

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 22
100TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 29, 2019, with recommendation that the Senate Committee Substitute do pass.

0496S.04C

ADRIANE D. CROUSE, Secretary.

AN ACT

To amend supreme court rules 25.02 and 25.03, relating to discovery in criminal cases.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Missouri supreme court rules 25.02 and 25.03, are amended,
2 to read as follows:

25.02. (a) Disclosure [on filing of felony complaint. Requests or motions
2 for discovery of material and information as provided in Rule 25.03(a) may be
3 made any time after defendant's initial appearance in court. The state shall,
4 within fourteen days of service of defendant's request, provide to defendant's
5 counsel material and information as provided in 25.03(a). The court may enlarge
6 or shorten the time for the state to respond to the request] **after**
7 **arraignment. Discovery as provided herein shall not commence earlier**
8 **than arraignment of the defendant. Unless otherwise provided,**
9 **responses to discovery requests shall be made within fifteen days of the**
10 **service of the request or not less than ten days prior to trial, whichever**
11 **is earlier. The time for response may be extended by the court for good**
12 **cause shown, but no more than one extension of time shall be granted**
13 **without prior notice to the opposing party.**

14 (b) [Disclosure after indictment or filing of information. Except as
15 provided in paragraph (a), upon the filing of an indictment or information
16 discovery may commence. Requests or motions for discovery may be made after
17 the filing of the indictment or information. Requests or motions for discovery
18 shall be made not later than twenty days after arraignment. Requests or motions

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 for discovery shall be answered within fourteen days after service of the
20 request. The court may enlarge or shorten the times specified in this rule]
21 **Objections. Objections, if any, to discovery requests shall be filed and**
22 **served within the time for responding to such requests.**

25.03. (a) Disclosure [upon filing of felony complaint] **after**
2 **arraignment.** Except as otherwise provided in these Rules, the state shall, upon
3 written request of defendant's counsel, disclose to defendant's counsel, **or of**
4 **defendant if counsel has been waived,** the following material and
5 information [in the possession of the prosecutor: any arrest reports, incident
6 reports, investigative reports, written or recorded statements, documents,
7 photographs, video, electronic communications and electronic data that relate to
8 the offense for which defendant is charged.

9 (b) Disclosure after indictment or filing of information. Except as
10 otherwise provided in these Rules, the state shall, upon written request of
11 defendant's counsel, disclose to defendant's counsel the following material and
12 information] within its possession or control designated in the request:

13 (1) Any arrest reports, incident reports, investigative reports, written or
14 recorded statements, documents, photographs, video, electronic communications
15 and electronic data that relate to the offense for which defendant is charged;
16 **provided, that personal identifying information of persons named in**
17 **such materials may be redacted at the discretion of the prosecutor;**

18 (2) The names and last known addresses of persons whom the state
19 intends to call as witnesses at any hearing or at the trial, together with their
20 written or recorded statements, and existing memoranda, reporting or
21 summarizing part or all of their oral statements;

22 (3) Any written or recorded statements and the substance of any oral
23 statements made by defendant, a co-defendant or a co-actor, a list of all witnesses
24 to the making of the statements and a list of all witnesses to the acknowledgment
25 of the statements including the last known addresses of the witnesses;

26 (4) Those portions of any existing transcript of grand jury proceedings
27 that relate to the offense with which defendant is charged, containing testimony
28 of defendant and testimony of persons whom the state intends to call as witnesses
29 at a hearing or trial;

30 (5) Any existing transcript of the preliminary hearing and of any prior
31 trial held in defendant's case if the state has the transcript in its possession;

32 (6) Any reports or statements of experts made in connection with the

33 particular case, including results of physical or mental examinations and of
34 scientific tests, experiments, or comparisons;

35 (7) Any books, papers, documents, photographs, video, electronic
36 communications, electronic data, or objects that the state intends to introduce
37 into evidence at the hearing or trial or that were obtained from or belong to
38 defendant; **provided, that personal identifying information of any person**
39 **named in such materials, other than those obtained from the defendant,**
40 **may be redacted at the discretion of the prosecutor;**

41 (8) Any record of prior criminal convictions of persons the state intends
42 to call as witnesses at a hearing or the trial; and

43 (9) Any photographic or electronic surveillance (including wiretapping) of
44 defendant or of conversations to which defendant was a party or of defendant's
45 premises, relating to the offense charged. This disclosure shall be in the form of
46 a written statement by counsel for the state briefly setting out the facts
47 pertaining to the time, place, and persons making the photographic or electronic
48 surveillance.

49 [(c)] (b) The request provided for by this Rule shall be made by filing the
50 request in the court where the case is pending and serving a copy of the request
51 upon counsel for the state.

52 [(d)] (c) The state may redact from any document it provides to
53 defendant's counsel [the following information: taxpayer identification number,
54 the first five digits of a social security number, driver's license number, financial
55 account number, personal identification code (PIN), electronic password of a
56 victim or witness, or the actual address or mailing address of a participant in an
57 address confidentiality program administered by the Missouri Secretary of State,]
58 **any personal identifying information of witnesses or other persons**
59 **named in any document** but must do so in a manner that makes it clear that
60 the information has been redacted.

61 [(e)] (d) The state may elect to provide a separate copy of a redacted
62 document to defendant's counsel to be delivered to defendant and designated as
63 "Defendant's Copy." If the state provides a redacted document designated as
64 "Defendant's Copy," in addition to the information permitted to be redacted
65 pursuant to Rule 25.03[(d)](c), the state may also redact from "Defendant's Copy"
66 of the document the following information: date of birth, home address, work
67 address, and personal phone number and work phone number of a victim or
68 witness. However, the redaction must be done in a manner that makes it clear

69 the information has been redacted from the document. Defendant's counsel shall
70 be provided a separate document designated as "Lawyer Copy Only – Not for
71 Defendant" that includes the information that has been redacted from the
72 document pursuant to Rule 25.03[(e)](d). If defendant's counsel is provided with
73 a redacted document by the state designated as "Defendant's Copy," only that
74 copy shall be provided to defendant. Defendant's counsel shall not provide to
75 defendant the unredacted document or any information redacted from the
76 document pursuant to this Rule without court approval. For any document
77 designated "Defendant's Copy" or "Lawyer Copy Only – Not for Defendant," every
78 page of the respective document shall be so designated.

79 [(f)] (e) Defendant is not entitled to the redacted information from a
80 document as provided in Rule 25.03(c) or (d) [or (e)] unless the court determines
81 after a showing of good cause that the disclosure of the information is necessary
82 for the defense of the case.

83 [(g)] (f) The state shall, without written request, disclose to defendant
84 any material or information that tends to negate the guilt of defendant for the
85 charged offense, mitigate the degree of the offense charged, reduce the
86 punishment of the offense charged, and any additional material or information
87 that would be required to be disclosed to comply with Brady v. Maryland, 373
88 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972) and their progeny.

89 [(h)] (g) If material or information would be discoverable under
90 subsections (b) and [(g)] (f) of this Rule if in the possession or control of the state,
91 but is in possession or control of other governmental personnel, the state shall
92 use diligence and make good faith efforts to make the material or information
93 available to defendant. If the state's efforts are unsuccessful and the material or
94 information or other governmental personnel are subject to the jurisdiction of the
95 court, the court, upon request, shall issue subpoenas or orders to cause the
96 material or information to be made available to the state for disclosure to the
97 defense.

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