

REPORTER'S NOTES

MASSACHUSETTS RULES OF CRIMINAL PROCEDURE

Rule 14.1 Pretrial Reciprocal Discovery from the Defense

Reporter's Notes—2025

Rule 14.1 Pretrial Reciprocal Discovery from the Defense.

(a) Defense duties. Following the prosecutor's delivery of all discovery required pursuant to Rule 14(b)(1), Rule 14(b)(2), and any court order, and on or before a date agreed to between the parties, or in the absence of such agreement a date ordered by the court, the defendant shall disclose to the prosecutor and permit the prosecutor to discover, inspect, and copy any material and relevant evidence discoverable under Rule 14(b)(1)(F), (G), and (H) which the defendant intends to offer at trial, including the names, addresses, known contact information, dates of birth, and written statements of those persons whom the defendant may call as witnesses, and any promise, reward, or inducement sought, requested by, offered to, or given to such witness. As used in this rule, the term "written statement" shall have the meaning defined in Rule 14(b)(3). The judge may inquire of the defense what actions were taken to achieve compliance with this rule.

(b) Continuing duty. If the defendant subsequently learns of additional items or information which would have been subject to disclosure or notification under this rule, the defendant shall promptly disclose to or notify the prosecutor of its acquisition of such additional items or information in the same manner as required for initial discovery under this rule.

[Rule 14.1 replaces prior Rule 14(a)(1)(B) (Reciprocal Discovery for the Prosecution)]

With two exceptions, Rule 14.1 makes no substantive changes to what was previously Rule 14(a)(1)(B). It combines the reciprocal discovery provision (formerly Rule 14(a)(1)(B)) and the provision making these discovery obligations continuing duties (formerly Rule 14(a)(4)) into a new rule. Counsel should note that the definition of "statement" as used in Rule 14.1 is provided in Rule 14(b)(3).

When the prosecution complies with its discovery obligations, the automatic discovery obligations of the defendant arise. These obligations parallel those of the prosecutor in Rule 14(b)(1)(F), (G), and (H), provided the defendant intends to offer these materials at trial. Additional discovery may be sought by motion. See Rule 14.2(d).

Rule 14.1 sets forth discovery duties for the defense in section 14.1(a) and specifies in section 14.1(b) that these are continuing duties. This is the same continuing duty to which the prosecutor is subject under Rule 14 (d).

The first substantive change to Rule 14.1 is the addition of "known contact information" that must be disclosed concerning witnesses the defense intends to call at trial. The same additional contact information is also provided in discovery from the prosecution concerning its prospective trial witnesses for the same reasons. See Rule 14(b)(1)(C).

The second substantive change to Rule 14.1 is the affirmative statement of the judge's express authority to inquire about actions taken to achieve compliance with this rule. This is the same affirmative statement that is in Rule 14(a)(2)(E) with regard to actions the prosecutor has taken to achieve compliance with the prosecution's discovery obligations. Any disclosures

concerning actions taken in a matter should be made bearing in mind the duties of confidentiality and the attorney-client privilege. See Mass. R. Prof. C. 1.6.

As under the prior rule, either party may face sanctions for non-compliance with its discovery obligations. See Rule 14.2(j). As under the prior rule, the discovery obligations in 14 and 14.1 do not extend to work product. See Rule 14.2(f).