

# Supreme Judicial Court Standing Advisory Committee on the Rules of Criminal Procedure

## Statement Regarding Proposed Replacement of Rule 14 with Rules 14.1-14.5

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The Standing Advisory Committee on the Rules of Criminal Procedure (committee) solicits comments regarding the proposed replacement of Mass. R. Crim. P. 14 (Pretrial Discovery) with the following new rules:

Rule 14.1 Discovery from the Prosecution

[Replacing current Rules 14(a)(1)(A), 14(a)(1)(E)(i), and 14(d)]

Rule 14.2 Reciprocal Discovery from the Defense

[Currently Rule 14(a)(1)(B)]

Rule 14.3 Timing and Sanctions

[Currently Rules 14(a)(1)(C), 14(a)(1)(D), 14(a)(1)(E)(ii), 14(a)(2)-(8), and 14(c)]

Rule 14.4 Special Procedures

[Currently Rule 14(b)(1), 14(b)(3), and 14(b)(4)]

Rule 14.5 Mental Health Issues

[Currently Rule 14(b)(2)]

Links to documents containing the proposed changes (including existing Rule 14 and clean and redline versions of proposed new Rules 14.1-14.5) and the draft Reporter's Notes are available herewith.

Comments should be directed to Timothy E. Maguire, Supreme Judicial Court, John Adams Courthouse, One Pemberton Square, Boston, MA 02108 **on or before October 14, 2022**. Comments may be emailed to [timothy.maguire@jud.state.ma.us](mailto:timothy.maguire@jud.state.ma.us). Comments received will be made available to the public.

The proposed changes are in response to the Supreme Judicial Court's (SJC) request in *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700, 732 (2018) (CPCS), that the committee propose a "Brady checklist to clarify the definition of exculpatory evidence." The SJC instructed the committee to "consider whether the categories used in the Federal District Courts would be useful, and . . . whether any other categories would help facilitate the disclosure of Brady materials." *Id.* at 733. The SJC further requested "any other modifications the committee believes would be beneficial, consistent with this opinion." *Id.* at 735. The Court

reiterated its request in *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 647 n.9 (2020).

The committee soon realized that, as the SJC noted in *CPCS*, since "[n]o checklist can exhaust all potential sources of exculpatory evidence," simply engrafting a checklist onto existing Mass. R. Crim. P. 14 would not – as the SJC had instructed – "make clear that the potential universe of exculpatory evidence includes, but is not limited to, the types of evidence included in [a] checklist." 480 Mass. at 733. Breaking into working groups, the committee identified the scope of persons from whom the prosecutor must seek material subject to automatic discovery ("the prosecution team"), the prosecutor's duties to collect and disclose this information, the definition of exculpatory evidence, and procedures for discovery and enforcement. The committee attempted to preserve the basic organizing structure of Mass. R. Crim. P. 14, through a category of "investigative materials" that is largely the existing items of automatic discovery without exculpatory material (in proposed Rule 14.1(b)(1)), and a new separate category of "Items and Information favorable to the defense" that addresses exculpatory material (in proposed Rule 14.1(b)(2)).

Following the SJC's directive for a broad definition that would develop a "more thorough baseline of the most likely sources and types of exculpatory information for prosecutors to consider," 480 Mass. at 732, the committee took two approaches. First, it set forth the broad scope of items and information favorable to the defense by eliminating considerations of materiality and assessments by prosecutors of the information's credibility or admissibility. See Rule 14.1(b)(2)(A). It then provided a definition of material favorable to the defense through information that served one or more of 8 functions in a case. See Rule 14.1(b)(2)(B). Second, with an eye to less-experienced lawyers, the committee developed 5 categories of material as non-exclusive and non-exhaustive examples of items or information that are favorable to the defense. See Rule 14.1(b)(2)(C).

As the first comprehensive revisions to the rules governing pretrial discovery since 2004, the committee took the referral as an opportunity to assess the clarity and operation of existing automatic discovery provisions. While the committee recommended few substantive changes to the remaining provisions of pretrial discovery, it sought to improve user-friendliness, for example by moving the definition of "statement" that figures prominently in the prosecution's automatic discovery obligations to the rule on automatic discovery. To aid readers, the Reporter's Notes provide a brief concordance listing the 5 proposed new rules (14.1-14.15) that would replace existing Mass. R. Crim. P. 14 and identifying the part or parts of Rule 14 that each new rule replaces.