

**As Amended by House Committee**

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*Session of 2012*

**HOUSE BILL No. 2468**

By Committee on Corrections and Juvenile Justice

1-17

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1 AN ACT concerning criminal procedure; relating to discovery and  
2 production requirements of defense attorneys; amending K.S.A. 2011  
3 Supp. 22-3212 and repealing the existing section.  
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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) Upon request, the prosecuting attorney shall permit the  
22 defendant to inspect and copy or photograph books, papers, documents,  
23 tangible objects, buildings or places, or copies, or portions thereof, which  
24 are or have been within the possession, custody or control of the  
25 prosecution, and which are material to the case and will not place an  
26 unreasonable burden upon the prosecution.

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

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

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

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

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

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

20 (c) If the defendant seeks discovery and inspection under subsection  
21 (a)(2) or subsection (b), the defendant shall:

22 (1) Permit the attorney for the prosecution to inspect and copy or  
23 photograph scientific or medical reports, books, papers, documents,  
24 tangible objects, or copies or portions thereof, which the defendant intends  
25 to produce at any hearing, ~~and which~~ are material to the case and will not  
26 place an unreasonable burden on the defense; *and*

27 (2) *provide for the attorney for the prosecution, no less than 30 days*  
28 *prior to trial*;

29 ~~(A) a summary or written report of what any expert witness intends to~~  
30 ~~testify, including the witness' qualifications, the witness' opinions and the~~  
31 ~~bases and reasons for such opinions~~;

32 ~~(B) the names and addresses of all prospective witnesses; and~~

33 ~~(C) any tangible papers, objects or exhibits that the defendant~~  
34 ~~intends to produce.~~

35 ~~(d)~~ (d) Except as to scientific or medical reports, ~~this~~ subsection (c)  
36 does not authorize the discovery or inspection of reports, memoranda or  
37 other internal defense documents made by the defendant, or the  
38 defendant's attorneys or agents in connection with the investigation or  
39 defense of the case, or of statements made by the defendant, or by  
40 prosecution or defense witnesses, or by prospective prosecution or defense  
41 witnesses, to the defendant, the defendant's agents or attorneys.

42 (e) **All disclosures shall be made at the times and in the sequence**  
43 **directed by the court. In the absence of other directions from the court**

1 **or stipulation by the parties, such disclosures shall be made as**  
2 **provided in this section.**

3 ~~(d)~~**(f)** The prosecuting attorney and the defendant shall cooperate in  
4 discovery and reach agreement on the time, place and manner of making  
5 the discovery and inspection permitted, so as to avoid the necessity for  
6 court intervention.

7 ~~(e)~~**(g)** Upon a sufficient showing the court may at any time order that  
8 the discovery or inspection be denied, restricted, enlarged or deferred or  
9 make such other order as is appropriate. Upon motion, the court may  
10 permit either party to make such showing, in whole or in part, in the form  
11 of a written statement to be inspected privately by the court. If the court  
12 enters an order granting relief following such a private showing, the entire  
13 text of the statement shall be sealed and preserved in the records of the  
14 court to be made available to the appellate court in the event of an appeal.

15 ~~(f)~~**(h)** Discovery under this section must be completed no later than  
16 21 days after arraignment or at such reasonable later time as the court may  
17 permit.

18 ~~(g)~~**(i)** If, subsequent to compliance with an order issued pursuant to  
19 this section, and prior to or during trial, a party discovers additional  
20 material previously requested or ordered which is subject to discovery or  
21 inspection under this section, the party shall promptly notify the other  
22 party or the party's attorney or the court of the existence of the additional  
23 material. If at any time during the course of the proceedings it is brought to  
24 the attention of the court that a party has failed to comply with this section  
25 or with an order issued pursuant to this section, the court may order such  
26 party to permit the discovery or inspection of materials not previously  
27 disclosed, grant a continuance, or prohibit the party from introducing in  
28 evidence the material not disclosed, or it may enter such other order as it  
29 deems just under the circumstances.

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

37 ~~(i)~~**(k)** The prosecuting attorney and defendant shall be permitted to  
38 inspect and copy any juvenile files and records of the defendant for the  
39 purpose of discovering and verifying the criminal history of the defendant.

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

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