, photographs, sound recordings, or copies thereof, or tangible objects, buildings, or places which are intended for use by the State as evidence at the trial or were obtained from or belong to the defendant;

(5) all results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and, subject to an appropriate protective order under paragraph (f), any tangible objects still in existence that were the subject of such tests or experiments;

(6) a written summary of testimony that the State intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence during its case-in-chief at trial, which describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(7) a written list of the names and addresses of all persons whom the attorney for the State expects to call as witnesses at the trial in support of the State's direct case;

(8) as to those persons whom the State expects to call as witnesses at the trial, all relevant recorded testimony before a grand jury of such persons and all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such testimony or statement of a witness is in the possession of the State, a summary of the testimony such person is expected to give at the trial;

(9) all reports or records of prior convictions of the defendant, or of persons whom the attorney for the State expects to call as witnesses at the trial, and within fifteen (15) days after receipt from the defendant of a list produced pursuant to paragraph (b)(3) of persons whom the defendant expects to call as witnesses all reports or records of prior convictions of such persons;

(10) all warrants which have been executed in connection with the particular case and the papers accompanying them, including affidavits, transcripts of oral testimony, returns and inventories.

(b) Discovery by the State. A defendant who seeks any discovery under subdivision (a) of this rule shall permit the State, upon receipt of written request, to inspect or listen to and copy or photograph any of the following items within the possession, custody or control of the defendant or the defendant's attorney:

(1) all books, papers, documents, photographs, sound recordings or copies thereof, or tangible objects, buildings, or places which are intended for use by the defendant as evidence at the trial;

(2) all results or reports in writing, or copies thereof, of physical or mental examinations, and of scientific tests or experiments made in connection with the particular case and prepared by a person whom the defendant intends to call as a witness at the trial and, subject to an appropriate protective order under paragraph (f), any tangible objects still in existence that were the subject of such tests or experiments;

(3) a written summary of testimony that the defendant intends to use under Rules 702, 703, or 705 of the Rhode Island Rules of Evidence as evidence at trial, which describes the witness' opinions, the bases and reasons for those opinions, and the witness' qualifications;

(4) a written list of the names and addresses of all persons other than the defendant whom the defendant expects to call as witnesses at the trial in the event the State presents a prima facie case;

(5) as to those persons other than the defendant whom the defendant expects to call as witnesses at the trial, all written or recorded verbatim statements, signed or unsigned, of such persons and, if no such statement of a witness is in the possession of the defendant, a summary of the testimony such person is expected to give at the trial.

(c) Notice of Alibi. In the event a defendant seeks any discovery under subdivision (a) of this rule, then upon demand by the attorney for the State and delivery by him or her to the defendant of a written statement describing with specificity the date and time when and the place where the offense charged is alleged to have occurred, the defendant, within twenty-one (21) days after receipt of such demand and particulars, shall give written notification whether he or she intends to rely in any way on the defense of alibi. If the defendant does so intend, the notice shall state with specificity the place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to call at the trial to establish such alibi. Within twenty-one (21) days after receipt of written notification of intent to rely on the defense of alibi, together with particulars thereof, the attorney for the State shall furnish to the defendant written notice of the names and addresses of the witnesses whom the State intends to call at the trial to establish defendant's presence at the place where and the time when the offense is alleged to have occurred.

(d) Material Not Subject to Discovery. Except as provided in subdivisions (a) and (b), this rule does not authorize discovery of internal reports, memoranda, or other documents made by a defendant, or his or her attorney or agent, or by the attorney for the State, or by officers or agents of the State, in connection with or in preparation for the prosecution or defense of a criminal proceeding.

(e) Failure to Call a Witness. The fact that a person was designated by a party

pursuant to subdivision (a)(6) or subdivision (b)(3) as an intended witness but was not called to testify shall not be commented upon at the trial by any party.

(f) Protective Orders. Upon motion and a sufficient showing the court may at any time order that the discovery or inspection sought pursuant to this rule be denied, restricted or deferred, or make such other order as is appropriate. In determining the motion, the court may consider, among other things, the following: protection of witnesses and others from physical harm, threats of harm, bribes, economic reprisals and other intimidation; maintenance of such secrecy regarding informants as is required for effective investigation of criminal activity; and protection of confidential relationships and privileges recognized by law; the need to safeguard from loss or to preserve the condition of tangible objects sought to be discovered under paragraphs (a)(4), (a)(5), (b)(1) and (b)(2). The court may permit a party to make a showing of good cause, in whole or in part, in the form of a written statement to be inspected by the court alone. If the court thereafter enters a protective order, the entire text of the party's statement shall be sealed and preserved in the records of the court, to be made available only to an appellate court in the event of an appeal. Upon application of a party who has, pursuant to subdivision (a)(6) or subdivision (b)(3), been requested to designate the names of persons who will be called as witnesses at the trial, the court may order that the testimony of one or more persons so designated be perpetuated by oral deposition pursuant to Rule 15 at a time and place and before an officer ordered by the court. Examination and cross-examination shall proceed as permitted at the trial. A record of the testimony of such a witness shall be made and shall be admissible at the trial as part of the case of the party who requested the taking of the deposition in the event the witness becomes unavailable without fault of such party or if the witness changes his or her testimony materially.

(g) Procedure and Timing.

(1) Defendant's Request. A request by a defendant for discovery and inspection shall be made within thirty (30) days after arraignment. The attorney for the state shall respond in writing within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time defendant may inspect the items being made available.

(2) State's Request. Within twenty-one (21) days after serving a response to a defendant's request for discovery and inspection, the attorney for the State may serve a defendant with a request for discovery and inspection. The defendant shall respond within fifteen (15) days after service of the request stating with respect to each item or category either that discovery and inspection will be permitted or stating that the request will not or cannot be complied with and the reason why. The response shall also specify the place and time the attorney for the State may inspect the items being made available.

(3) Discovery or Inspection Withheld. In the event a party refuses to comply with a request for discovery or inspection, the party who served the request may move for an order to compel compliance with his request.

(4) Extensions of Time. The court may on motion of a party and for good cause shown extend the time for serving requests or responses permitted or required under this rule.

(h) Continuing Duty to Disclose. If, subsequent to compliance with a request for discovery or with an order issued pursuant to this rule, and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, he or she shall promptly notify the other party of the existence thereof.

(i) Failure to Comply. 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 rule or with an order issued pursuant to this rule, it may order such party to provide the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material which or testimony of a witness whose identity or statement were not disclosed, or it may enter such other order as it deems appropriate.