

HOUSE BILL No. 2445

By Committee on Corrections and Juvenile Justice

1-16

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

4
5 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

35 (3) Except as provided in subsection (g), this section does not require
36 the prosecuting attorney to provide unredacted vehicle identification

1 numbers or personal identifiers of persons mentioned in such books,
2 papers or documents.

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

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

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

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

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

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

29 (2) provide for the attorney for the prosecution, no less than 30 days
30 prior to trial, a summary or written report of what any expert witness
31 intends to testify, including the witness' qualifications, the witness'
32 opinions and the bases and reasons for such opinions.

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

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

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

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

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

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

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

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

38 (l) (1) In any criminal proceeding, any property or material that
39 constitutes a visual depiction, as defined in subsection (a)(2) of K.S.A.
40 2013 Supp. 21-5510, and amendments thereto, shall remain in the care,
41 custody and control of either the prosecution, law enforcement or the
42 court.

43 (2) Notwithstanding subsection (b), if the state makes property or

1 material described in this subsection reasonably available to the
2 ~~defendant~~ defense, the court shall deny any request by the
3 ~~defendant~~ defense to copy, photograph, duplicate or otherwise reproduce
4 any such property or material submitted as evidence.

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

12 Sec. 2. K.S.A. 22-3213 is hereby amended to read as follows: 22-
13 3213. ~~(1)~~(a) In any criminal prosecution brought by the state of Kansas, no
14 statement or report in the possession of the prosecution which was made
15 by a state witness or prospective state witness ~~(, other than the defendant),~~
16 shall be the subject of subpoena, discovery, or inspection until ~~said~~ such
17 witness has testified on direct examination at the preliminary hearing or in
18 the trial of the case.

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

27 ~~(3)~~(c) If the prosecution claims that any statement ordered to be
28 produced under this section contains matter which does not relate to the
29 subject matter of the testimony of the witness, the court shall order the
30 prosecution to deliver such statement for the inspection of the court in
31 camera. Upon such delivery the court shall excise the portions of such
32 statement which do not relate to the subject matter of the testimony of the
33 witness. With such material excised, the court shall then direct delivery of
34 such statement to the ~~defendant~~ defense for ~~his~~ use *by the defense*. If,
35 pursuant to such procedure, any portion of such statement is withheld from
36 the ~~defendant~~ defense and the ~~defendant~~ defense objects to such
37 withholding, and the trial is continued to an adjudication of the guilt of the
38 defendant, the entire text of such statement shall be preserved by the
39 prosecution and, in the event the defendant appeals, shall be made
40 available to the appellate court for the purpose of determining the
41 correctness of the ruling of the trial judge. Whenever any statement is
42 delivered to a ~~defendant~~ defense pursuant to this section, the court in its
43 discretion, upon application of ~~said~~ ~~defendant~~ *the defense*, may recess

1 proceedings in the trial for such time as it may determine to be reasonably
2 required for the examination of such statement by ~~said defendant~~*the*
3 *defense* and ~~his~~ preparation for its use in the trial.

4 ~~(4)(d)~~ The term "statement," as used in subsections ~~(2)(b)~~ and ~~(3)(c)~~
5 ~~of this section~~ in relation to any witness called by the prosecution means
6 —:

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

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

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

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