

PRE-TRIAL DISCOVERY

ATTORNEY GENERAL'S DRAFT

ARTICLE 7

Section 1. Applicability

The provisions of this Article are applicable to all prosecutions in which an indictment has been found by a grand jury, or in which an information has been filed on waiver of indictment. In other criminal prosecutions, the provisions of this Article shall be applicable if defendant files in the court having jurisdiction of the prosecution, a request for discovery of any of the items discoverable under this Article.

Section 2. Disclosure to defendant

Except as otherwise provided in section 5 relating to matters not subject to disclosure, and in section 7 relating to protective orders, the district attorney shall disclose to defendant the following material and information within his possession and control:

- (1) The names and addresses of persons whom he intends to call as witnesses at the trial, together with their relevant written or recorded statements;
 - (2) Any written or recorded statements or memoranda of any oral statements made by the defendant, or made by a codefendant if the trial is to be a joint one;
 - (3) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons;
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(4) Any books, papers, documents, photographs or tangible objects which the district attorney intends to use in the trial or which were obtained from or belong to the defendant;

(5) Any record of prior criminal convictions of persons whom the district attorney intends to call as witnesses at the trial; and

(6) Any relevant material or information regarding:

(a) specified searches and seizures; and

(b) the acquisition of specified statements from the defendant.

Section 3. Disclosure to the state

Except as otherwise provided in section 5 relating to matters not subject to disclosure, and in section 7 relating to protective orders, the defendant shall disclose to the district attorney the following material and information within his possession and control:

(1) The names and addresses of persons whom he intends to call as witnesses at the trial, together with their relevant written or recorded statements;

(2) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons, which defendant intends to use in the trial; and

(3) Any books, papers, documents, photographs or tangible objects which the defendant intends to use in the trial.

Section 4. Time of disclosure

The obligations to disclose shall be performed as soon as practicable following the filing of charges against the defendant, and not later than 10 days prior to trial, unless later disclosure is authorized and permitted by the court for good cause shown. The court may supervise the exercise of discovery to the extent necessary to ensure that it proceeds properly and expeditiously.

Section 5. Property not subject to discovery

The following property and information shall not be subject to discovery under this Article:

(1) Legal research, records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the attorneys or members of their legal staffs.

(2) The identity of a confidential prosecution informant where his identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at trial.

Section 6. Continuing duty to disclose; failure to comply with requirements

(1) If, after complying with the provisions of this Article, a party finds, either before or during trial, additional property which is subject to or covered by the order, he must promptly notify the other party of the existence thereof.

(2) Upon being apprised of any breach of the duty imposed by the provisions of this Article, the court may order the violating party to permit inspection of the additional property, or grant a continuance, or refuse to receive such property in evidence, or enter such other order as it considers appropriate.

Section 7. Protective orders

(1) Upon a showing of cause, the court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit his counsel to make beneficial use thereof.

(2) Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings.

(3) If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.