

COMMONWEALTH OF MASSACHUSETTS
Supreme Judicial Court

At the Supreme Judicial Court holden at Boston within and
for said Commonwealth on the 26th day of November, in the year
two thousand and twenty-four:

present,

<u>KIMBERLY S. BUDD</u>)	
)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	Justices
)	
<u>SCOTT L. KAFKER</u>)	
)	
)	
<u>DALILA ARGAEZ WENDLANDT</u>)	
)	
)	
<u>SERGE GEORGES, JR.</u>)	
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<u>ELIZABETH N. DEWAR</u>)	
)	
)	
<u>GABRIELLE R. WOLOHOJIAN</u>)	

ORDERED: That the Massachusetts Rules of Criminal Procedure
adopted by order dated October 19, 1978, as amended,
to take effect on July 1, 1979, are hereby amended as
follows:

Rule 14 By deleting Mass. R. Crim. P. 14 and inserting in lieu
thereof the new Mass. R. Crim. P. 14, 14.1, 14.2,
14.3, and 14.4 attached hereto.

The amendments accomplished by this order shall take effect on March 1, 2025.

ORDERED:

<u>KIMBERLY S. BUDD</u>)	
)	Chief Justice
)	
<u>FRANK M. GAZIANO</u>)	
)	Justices
)	
<u>SCOTT L. KAFKER</u>)	
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<u>DALILA ARGAEZ WENDLANDT</u>)	
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<u>GABRIELLE R. WOLOHOJIAN</u>)	

Mass. R. Crim. P. 14, 14.1, 14.2, 14.3, and 14.4

Rule 14: Pretrial Discovery from the Prosecution

(a) The Prosecutor's Obligations.

(1) The prosecution team. For the purposes of this rule, the prosecution team includes all persons 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 prosecution team includes but is not limited to:

(A) 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;

(B) Personnel of other governmental agencies who, in conjunction or collaboration with the prosecutor, were or are involved in the investigation or prosecution of the case;

(C) Forensic analysts, crime laboratory personnel, and criminalists employed or retained by state or local government who were or are involved in the investigation or prosecution of the case;

(D) Victim witness advocates and investigators employed by the prosecuting office; and

(E) Members of joint state and federal law enforcement task forces who were or are involved in the investigation or prosecution of the case.

(2) The prosecutor's duties to inform and inquire, collect and disclose, preserve and notify, and record.

(A) The prosecutor has a duty in each case to inform each member of the prosecution team whom the prosecutor has reason to believe may be in possession of items or information subject to this rule of the discovery and preservation obligations required by this rule, and to inquire of each such person as to the existence of any such items or information.

(B) The prosecutor has a duty in each case to collect and to disclose to the defense all items and information required by this rule that are in the possession, custody,

or control of the prosecutor, the prosecuting office, or any member of the prosecution team.

(C) When the prosecutor learns of items or information subject to disclosure which cannot be promptly copied or made available for inspection by the defense, the prosecutor has a duty to promptly notify the defense of the existence, and if known the location, of those items or information, and to instruct an appropriate member of the prosecution team to preserve those items or information until they can be disclosed.

(D) When the prosecutor learns of items subject to disclosure that have been destroyed, lost, altered, or which have otherwise become unavailable, or items or information subject to disclosure that a member of the team will not provide the prosecutor, the prosecutor has a duty to promptly notify the defense of the destruction, loss, alteration, or unavailability of the items or the refusal to provide the items or information.

(E) The judge may inquire of the prosecutor what actions were taken to achieve compliance with this rule.

(b) Materials subject to automatic discovery.

(1) Investigative Materials. The prosecutor shall disclose to the defense, and permit the defense to discover, inspect, and copy, each of the following items and information, provided it is relevant to the case and in the possession, custody, or control of the prosecutor, the prosecuting office, or any member of the prosecution team:

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

(B) The grand jury minutes, and the written or recorded statements of a person who has testified before a grand jury.

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

(D) 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.

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

(F) Intended expert opinion evidence, other than evidence that pertains to the defendant's criminal responsibility and is subject to Rule 14.4. Such discovery

shall include the identity, current curriculum vitae, and list of publications of each intended expert witness, and all reports prepared by the expert that pertain to the case.

(G) All photographs, video and audio recordings, or other tangible objects, all police or investigator's reports, and all intended exhibits.

(H) Reports of physical examinations of any person or of scientific tests or experiments.

(I) 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.

(2) Items and Information Favorable to the Defense.

(A) Scope. The prosecutor shall disclose to the defense, and permit the defense to discover, inspect, and copy, all items and information favorable to the defense in the possession, custody, or control of the prosecutor, the prosecuting office, or any member of the prosecution team. Items and information subject to this section 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.

(B) Definition. Items and information favorable to the defense are 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.

(C) Examples. Items or information favorable to the defense include but are not limited to:

(i) 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;

(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.

(ii) With respect to any percipient witness, without regard to whether the prosecutor may call such witness:

(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.

(iii) With respect to any expert witness, other than one pertaining to the defendant's criminal responsibility subject to Rule 14.4, the prosecutor may call:

(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.

(iv) 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.

(v) 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;

(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.

(3) Statement definitions.

(A) The term “written statement,” as used in this rule, means:

(i) a writing made, signed, or otherwise adopted by a person having percipient knowledge of relevant facts and which contains such facts, other than drafts or notes that have been incorporated into a subsequent draft or final report; or

(ii) a written, stenographic, mechanical, electrical, or other recording, or transcription thereof, which is a substantially verbatim recital of an oral declaration, except that a computer assisted real time translation, or its functional equivalent, made to assist a deaf or hearing-impaired person, that is not transcribed or permanently saved in electronic form, shall not be considered a statement.

(B) The term “oral statement,” as used in this rule, means any communication, by speech or nonverbal conduct intended as an assertion, of a person having percipient knowledge of relevant facts and which contains such facts that is not a written statement.

(C) If information subject to disclosure exists in statements of multiple forms, including written and oral statements, the entirety of the substance of the

information must be fully and completely disclosed, even when such disclosure requires providing written documents and separately disclosing the substance of any unwritten oral statement. The disclosure of any unwritten oral statements should be memorialized as soon as there is a reasonable opportunity, manner, and means to do so.

(c) Timing of Discovery. Except as otherwise ordered by the court, the prosecutor shall provide the discovery required by Rule 14(b) at arraignment to the extent that the discovery is in the possession of the prosecutor. The prosecutor shall provide the discovery required by Rule 14(b) then available to the prosecution team by the first pretrial conference.

(d) Continuing duty. If the prosecution team subsequently obtains possession of items or information subject to disclosure under Rule 14(b), the prosecutor shall promptly disclose to or notify the defense of its acquisition of such additional items or information in the same manner as required for initial discovery.

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), 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 14.2: Pretrial Discovery Procedures.

(a) Authority of Rules; Stays. Rule 14(b) and Rule 14.1 shall have the force and effect of a court order, and failure to provide discovery pursuant to them may result in application of any sanctions permitted for non-compliance with a court order under this rule. However, if in the judgment of either party good cause exists for declining to make any of the disclosures set forth above, it may move for a protective order pursuant to Rule 14.2(g) and production of the item shall be stayed pending a ruling by the court.

(b) Record of Court Activity of the Defendant, Codefendants, and Prosecution Witnesses. Upon request made in such form as the court may prescribe, the court shall order the Probation Service to provide the defendant with the record of court activity of all defendants and all witnesses identified pursuant to Rules 14, 14.1, and 14.3.

(c) Notice and Preservation of Evidence.

(1) Upon receipt of information that any item described in Rule 14(b) exists that is not within the possession, custody, or control of the prosecutor, the prosecuting office, or the prosecution team as defined in Rule 14(a)(1), the prosecutor shall notify the defendant of the existence of the item and all information known to the prosecutor concerning the item's location and the identity of any persons possessing it.

(2) At any time, a party may move for an order to any individual, agency or other entity in possession, custody or control of items pertaining to the case, requiring that such items be preserved for a specified period of time. The judge shall hear and rule upon the motion expeditiously. The judge may modify or vacate such an order upon a showing that preservation of particular evidence will create significant hardship, on condition that the probative value of said evidence is preserved by a specified alternative means.

(d) Motions for Discovery. The defendant may move, and following its filing of the Certificate of Compliance, the prosecutor may move, for discovery of other material and relevant evidence not required by Rule 14(b) or Rule 14 within the time allowed by Rule 13(d)(1).

(e) Certificate of Compliance. When a party has provided all discovery required by Rule 14 or Rule 14.1 or by court order, it shall promptly file with the court a Certificate of Compliance. The certificate shall state that, to the best of its knowledge and after reasonable inquiry, the party has disclosed and made available all items and information subject to discovery other than reports of experts, and shall identify each item provided. If further discovery is subsequently provided, a supplemental certificate shall be filed with the court identifying the additional items or information provided.

(f) Work Product. Unless otherwise required by law or court order, this rule does not authorize discovery by a party of those portions of records, reports, correspondence, memoranda, or internal documents of the adverse party which are only the legal research, opinions, theories, or conclusions of the adverse party or its attorney and legal staff, or of statements of a defendant, signed or unsigned, made to the attorney for the defendant or the attorney's legal staff. This

definition of work product does not include any items or information that the prosecutor is obligated to disclose as items or information favorable to the defense.

(g) Protective Orders. Upon a sufficient showing, the judge may at any time order that the discovery or inspection be denied, restricted, or deferred, or make such other order as is appropriate. The judge may alter the time requirements of Rules 14, 14.1, or 14.2. The judge may, for cause shown, grant discovery to a defendant on the condition that the material to be discovered be available only to counsel for the defendant. This provision does not alter the allocation of the burden of proof with regard to the matter at issue, including privilege.

(h) Amendment of Discovery Orders. Upon motion of either party made subsequent to an order of the judge pursuant to Rules 14, 14.1, or 14.2, the judge may alter or amend the previous order or orders as the interests of justice may require. The judge may, for cause shown, affirm a prior order granting discovery to a defendant upon the additional condition that the material to be discovered be available only to counsel for the defendant.

(i) Waiver. A party may waive the right to discovery of an item, or to discovery of the item within the time provided in Rules 14, 14.1, and 14.2. The parties may agree to reduce or enlarge the items subject to discovery pursuant to Rules 14 and 14.1. Any such waiver or agreement shall be in writing and signed by the waiving party or the parties to the agreement, shall identify the specific items included, and shall be served upon all the parties.

(j) Sanctions for Noncompliance.

(1) Relief for Nondisclosure. For failure to comply with any discovery order issued or imposed pursuant to this rule, the judge may make a further order for discovery, grant a continuance, or enter such other order as the judge deems just under the circumstances, including but not limited to the exclusion of evidence, adverse jury instructions, dismissal of charges with or without prejudice, contempt proceedings, and other sanctions.

(2) Exclusion of Evidence. The judge may in an exercise of discretion exclude evidence for noncompliance with a discovery order issued or imposed pursuant to this rule. Testimony of the defendant and evidence concerning the defense of lack of criminal responsibility which is otherwise admissible cannot be excluded except as provided by Rule 14.4.

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 14.4: 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:

(A) 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;

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

(C) 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.