

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2464

By Committee on Judiciary

1-17

1 AN ACT concerning criminal procedure; relating to discovery; certain
2 visual depictions; amending K.S.A. 2011 Supp. 22-3212 and repealing
3 the existing section.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 22-3212 is hereby amended to read as
7 follows: 22-3212.(a) Upon request, the prosecuting attorney shall permit
8 the defendant to inspect and copy or photograph the following, if relevant:
9 (1) Written or recorded statements or confessions made by the defendant,
10 or copies thereof, which are or have been in the possession, custody or
11 control of the prosecution, the existence of which is known, or by the
12 exercise of due diligence may become known, to the prosecuting attorney;
13 (2) results or reports of physical or mental examinations, and of scientific
14 tests or experiments made in connection with the particular case, or copies
15 thereof, the existence of which is known, or by the exercise of due
16 diligence may become known, to the prosecuting attorney; (3) recorded
17 testimony of the defendant before a grand jury or at an inquisition; and (4)
18 memoranda of any oral confession made by the defendant and a list of the
19 witnesses to such confession, the existence of which is known, or by the
20 exercise of due diligence may become known to the prosecuting attorney.

21 (b) (1) *Except as provided in subsection (j)*, upon request, the
22 prosecuting attorney shall permit the defendant to inspect and copy or
23 photograph books, papers, documents, tangible objects, buildings or
24 places, or copies, or portions thereof, which are or have been within the
25 possession, custody or control of the prosecution, and which are material
26 to the case and will not place an unreasonable burden upon the
27 prosecution.

28 (2) Except as provided in subsections (a)(2) and (a)(4), this section
29 does not authorize the discovery or inspection of reports, memoranda or
30 other internal government documents made by officers in connection with
31 the investigation or prosecution of the case, or of statements made by state
32 witnesses or prospective state witnesses, other than the defendant, except
33 as may be provided by law.

34 (3) Except as provided in subsection (e), this section does not require
35 the prosecuting attorney to provide unredacted vehicle identification
36 numbers or personal identifiers of persons mentioned in such books,

1 papers or documents.

2 (4) As used in this subsection, personal identifiers include, but are not
3 limited to, birthdates, social security numbers, taxpayer identification
4 numbers, drivers license numbers, account numbers of active financial
5 accounts, home addresses and personal telephone numbers of any victims
6 or material witnesses.

7 (5) If the prosecuting attorney does provide the defendant's counsel
8 with unredacted vehicle identification numbers or personal identifiers, the
9 defendant's counsel shall not further disclose the unredacted numbers or
10 identifiers to the defendant or any other person, directly or indirectly,
11 except as authorized by order of the court.

12 (6) If the prosecuting attorney provides books, papers or documents
13 to the defendant's counsel with vehicle identification numbers or personal
14 identifiers redacted by the prosecuting attorney, the prosecuting attorney
15 shall provide notice to the defendant's counsel that such books, papers or
16 documents had such numbers or identifiers redacted by the prosecuting
17 attorney.

18 (7) Any redaction of vehicle identification numbers or personal
19 identifiers by the prosecuting attorney shall be by alteration or truncation
20 of such numbers or identifiers and shall not be by removal.

21 (c) If the defendant seeks discovery and inspection under subsection
22 (a)(2) or subsection (b), the defendant shall permit the attorney for the
23 prosecution to inspect and copy or photograph scientific or medical
24 reports, books, papers, documents, tangible objects, or copies or portions
25 thereof, which the defendant intends to produce at any hearing, and which
26 are material to the case and will not place an unreasonable burden on the
27 defense. Except as to scientific or medical reports, this subsection does not
28 authorize the discovery or inspection of reports, memoranda or other
29 internal defense documents made by the defendant, or the defendant's
30 attorneys or agents in connection with the investigation or defense of the
31 case, or of statements made by the defendant, or by prosecution or defense
32 witnesses, or by prospective prosecution or defense witnesses, to the
33 defendant, the defendant's agents or attorneys.

34 (d) The prosecuting attorney and the defendant shall cooperate in
35 discovery and reach agreement on the time, place and manner of making
36 the discovery and inspection permitted, so as to avoid the necessity for
37 court intervention.

38 (e) Upon a sufficient showing the court may at any time order that the
39 discovery or inspection be denied, restricted, enlarged or deferred or make
40 such other order as is appropriate. Upon motion, the court may permit
41 either party to make such showing, in whole or in part, in the form of a
42 written statement to be inspected privately by the court. If the court enters
43 an order granting relief following such a private showing, the entire text of

1 the statement shall be sealed and preserved in the records of the court to be
2 made available to the appellate court in the event of an appeal.

3 (f) Discovery under this section must be completed no later than 21
4 days after arraignment or at such reasonable later time as the court may
5 permit.

6 (g) If, subsequent to compliance with an order issued pursuant to this
7 section, and prior to or during trial, a party discovers additional material
8 previously requested or ordered which is subject to discovery or inspection
9 under this section, the party shall promptly notify the other party or the
10 party's attorney or the court of the existence of the additional material. If at
11 any time during the course of the proceedings it is brought to the attention
12 of the court that a party has failed to comply with this section or with an
13 order issued pursuant to this section, the court may order such party to
14 permit the discovery or inspection of materials not previously disclosed,
15 grant a continuance, or prohibit the party from introducing in evidence the
16 material not disclosed, or it may enter such other order as it deems just
17 under the circumstances.

18 (h) For crimes committed on or after July 1, 1993, the prosecuting
19 attorney shall provide all prior convictions of the defendant known to the
20 prosecuting attorney that would affect the determination of the defendant's
21 criminal history for purposes of sentencing under a presumptive
22 sentencing guidelines system as provided in K.S.A. 21-4701 et seq., prior
23 to their repeal, or the revised Kansas sentencing guidelines act, article 68
24 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto.

25 (i) The prosecuting attorney and defendant shall be permitted to
26 inspect and copy any juvenile files and records of the defendant for the
27 purpose of discovering and verifying the criminal history of the defendant.

28 (j) (1) *In any criminal proceeding, any property or material that*
29 *constitutes a visual depiction, as defined in subsection (a)(2) of K.S.A.*
30 *2011 Supp. 21-5510, and amendments thereto, shall remain in the care,*
31 *custody and control of either the prosecution, law enforcement or the*
32 *court.*

33 (2) *Notwithstanding subsection (b), if the state makes property or*
34 *material described in this subsection reasonably available to the*
35 *defendant, the court shall deny any request by the defendant to copy,*
36 *photograph, duplicate or otherwise reproduce any such property or*
37 *material submitted as evidence.*

38 (3) *For the purpose of this subsection, property or material described*
39 *in this subsection shall be deemed to be reasonably available to the*
40 *defendant if the prosecution provides ample and liberal opportunity for*
41 *inspection, viewing and examination of such property or material at a law*
42 *enforcement facility, whether inside or outside the state of Kansas, by*
43 *the defendant, the defendant's attorney and any individual the defendant*

1 *may seek to qualify to furnish expert testimony at trial.*

2 Sec. 2. K.S.A. 2011 Supp. 22-3212 is hereby repealed.

3 Sec. 3. This act shall take effect and be in force from and after its
4 publication in the statute book.

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