



LEGAL UPDATE

AMENDMENTS TO DISCOVERY RULE 14

All criminal prosecutions in the Commonwealth are governed by the Rules of Criminal Procedure. The discovery rules are contained in Rule 14. Rule 14 has undergone significant revisions which clarify who is part of the prosecution team for discovery purposes and what is required to be turned over to the defense in criminal cases. These changes go into effect on March 1, 2025.

This legal update summarizes the changes to Rule 14 which most directly impact officers. As important members of the prosecution team, it is imperative that officers be aware of these rules and obligations so that they can work collaboratively with the prosecutor to make sure that all discovery obligations are met. Violations of discovery obligations can result in sanctions including the suppression of evidence and, in extreme cases, dismissal of the charges.

The full text of the Rules of Criminal Procedure, including Rule 14 and helpful reporter's notes, are available online on the [mass.gov](https://www.mass.gov) website.

Rule 14 (a) Prosecutor's Obligations

Subsection 1 defines "prosecution team." The prosecution team includes all people under the prosecuting office's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecuting office or have done so in the case.

The rule lists certain groups of people who are included in this definition. That list includes "personnel of police departments or other law enforcement agencies who were or are involved in the investigation of the case, before or after charges were issued, or were or are involved in the prosecution of the case." It also includes members of joint state and federal task forces who were or are involved in the investigation or prosecution of a case.

Subsection 2 articulates the prosecutor's duties with respect to discovery.

Prosecutors are required to advise all members of the prosecution team of the discovery obligations and to inquire of each member of the team as to the existence of such items. Prosecutors are also required to collect and disclose to the defense all discovery that is in the possession, custody, or control of any member of the prosecution team.

Subsection 3 requires the prosecutor to promptly notify the defense of any item or information subject to disclosure which cannot be promptly copied or made available to the defense. They are also required to instruct the appropriate member of the prosecution team to preserve the item until it can be disclosed.

Subsection 4 requires the prosecutor to notify the defense of any discovery item that is lost, destroyed, altered, is no longer available or information or items that a member of the prosecution team refuses to provide to the prosecutor.

Rule 14(b): Mandatory Discovery

Items listed in this rule which are in the possession, custody, or control of the prosecutor are required to be disclosed, copied or made available for inspection to the defense in every case. The defense is not required to file a motion to get these items. If the items exist and are within the prosecutor's possession, custody or control, they must be turned over automatically.

Mandatory discovery includes:

Any written or recorded statements, and the substance of any oral statements, made by the defendant or a co-defendant.

The names, addresses, dates of birth, and known contact information of the Commonwealth's prospective witnesses other than law enforcement witnesses.

Written or recorded statements of persons the prosecutor may call as witnesses, and notes of interviews by law enforcement with persons the prosecutor may call as witnesses, unless contained within a disclosed statement or report.

The names, business telephone numbers, business email addresses, and business addresses of prospective law enforcement witnesses.

All photographs, video and audio recordings, or other tangible objects, all police or investigator reports, and all intended exhibits.

Reports of physical examinations of any person or of scientific tests or experiments.

A summary of identification procedures, and all written, recorded, or oral statements made in the presence of or by an identifying witness that are relevant to the issue of identity or to the fairness or accuracy of the identification procedures.

For specific guidance on the application of this case or any law, please consult your supervisor or your department's legal advisor.

Rule 14(b)(2): Items and Information Favorable to the Defense

Mandatory discovery also includes any information favorable to the defense. Any item or information that is favorable to the defense must be turned over automatically.

“Items and information favorable to the defense means items or information that tend to:

- (i) Cast doubt on an aspect of guilt as to an element of any count of a charged or lesser included offense;
- (ii) Cast doubt on the credibility or accuracy of any evidence, including identification or scientific evidence, the prosecutor may introduce;
- (iii) Cast doubt on the credibility of the testimony of any witness the prosecutor may call;
- (iv) Cast doubt on the admissibility of any evidence or testimony the prosecutor may introduce;
- (v) Support the suppression or exclusion of any evidence or testimony the prosecutor may introduce;
- (vi) Mitigate the charged offense or offenses or any lesser included offense or offenses, diminish the defendant’s culpability, or mitigate the sentence;
- (vii) Establish a defense theory or recognized affirmative defense or exemption to the charged offense or offenses or any lesser included offense or offenses, regardless of whether the defendant has presented such theory or raised such affirmative defense or exemption; or
- (viii) Corroborate the defense version of facts or call into question a material aspect of the prosecution’s version of facts, even if this aspect is not an element of the prosecution’s case.

The rule also provides examples of what may be considered items or information favorable to the defense. This list of examples is helpful but is not exhaustive.

With respect to any witness the prosecutor may call:

- (a) Any promise, reward, or inducement sought, requested by, offered to, or given to such witness;
- (b) Any criminal record of such witness not contained in the court activity record provided pursuant to Rule 14.2(b);
- (c) Any criminal cases pending against such witness at any relevant time, whether brought by the prosecuting office or by a prosecuting office in any other jurisdiction;
- (d) Any written statement or oral statement of such witness that is inconsistent with any written statement or oral statement known to the prosecutor by the witness, that recants any written statement or oral statement known to the prosecutor by the witness, or that omits, adds, varies, or supplements any written statement or oral statement known to the prosecutor by the witness;
- (e) Any written statement or oral statement of such witness that is inconsistent with any written statement or oral statement known to the prosecutor made by any other witness the prosecutor may call;

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- (f) Any information reflecting bias or prejudice against the defendant by such witness or which otherwise reflects bias or prejudice against any class or group of which the defendant is a member;
- (g) Any crime, charged or uncharged, committed by such witness, if known to the prosecutor, prosecuting office, or any member of the prosecution team;
- (h) Any information about such witness contained in any database or list of information about law enforcement misconduct maintained by or available to the prosecuting office; and
- (i) Any information about any mental or physical impairment or condition of such witness that may cast doubt on such witness's ability to testify truthfully and accurately concerning any relevant event.

With respect to any percipient witness, regardless of whether they will be called to testify:

- (a) The failure of the percipient witness to make an identification of a defendant, if any identification procedure has been conducted with such a witness with respect to the crime at issue;
- (b) Any inconsistent written statement or oral statement of the percipient witness regarding the alleged incident or the conduct of the defendant; and
- (c) Any written statement or oral statement of the percipient witness that is inconsistent with written statements or oral statements about the alleged incident made by other witnesses.

With respect to any expert witness:

- (a) Descriptions of any examinations, tests, or experiments performed by the expert in connection with the case that were inconclusive, whose results were inconsistent with those of any examinations, tests, or experiments included in the expert's report, or whose results were inconsistent with any conclusion or opinion offered by the expert; and
- (b) Descriptions of negative outcomes of proficiency testing or audits of the expert witness or of any testing or laboratory facility used by the expert for tests or experimentation.

With respect to any person the prosecutor does not anticipate calling:

- (a) Any written statement or oral statement of such person, including an expert, pertaining to the case that is inconsistent with any written statement or oral statement known to the prosecutor made by a witness the prosecutor may call.

Items or information that tend to:

- (a) Support the proposition that another person committed the crime or had the motive, intent, or opportunity to commit it;
- (b) Establish deficiencies or lapses in the investigation of the case or the failure of any expert witness or member of the prosecution team to follow established protocols, policies, or professional standards;

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- (c) Call into doubt the authenticity of any evidence the prosecutor may introduce, or the reliability or validity of any expert testimony the prosecutor may introduce; and
- (d) Suggest that any bias or prejudice against any class or group of which the defendant is a member played any role in the investigation or prosecution of the case.

Items and information favorable to the defense must be disclosed without regard to whether the prosecutor considers the items or information credible, reliable, or admissible and without regard to whether any such information has been reduced to tangible form. The disclosure of any unwritten or intangible information shall be memorialized as soon as there is a reasonable opportunity, manner, and means to do so.

The rule requires mandatory discovery be provided at arraignment if it is in the possession of the prosecutor. The requirement to turn over mandatory discovery is ongoing. Whenever items of mandatory discovery come into the possession of the prosecutor, they must be promptly disclosed to the defense.