

## **REPORTER'S NOTES**

### **MASSACHUSETTS RULES OF CRIMINAL PROCEDURE**

#### **Rule 14.3 Pretrial Discovery of Affirmative Defenses; Self Defense and First Aggressor**

##### **Reporter's Notes—2025**

#### **Rule 14.3 Pretrial Discovery of Affirmative Defenses; Self Defense and First Aggressor.**

##### **(a) Notice of Alibi.**

**(1) Notice by Defendant.** The judge may, upon written motion of the prosecutor filed pursuant to Rule 14.2(d), stating the time, date, and place at which the alleged offense was committed, order that the defendant serve upon the prosecutor a written notice, signed by the defendant, of the defendant's intention to offer a defense of alibi. The notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names, addresses, dates of birth, and known contact information of the witnesses upon whom the defense intends to rely to establish the alibi.

**(2) Disclosure of Information and Witness.** Within 7 days of service of the defendant's notice of alibi, the prosecutor shall serve upon the defendant a written notice stating the names, addresses, dates of birth, and known contact information of witnesses upon whom the prosecutor intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut testimony of any of the defendant's alibi witnesses.

**(3) Continuing Duty to Disclose.** If prior to or during trial a party learns of an additional witness whose identity, if known, should have been included in the information furnished under subdivision Rule 14.3(a)(1) or (2), that party shall promptly notify the adverse party or its attorney of the existence and identity of the additional witness.

**(4) Failure to Comply.** Upon the failure of either party to comply with the requirements of this rule, the judge may exclude the testimony of any undisclosed witness offered by such party as to the defendant's absence from or presence at the scene of the alleged offense. This rule shall not limit the right of the defendant to testify.

**(5) Exceptions.** For cause shown, the judge may grant an exception to any of the requirements of Rule 14.3(a)(1)-(4).

**(6) Inadmissibility of Withdrawn Alibi.** Evidence of an intention to rely upon an alibi defense, later withdrawn, or of statements made in connection with that

**intention, is not admissible in any civil or criminal proceeding against the person who gave notice of that intention.**

**(b) Notice of Other Defenses.** If a defendant intends to rely upon a defense based upon a license, claim of authority or ownership, or exemption, the defendant shall, within the time provided for the filing of pretrial motions by Rule 13(d)(2) or at such later time as the judge may direct, notify the prosecutor in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, a license, claim of authority or ownership, or exemption may not be relied upon as a defense. The judge may for cause shown allow a late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

**(c) Self Defense and First Aggressor.**

**(1) Notice by Defendant.** If a defendant intends to raise a claim of self defense and to introduce evidence of the alleged victim's specific acts of violence to support an allegation that the alleged victim was the first aggressor, the defendant shall no later than 21 days after the pretrial hearing or at such other time as the judge may direct for good cause, notify the prosecutor in writing of such intention. The notice shall include a brief description of each such act, together with the location and date to the extent practicable, and the names, addresses, dates of birth, and known contact information of the witnesses the defendant may call to provide evidence of each such act. The defendant shall file a copy of such notice with the clerk.

**(2) Reciprocal Disclosure by the Prosecution.** No later than 30 days after receipt of the defendant's notice, or at such other time as the judge may direct for good cause, the prosecutor shall serve upon the defendant a written notice of any rebuttal evidence the prosecutor may introduce, including a brief description of such evidence together with the names of the witnesses the prosecutor may call, the addresses, dates of birth, and known contact information of other than law enforcement witnesses and the business addresses of law enforcement witnesses.

**(3) Continuing Duty to Disclose.** If prior to or during trial a party learns of additional evidence that, if known, should have been included in the information furnished under Rule 14.3(c)(1) or (2), that party shall promptly notify the adverse party or its attorney of such evidence.

**(4) Failure to Comply.** Upon the failure of either party to comply with the requirements of this rule, the judge may exclude the evidence offered by such party on the issue of the identity of the first aggressor.

*[Rule 14.3 replaces prior Rules 14(b)(1), (b)(3), and (b)(4).]*

Rule 14.3 makes no substantive changes to what was previously Rule 14(b)(1), (b)(3), and (b)(4). It groups together the discovery provisions for affirmative defenses and defense claims that may require rebuttal, other than mental health-related defenses and evidence

(formerly 14(b)(2)) which are in new Rule 14.4. The rule provides for disclosure by the defendant of the same demographic information concerning alibi witness, and by the prosecutor of witnesses to rebut the alibi, as is provided for in Rule 14(b)(1)(C) and Rule 14.1(a) (i.e., name, address, date of birth and known contact information).