

## **REPORTER'S NOTES**

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

#### **Rule 14.4 Pretrial Discovery of Mental Health Issues**

##### **Reporter's Notes—2025**

#### **Rule 14.4 Pretrial Discovery of Mental Health Issues.**

##### **(a) Notice and Filing.**

**(1) Notice.** If a defendant intends at trial to raise as an issue the defendant's mental condition at the time of the alleged crime, or if the defendant intends to introduce expert testimony on the defendant's mental condition at any stage of the proceeding, 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 allow, notify the prosecutor in writing of such intention. The notice shall state:

**(i)** whether the defendant intends to offer testimony of expert witnesses on the issue of the defendant's mental condition at the time of the alleged crime or at another specified time;

**(ii)** the names, addresses, and known contact information of expert witnesses whom the defendant expects to call; and

**(iii)** whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to the defendant's mental condition.

**(2) Filing.** The defendant shall file a copy of the notice with the clerk. The judge may for cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial, or make such other order as may be appropriate.

##### **(b) Examination.**

**(1) Order.** If the notice of the defendant or subsequent inquiry by the judge or developments in the case indicate that statements of the defendant as to the defendant's mental condition will be relied upon by a defendant's expert witness, the judge, on the judge's own motion or on motion of the prosecutor, may order the defendant to submit to an examination consistent with the provisions of the General Laws and subject to the following terms and conditions:

**(A)** The examination shall include such physical, psychiatric, and psychological tests as the examiner deems necessary to form an opinion as to the mental condition of the defendant at the relevant time. No examination based on statements of the defendant may be conducted unless the judge has

**found that (i) the defendant then intends to offer into evidence expert testimony based on the defendant's own statements or (ii) there is a reasonable likelihood that the defendant will offer that evidence.**

**(B) No statement, confession, or admission, or other evidence of or obtained from the defendant during the course of the examination, except evidence derived solely from physical examinations or tests, may be revealed to the prosecution or anyone acting on its behalf unless so ordered by the judge.**

**(C) The examiner shall file with the court a written report as to the mental condition of the defendant at the relevant time.**

**(2) Sealing of Examiner Report. Unless the parties mutually agree to an earlier time of disclosure, the examiner's report shall be sealed and shall not be made available to the parties unless (A) the judge determines that the report contains no matter, information, or evidence which is based upon statements of the defendant as to the defendant's mental condition at the relevant time or which is otherwise within the scope of the privilege against self-incrimination; or (B) the defendant files a motion requesting that the report be made available to the parties; or (C) after the defendant expresses the clear intent to raise as an issue the defendant's mental condition, the judge is satisfied that (i) the defendant intends to testify, or (ii) the defendant intends to offer expert testimony based in whole or in part on statements made by the defendant as to the defendant's mental condition at the relevant time.**

**(3) Discovery of Defense Report. At the time the report of the prosecution's examiner is disclosed to the parties, the defendant shall provide the prosecutor with a report of the defense psychiatric or psychological expert(s) as to the mental condition of the defendant at the relevant time.**

**(4) Content of Reports. The reports of both parties' experts must include a written summary of the expert's expected testimony that fully describes: the defendant's history and present symptoms; any physical, psychiatric, and psychological tests relevant to the expert's opinion regarding the issue of mental condition and their results; any oral or written statements made by the defendant relevant to the issue of the mental condition for which the defendant was evaluated; the expert's opinions as to the defendant's mental condition, including the bases and reasons for these opinions; and the witness's qualifications.**

**(5) Redaction of Reports. If these reports contain both privileged and nonprivileged matter, the judge may, if feasible, at such time as it deems appropriate prior to full disclosure of the reports to the parties, make available to the parties the nonprivileged portions.**

**(6) Failure to Comply. If a defendant refuses to submit to an examination ordered pursuant to and subject to the terms and conditions of this rule, the judge may prescribe such remedies as the judge deems warranted by the circumstances, which**

may include exclusion of the testimony of any expert witness offered by the defense on the issue of the defendant's mental condition or the admission of evidence of the refusal of the defendant to submit to examination.

**(c) Discovery for the purpose of a court-ordered examination under Rule 14.4(b).**

**(1) Automatic Discovery to Examiner.** If the judge orders the defendant to submit to an examination under Rule 14.4(b), the defendant shall, within 14 days of the court's designation of the examiner, make available to the examiner the following:

**(A)** All mental health records concerning the defendant, whether psychological, psychiatric, or counseling, in defense counsel's possession;

**(B)** All medical records concerning the defendant in defense counsel's possession; and

**(C)** All raw data from any tests or assessments administered to the defendant by the defendant's expert or at the request of the defendant's expert.

**(2) Continuing Duty.** The defendant's duty of production set forth in Rule 14.4(c)(1) shall continue beyond the defendant's initial production during the fourteen-day period and shall apply to any such mental health or medical record(s) thereafter obtained by defense counsel and to any raw data thereafter obtained from any tests or assessments administered to the defendant by the defendant's expert or at the request of the defendant's expert.

**(3) Additional Discovery Requested by Examiner.**

**(A) In General.** In addition to the records provided under Rule 14.4(c)(1) and (2), the examiner may request records from any person or entity by filing with the court under seal, in such form as the court may prescribe, a writing that identifies the requested records and states the reason(s) for the request. The examiner shall not disclose the request to the prosecutor without either leave of court or agreement of the defendant.

**(B) Notice and Hearing.** Upon receipt of the examiner's request, the court shall issue a copy of the request to the defendant and shall notify the prosecutor that the examiner has filed a sealed request for records pursuant to Rule 14.4(c)(3). Within 30 days of the court's issuance to the defendant of the examiner's request, or within such other time as the judge may allow, the defendant shall file in writing any objection that the defendant may have to the production of any of the material that the examiner has requested. The judge may hold an ex parte hearing on the defendant's objections and may, in the judge's discretion, hear from the examiner. Records of such hearing shall be sealed until the report of the examiner is disclosed to the parties under Rule 14.4(b)(3), at which point the records related to the examiner's

request, including the records of any hearing, shall be released to the parties unless the judge, in the exercise of discretion, determines that it would be unfairly prejudicial to the defendant to do so.

**(C) Order.** If the judge grants any part of the examiner's request, the judge shall indicate on the form prescribed by the court the particular records to which the examiner may have access, and the clerk shall subpoena the indicated record(s). The clerk shall notify the examiner and the defendant when the requested record(s) are delivered to the clerk's office and shall make the record(s) available to the examiner and the defendant for examination and copying, subject to a protective order under the same terms as govern disclosure of reports under Rule 14.4(b)(3). The clerk's office shall maintain these records under seal except as provided herein. If the judge denies the examiner's request, the judge shall notify the examiner, the defendant, and the prosecutor of the denial.

**(4) Tests and Assessments.** Upon completion of the court-ordered examination, the examiner shall make available to the defendant all raw data from any tests or assessments administered to the defendant by the prosecution's examiner or at the request of the prosecution's examiner.

**(d) Additional discovery.** Upon a showing of necessity, the prosecutor and the defendant may move for other material and relevant evidence relating to the defendant's mental condition.

*[Rule 14.4 replaces but makes no substantive change to prior Rule 14(b)(2) (Mental Health Issues).]*

Rule 14.4 makes no substantive changes to what was previously Rule 14(b)(2). It sets forth discovery provisions applicable when the defendant raises an issue of the defendant's mental health at the time of the alleged crime or seeks to offer expert testimony on the defendant's mental condition at any stage of the proceeding. The new rule adds clarifying headings to the sections and removes references to gender.