HB

25

FISCAL NOTE

No. 9

Bill Version: CSHB 25(FIN)

(H) Publish Date: 1/26/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Dept. Affected: Public Safety

Title: "An Act revising Rule 16, AK Rules of Criminal Procedure, relating to discovery..."

BRU: DPS Statewide

Sponsor: Representative Parnell

Components: Commissioner's Office

Requestor:

Serial #: 523

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE	0.0	0.0	0.0	0.0	0.0	0.0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0.0	0.0	0.0	0.0	0.0	0.0
Federal Fund	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

see attached analysis

Prepared by: House Finance Committee — Date: 1/25/96

Rep. Mark Hanley, Co-Chair — Phone: 465-4939

Rep. Richard Foster, Co-Chair — Phone: 465-3789

COMMITTEE COPY

FISCAL NOTE

No. 8
Bill Version: CSHB 25(FIN)
(H) Publish Date: 1/26/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 01/23/96
Dept. Affected: Alaska Court System
Title: An Act revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery
BRU: Trial Courts
Component:
Sponsor: Reps. Parnell, Porter
Requester:
COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES						

Fund Source (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel
Phone: 264-8228
Agency: Alaska Court System
Date: 01/23/96

Approved by: Arthur H. Snowden, II, Administrative Director
Date: 01/23/96
Agency: Alaska Court System

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FISCAL NOTE

No. 7
Bill Version: CSHB 25(FIN)
(H) Publsn Date: 1/26/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 1/23/96
Title: "...revising Alaska Rule of Criminal Procedure 16, relating to discovery and inspection in criminal proceedings..."
Sponsor: Representative Parnell
Requester: Representative Parnell

Dept. Affected: Department of Law
BRU: Criminal Division
Component: Criminal Division
COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill imposes a duty on both the prosecution and the defense for making full and fair disclosure of information in criminal cases. This version of the bill differs from previous versions in that it is less burdensome on the defense. As we advised in our original fiscal analysis, of 1/23/95, the department believes that the bill will result in fairer verdicts and, in some cases, may avoid trials when the prosecution is given early notice of a viable defense. Consequently, the bill will not have a fiscal impact.

Prepared by: Richard L. Pegues, Director — Phone: 465-3672
Division: Administrative Services Division — Date: 1/23/96
Approved by Commissioner: Bruce M. Botelho, Attorney General — Date: 1/23/96
Agency: Department of Law

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FISCAL NOTE

No. 6

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSHB 25(FIN)
(H) Publsn Date: 1/26/96

Revision Date: 1/22/96
Title: "An Act revising Alaska Rule of Criminal Procedure 16, relating to discovery and inspection in criminal proceedings..."
Sponsor: Rep. Parnell
Requestor: (H) Fin

Dept. Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	00	00	00	00	00	00
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	00	00	00	00	00	00

Estimate of any current year (FY 96) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the Public Defender Agency.

Prepared by: John Salemi, Director
Division: Public Defender Agency
Phone: 264-4400
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/23/96

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FISCAL NOTE

No. 5

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: CSHB 25(FIN)
(H) Publish Date: 1/26/96

Revision Date:
Title: "An Act revising Alaska Rule of Criminal Procedure 16, relating to discovery and inspection in criminal proceedings..."
Sponsor: Rep. Pamell
Requestor: (H) Fin

Dept. Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ( )	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: $ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact to the Office of Public Advocacy.

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Phone: 274-1684
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 1/23/96

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Rev: 12/95

COMMITTEE COPY

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/15/96

FURTHER: ~~Finance~~ - Wsund

DATE TURNED INTO OFFICE: 3-29-96

The Judiciary Committee considered CS FOR HOUSE BILL NO. 25(FIN)

Revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery and inspection in criminal proceedings.

and recommends:

[ ] be **replaced** with _____ CS _____ (_____)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[ ] same title
[ ] new title

House Bill:
[✓] same title
[ ] technical title
[ ] new: SCR*_____

SIGNING DO PASS	*DP*	*OTHER RECOMMENDATIONS*	*NR*	*DNP*	*AM*
Kyle Green	✓				
Pete Kott	✓				
CHAIR: Mike Navarre	✓	*CHAIR:*			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Public Safety	1/25/96	✓	
Att General System	1/23/96	✓	
Law - Criminal Div	1/22/96	✓	
Public Defender	1/22/96	✓	
Public Advocacy	1/23/96	✓	

[ ] **APPROPRIATION -- no fiscal note**

***Include fiscal notes accompanying Governor's bill**

Alaska State Legislature

REPRESENTATIVE
SEAN R. PARNELL

HOUSE OF REPRESENTATIVES

SPONSOR STATEMENT
House Bill 25

"An act revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery and inspection in criminal proceedings."

HB 25 changes Alaska Rules of Criminal Procedure to allow for reciprocal discovery between the prosecution and the defense, a system used in many other jurisdictions.

The Alaska Supreme Court's *Scott* v. State decision (No. 1968), handed down 20 years ago, created the most extreme discovery system in all 50 states and the only system that denied virtually all discovery to protect a persons constitutional right against "self-incrimination." This use of Section 9 (Alaska Constitution's "self-incrimination" clause modeled almost word for word after Article V of the US Constitution) to prevent discovery of non-defendant statements is completely out of step with federal and other state judicial practice.

The *Scott* decision was a "snapshot" in time that permanently froze the judicial beliefs of the 70's into Alaska law. Unfortunately this was at a time of extremes and not before or since has any court come remotely close to this type of opinion on "self-incrimination" and discovery. Given that the federal courts have only held "self-incrimination" to protect defendant statements and not expert or alibi witness names and addresses, and given that Alaska modeled its language after the federal "self-incrimination" clause, it is not unreasonable to interpret similarly for Alaska's discovery laws.

The "self-incrimination" clause was designed to protect defendants from coerced confessions by unscrupulous prosecutorial powers. Reciprocal discovery does not coerce a defendant's statement, but simply requires that if either the prosecution or defense is likely to use particular information in their case, apart from defendants statements, that they disclose it beforehand to

encourage timely and fair justice. This accelerated discovery notion has been articulated in many courts where some form of reciprocal discovery is used.

In practice, Alaska's current Rule 16 does not require the defense to divulge virtually any information to the prosecution, but allows for one-sided discovery by the defense, a most inequitable result. Alaska's rule enables defense attorneys to ambush the prosecution mid-trial with previously undisclosed evidence, which causes costly continuances of trials while the prosecution tries desperately to prepare for this new evidence. These delays can result in a failed case, not because of the innocence of the accused, but because the prosecution lacked the time to adequately prepare for this new evidence.

The Alaska Supreme Court recently adopted a new rule 16 (effective 7/95), which would establish partial reciprocal discovery for alibi defense and expert witnesses, saying that if you are likely to use this evidence than you should disclose it before trial in the interest of fair and speedy justice. However, discovery issues protected at the heart of Alaska Supreme Court's *Scott* decision did not change, and could not be changed by a simple court rule change. If the Alaska Supreme court wanted to overturn the *Scott* decision they would need a court case in which *Scott* was violated. This will never happen unless the court rules are changed by law to allow for complete reciprocal discovery. Since the Alaska Supreme Court has adopted reciprocal discovery, where it did not violate *Scott*, it seems appropriate to allow the courts the opportunity to complete the reciprocal discovery package.

HB 25 is motivated by the philosophy that justice is better served when both sides have full and free discovery in a timely and cost effective manner. I respectfully request your support.

CSHB 25 (JUD): Who Provides What

Prosecution Obligation		Defense Obligation	
Criminal Rule 16(b)	When	Criminal Rule 16 (c)	When
(1) List of *all known* witnesses, plus written or recorded statements	Immediately	(1) List of witnesses likely to be used at trial, plus written or recorded statements	10 days after state provides items 1 thru 8
(2) Statements by defendant	Immediately		
(3) Statements by co-defendant	Immediately		
(4) Documents, photos or other objects likely to be used as evidence	Immediately	(2) Documents, photos or other objects likely to be used as evidence	10 days after state provides items 1 thru 8
(5) Rap sheets for defendant and any victims or witnesses likely to testify for state	Immediately		
(6) Information about line-ups or other identification procedures	Immediately		
(7) Any evidence tending to negate guilt or reduce the defendant's punishment	Immediately		
(8) Information provided by an informant or by electronic surveillance	Immediately		
(9) Agreements with witnesses or inducements to witnesses	Upon agreement or court order	(4) Agreements with witnesses or inducements to witnesses	Upon agreement or court order
(10) Information about searches and acquisition of statements	Upon agreement or court order		
(11) Character evidence the prosecution is likely to use *against the defendant*	Upon agreement or court order	(3) Character evidence the defense is likely to use *against victims and witnesses*	Upon agreement or court order
(12) Reports prepared by *any expert* consulted, and the opinions of experts likely to be used at trial	45 days before trial	(6) Experts likely to be used at trial, and their opinions	30 days before trial
(13) Any other relevant and admissible evidence as ordered by the court	Upon court order	(9) Any other relevant and admissible evidence as ordered by the court	Upon court order
		(5) Notice of alibi, duress, entrapment or other statutory defenses	30 days before felony trial; 10 days before misd trial
		(7) Notice of mental disease or defect	As required by AS 12.47
		(8) Physical evidence held by defense counsel	Immediately

HB 25 also creates a new procedure to allow defendants to obtain confidential information that is *not in the possession of the prosecution*, and sets standards for courts to follow in granting such requests.

Shaded areas show the information now required to be disclosed by the defense under present Criminal Rule 16.

CSHB 25 (JUD): Derivation

Prosecution Obligation

Crminal Rule 16(b)	Derivation
(1) List of *all known* witnesses, plus written or recorded statements	Rule 16(b)(1)(A)(i) ABA 11-2.1(a)(ii)
(2) Statements by defendant (3) Statements by co-defendant	Rule 16(b)(1)(A)(ii-iii) ABA 11.2.1(a)(i)
(4) Documents, photos or other objects likely to be used as evidence	Rule 16(b)(1)(A)(iv) ABA 11-2.1(a)(v)
(5) Rap sheets for defendant and any victims or witnesses likely to testify for state	Rule 16(b)(1)(A)(v) ABA 11-2.1(a)(vi)
(6) Information about line-ups or other identification procedures	ABA 11-2.1(a)(vii)
(7) Any evidence tending to negate guilt or reduce the defendant's punishment	Rule 16(b)(3) ABA 11-2.1(a)(viii)
(8) Information provided by an informant or by electronic surveillance	Rule 16(b)(2) ABA 11-2.1(c)
(9) Agreements with witnesses or inducements to witnesses	Rule 16(b)(6)(iii) ABA 11-2.1(a)(iii)
(10) Information about searches and acquisition of statements	Rule 16(b)(6)(ii/iii) ABA 11-2.1(a)(i)/(d)
(11) Character evidence the prosecution is likely to use *against the defendant*	ABA 11-2.1(b)
(12) Reports prepared by *any expert* consulted, and the opinions of experts likely to be used at trial	Rule 16(b)(1)(B) ABA 11-2.1(a)(iv)
(13) Any other relevant and admissible evidence as ordered by the court	Rule 16(b)(7)

Defense Obligation

Criminal Rule 16 (c)	Derivation
(1) List of witnesses likely to be used at trial, plus written or recorded statements	ABA 11-2.2(a)(i)
(2) Documents, photos or other objects likely to be used as evidence	ABA 11-2.2(a)(iii)
(4) Agreements with witnesses or inducements to witnesses	Same obligation as for prosecution
(3) Character evidence the defense is likely to use *against victims and witnesses*	ABA 11-2.2(b)
(6) Experts likely to be used at trial, and their opinions	Rule 16(c)(4) ABA 11-2.2(a)(i)
(9) Any other relevant and admissible evidence as ordered by the court	Same obligation as for prosecution
(5) Notice of alibi, duress, entrapment or other statutory defenses	Rule 16(c)(5)
(7) Notice of mental disease or defect	Rule 16(c)(5) AS 12.47
(8) Physical evidence held by defense counsel	Rule 16(c)(6)

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM February 11, 1996

SUBJECT: Sectional Summary of CSHB 25(FIN) (Work Order No. 91LS0146\P)

TO: Representative Sean Parnell
Attn: Richard Vitale

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill amends Rule 16 of the Alaska Rules of Criminal Procedure, relating to pretrial discovery in criminal cases. The bill maintains, revises, and adds burdens concerning disclosure of information between the parties in a criminal case in an attempt to equalize those burdens.

Section 2 of the bill provides that the provisions of the bill are not severable despite the general severability clause provided in AS 01.10.030.

Section 3 of the bill provides that the provisions of the bill are retroactive and applicable to all criminal cases on or arising after the effective date.

Section 4 of the bill provides that the provisions of the bill supersede Rule 16, A.R.Cr.P., and any intervening amendments.

Section 5 of the bill provides an effective date.

GPL:lmb
96-043.lmb

Victims for Justice

619 East Fifth Avenue, Anchorage, AK 99501
Phone: (907)278-0977 FAX: (907)258-0740

January 19, 1996

JAN 24 1996

Representative Sean R. Parnell
House of Representatives
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Parnell,

I am writing a letter in support of HB 25. The theme of victims groups throughout the United States is "equal justice for all even the victim...". The inequitable discovery laws that the State of Alaska passed years ago does not provide the same equality for the prosecutors as it does for the defense attorneys. These laws often create reasons for more costly continuances and definitely gives the defense more power in the criminal justice system. It is much more difficult for the prosecutors to establish a proof of guilt when the laws are lopsided for the defense. The tragedy is this is real life cases, criminals should not have the edge. It is necessary to restore a **BALANCE** of justice. HB 25 provides this balance for justice to be better served. Thank you for taking the time to present a bill that better serves the criminal justice process and provides justice for all even the victim.

Sincerely,

Janice Lienhart

Janice Lienhart

- Crisis Intervention
- Short and Long Term Emotional Support
- Grief Educaton
- Victim Advocacy
- Assault Support Group
- Homicide Survivors Support Group
- Court Accompaniment
- CourtWatch Program
- Annual Victims Rights Week Observance
- Member - National Association of Victim Advocacy
- Member - National Organization Victim Assistance

Alaska Women's Resource Center
111 W. 9th Avenue • Anchorage, Alaska 99501 • (907) 276 0528 • Fax: (907) 278 8944

JAN 25 1996

January 22, 1996 VIA FAX

Representative Sean Parnell
State Capitol, Room 515
Juneau, AK 99801-1182

Dear Representative Parnell:

I am writing on behalf of the Alaska Women's Resource Center to express our support of House Bill No. 25.

For all citizens of the State of Alaska to enjoy a healthy and safe community in which to live, laws must be enforced in a thorough and timely manner. House Bill No. 25 addresses the sharing of information and evidence for the purpose of promoting a fair and expeditious disposition of the charges. This will not only facilitate the trial process, but it will also assure victims and non-victims in the community that perpetrators will be held accountable for their actions.

The Alaska Women's Resource Center favors House Bill No. 25 as a means of promoting fully informed and timely law enforcement for the protection of the citizens of Alaska.

Sincerely,

Diane J. Heard
Executive Director

ALASKA NETWORK
ON
DOMESTIC VIOLENCE
AND
SEXUAL ASSAULT

130 Seward Street, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

Comments on HB25: Discovery

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska. Twenty-one full member and five supporting member programs provide shelter, advocacy, crisis intervention, and, information and referral services to victims seeking assistance in ending the violence being perpetrated against them. The Network works to promote institutional and systemic change necessary to end violence against women.

The Network supports reciprocal discovery. Having each side aware of all the pertinent facts prior to trial will allow for more thorough preparation and less lengthy trials. Reciprocal discovery also allows victims of violent crimes to know prior to the time they are required to testify what approach the defense will be taking with them. They will be better able to respond to questioning and not be taken by surprise. Trials should be about fact-finding, not about blind-siding.

The Network is however, concerned over a victim's right to confidentiality. In 1992, the legislature passed a law providing for privileged communication between the victim of domestic violence or sexual assault, and a victim counselor. Approximately ten states that have established privilege for domestic violence and sexual assault victims have absolute privilege.

Alaska is one of several states that has established privilege with exceptions. The exceptions primarily address suspected child abuse and child-in-need-of-aid cases; excited utterances; and, circumstances in which the victim may have committed a crime.

Only two states require an in-camera hearing upon defense submission of a pretrial discovery motion. HB25 adds Alaska to this list. We hope enough safeguards surround the opportunity for in-camera review so that the privilege remains viable and victims will continue to come forward to seek help in ending the violence being perpetrated against them.

S. T. A. R.

Business 907/276-7279
24 Hour Crisis 907/276-7273
Toll Free 1-800-478-8999
TTDY 907/278-9983

January 19, 1996

Representative Sean Parnell
716 W. 4th
Anchorage, AK 99501-2133

Dear Representative Parnell:

We support the passage of **House Bill No. 25.** This bill addresses the sharing of information and evidence for the purpose of promoting a fair and expeditious disposition of the charges.

As an agency that works for and with victims of sexual assault, we must emphasize how important it is to have a system that supports and protects victims as well as defendants. The sharing of information would facilitate a more help reduce the risk of a "surprise attack" where victims may feel like they are being revictimized. After an assault where a victim was denied a voice and made powerless, it is an important part of the healing process for the victim to be able to be well informed.

We strongly support Representative Parnell's efforts to ensure that victims are kept aware and well informed so that the chance of being taken by surprise is greatly reduced or eliminated.

Thank you.

Sincerely,

Trisha Gentle

Trisha Gentle
Executive Director
Standing Together Against Rape

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

February 5, 1996

Representative Sean Parnell
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1182

Dear Representative Parnell,

On behalf of the Alaska Peace Officers Association, I would like to thank you for introducing House Bill 25 relating to the Rules of Discovery. At a recent meeting of the APOA State Board, we unanimously decided to support this piece of legislation. We agree that Alaska's Court Rules on discovery are out of step with the rest of the country and they do not foster a level playing field for the prosecution and the defense.

We encourage you to call on us when there are teleconference hearings, so that we may testify about the need for this legislation. If you need assistance as you shepherd this bill through the legislative process, please call me at 451-5316, or our business manager, Joseph Young at 277-0515.

Sincerely

Michael Corkill
State President

ANCHORAGE POLICE DEPARTMENT

4501 South Bragaw Street • Anchorage, Alaska 99507-1599
Telephone (907) 786-8500

Rick Mystrom
Major

Service since 1921

January 31, 1996

Representative Sean R. Parnell
Alaska State Legislature
State Capitol (MS 3000)
Juneau, Alaska 99801-1182

Dear Representative Parnell,

We support your efforts on three House Bills that you have introduced. They are House Bills 25, 314, and 326.

House Bill 25 would allow reciprocal discovery between the prosecution and the defense in criminal matters. Under current law the defense enjoys an unfair advantage because they don't have to divulge information to the prosecution that may be critical at trial. The public and the defendant both deserve a fair trial, and your bill would help level the playing field.

House Bill 314 would strengthen our domestic violence laws by affording victims more protection under the law when a Temporary Restraining Order is issued by a court. We need the additional specificity contained in House Bill 314.

House Bill 326 would reverse what we think was a mistake on the part of the Bar Association when they adopted a rule that allows for surreptitious taping without a person's notice or consent. Victims should not be subjected to this type of taped recording.

We thank you for introducing these bills. If we can be of any assistance, please contact my office.

Sincerely,

Duane S. Udland
Deputy Chief

City and Borough of Sitka

POLICE DEPARTMENT

304 Lake Street, Room 102 • Sitka, Alaska 99835

John H. Newell
Chief of Police

Business 747-3245
Fax 747-1075

February 2, 1996

Representative Sean Parnell
House of Representatives
State Capitol, Juneau, AK 99801-1182

Representative Parnell,

I support HB 25 and encourage the legislature to enact this bill into law.

We are all well aware of the crowded court dockets and frequent delays in proceedings which ultimately thwart in interest of justice. It seems reasonable and appropriate that similar, if not the same, rules apply to both prosecution and defense.

It is my view that passage of HB25 will increase the timely resolution of issues in criminal cases, reduce the courts time, and allow prosecution and defense opportunity to satisfactorily carry out their respective responsibilities.

Sincerely,

John H. Newell
Chief of Police

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ABA STANDARDS FOR CRIMINAL JUSTICE: DISCOVERY (THIRD EDITION)

Reprinted below are black letter American Bar Association Standards for Criminal Justice concerning Discovery. They were approved by the ABA's House of Delegates in August 1994.

The ABA's Criminal Justice Standards Committee, chaired by William H. Jeffress Jr., of Washington, D.C., and the Discovery Standards Task Force, chaired by Justice Ben F. Overton of the Florida Supreme Court, will be reviewing the proposed commentary to these Standards over the next year. The commentary is being prepared by Niki Kuckes of Miller, Cassidy, Larroca & Lewin in Washington, D.C. and by Professor Gerald Bennett of the University of Florida Law School. Upon completion, these Standards and supporting Commentary will be published in soft-cover by the ABA as part of the Third Edition ABA Standards for Criminal Justice.

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PART I. GENERAL PRINCIPLES

Standard 11-1.1 Objectives of pretrial procedures

(a) Procedures prior to trial should, consistent with the constitutional rights of the defendant:

(i) promote a fair and expeditious disposition of the charges, whether by diversion, plea, or trial;

(ii) provide the defendant with sufficient information to make an informed plea;

(iii) permit thorough preparation for trial and minimize surprise at trial;

(iv) reduce interruptions and complications during trial and avoid unnecessary and repetitious trials by identifying and resolving prior to trial any procedural, collateral, or constitutional issues;

(v) minimize the procedural and substantive inequities among similarly situated defendants;

(vi) effect economies in time, money, judicial resources, and professional skills by minimizing paperwork, avoiding repetitious assertions of issues, and reducing the number of separate hearings; and

(vii) minimize the burden upon victims and witnesses.

(b) These needs can be served by:

(i) full and free exchange of appropriate discovery;

(ii) simpler and more efficient procedures; and

(iii) procedural pressures for expediting the processing of cases.

Standard 11-1.2. Applicability

These standards should be applied in all criminal cases. Discovery procedures may be more limited than those described in these standards in cases involving minor offenses, provided the procedures are sufficient to permit the party adequately to investigate and prepare the case.

Standard 11-1.3. Definition of "statement"

(a) When used in these standards a "written statement" of a person shall include:

(i) any statement in writing that is made, signed or adopted by that person; and

(ii) the substance of a statement of any kind made by that person that is embodied or summarized in any writing or recording, whether or not specifically signed or adopted by that person. The term is intended to include statements contained in police or investigative reports, but does not include attorney work product.

(b) When used in these standards, an "oral statement" of a person shall mean the substance of any statement of any kind by that person, whether or not reflected in any existing writing or recording.

PART II. DISCOVERY OBLIGATIONS OF THE PROSECUTION AND DEFENSE

Standard 11-2.1. Prosecutorial disclosure

(a) The prosecution should, within a specified and reasonable time prior to trial, disclose to the defense the following information and material and permit inspection, copying, testing and photographing of disclosed documents or tangible objects:

(i) All written and all oral statements of the defendant or of any codefendant that are within the possession or control of the prosecution and that relate to the subject matter of the offense charged, and any documents relating to the acquisition of such statements.

(ii) The names and addresses of all persons known to the prosecution to have information concerning the offense charged, together with all written statements of any such person that are within the possession or control of the prosecution and that relate to the subject matter of the offense charged. The prosecution should also identify the persons it intends to call as witnesses at trial.

(iii) The relationship, if any, between the prosecution and any witness it intends to call at trial, including the nature and circumstances of any agreement, understanding or representation between the prosecution and the witness that constitutes an inducement for the cooperation or testimony of the witness.

(iv) Any reports or written statements of experts made in connection with the case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons. With respect to each expert whom the prosecution intends to call as a witness at trial, the prosecutor should also furnish to the defense a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion.

(v) Any tangible objects, including books, papers, documents, photographs, buildings, places, or any other objects, which pertain to the case or which were obtained from or belong to the defendant. The prosecution should also identify which of these tangible objects it intends to offer as evidence at trial.

(vi) Any record of prior criminal convictions, pending charges, or probationary status of the defendant or of any codefendant, and, insofar as known to the prosecution, any record of convictions, pending charges, or probationary status that may be used for impeachment of any witness to be called by either party at trial.

(vii) Any material, documents or information relating to lineups, showups, and picture or voice identifications in relation to the case.

(viii) Any material or information within the prosecutor's possession or control which tends to negate the guilt of the defendant as to the offense charged or which would tend to reduce the punishment of the defendant.

(b) If the prosecution intends to use character, reputation or other act evidence, the prosecution should notify the defense of that intention and of the substance of the evidence to be used.

(c) If the defendant's conversations or premises have been subjected to electronic surveillance (including wiretapping) in connection with the investigation or prosecution of the case, the prosecution should inform the defense of that fact.

(d) If any tangible object which the prosecutor intends to offer at trial was obtained through a search and seizure, the prosecution should disclose to the defense any information, documents or other material relating to the acquisition of such objects.

Standard 11-2.2. Defense disclosure

(a) The defense should, within a specified and reasonable time prior to trial, disclose to the prosecution the following information and material and permit inspection, copying, testing and photographing of disclosed documents and tangible objects:

(i) The names and addresses of all witnesses (other than the defendant) whom the defense intends to call at trial, together with all written statements of any such witness that are within the possession or control of the defense and that relate to the subject matter of the testimony of the witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a prosecution witness should not be required until after the prosecution witness has testified at trial.

(ii) Any reports or written statements made in connection with the case by experts whom the defense intends to call at trial, including the results of physical or mental examinations and of scientific tests, experiments, or comparisons that the defendant intends to offer as evidence at trial. For each such expert witness, the defense should also furnish to the prosecution a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion.

(iii) Any tangible objects, including books, papers, documents, photographs, buildings, places, or any other objects, which the defense intends to introduce as evidence at trial.

(b) If the defense intends to use character, reputation or other act evidence not relating to the defendant, the defense should notify the prosecution of that intention and of the substance of the evidence to be used.

(c) If the defense intends to rely upon a defense of alibi or insanity, the defense should notify the prosecu-

tion of that intent and of the names of the witnesses who may be called in support of that defense.

Standard 11-2.3. The person of the defendant

(a) After the initiation of judicial proceedings, the defendant should be required, upon the prosecution's request, to appear within a time specified for the purpose of permitting the prosecution to obtain fingerprints, photographs, handwriting exemplars, or voice exemplars from the defendant, or for the purpose of having the defendant appear, move, or speak for identification in a lineup or try on clothing or other articles. Whenever the personal appearance of the defendant is required for the foregoing purposes, reasonable notice of the time and place of such appearance should be given by the prosecuting attorney to the defendant and the defendant's counsel.

(b) Upon motion by the prosecution, with reasonable notice to defendant and defendant's counsel, the court should upon an appropriate showing order the defendant to appear for the following purposes:

(i) to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, and material under the nails;

(ii) to permit the taking of samples of other materials of the body;

(iii) to submit to a reasonable physical or medical inspection of the body, or;

(iv) to participate in other reasonable and appropriate procedures.

(c) The motion and order pursuant to paragraph (b) above should specify the following information where appropriate: the authorized procedure, the scope of the defendant's participation, the name or job title of the person who is to conduct the procedure, and the time, duration, place, and other conditions under which the procedure is to be conducted.

(d) The court should issue the order sought pursuant to paragraph (b) above if it finds that:

(i) the appearance of the defendant for the procedure specified may be material to the determination of the issues in the case, and

(ii) the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual; and

(iii) the request is reasonable.

(e) Defense counsel may be present at any of the foregoing procedures unless, with respect to a psychiatric examination, it is otherwise ordered by the court.

PART III. SPECIAL DISCOVERY PROCEDURES

Standard 11-3.1. Obtaining nontestimonial information from third parties

(a) Upon motion by either party, if the court finds that there is good cause to believe that the evidence sought may be material to the determination of the issues in the case, the court should in advance of trial issue compulsory process for the following purposes:

(i) To obtain documents and other tangible objects in the possession of persons not parties to the case.

(ii) To allow the entry upon property owned or controlled by persons not parties to the case. Such process should be issued if the court finds that the party requesting entry has met the standard that the government would be required to meet to obtain access to the property at issue.

(iii) To obtain from a third party fingerprints, photographs, handwriting exemplars, or voice exemplars, or to compel a third party to appear, move or speak for identification in a lineup, to try on clothing or other articles, to permit the taking of specimens of blood, urine, saliva, breath, hair, nails, or other materials of the body, to submit to a reasonable physical or medical inspection of the body, or to participate in other reasonable and appropriate procedures. Such process should be issued if the court finds that:

(1) the procedure is reasonable and will be conducted in a manner which does not involve an unreasonable intrusion of the body or an unreasonable affront to the dignity of the individual the individual, and

(2) the request is reasonable.

(b) The motion and the order should specify the following information where appropriate: the authorized procedure, the scope of participation of the third party, the name or job title of the person who is to conduct the procedure; and the time, duration, place and other conditions under which the procedure is to be conducted.

(c) A person whose interests would be affected by the compulsory process sought should have the right and a reasonable opportunity to move to quash the process on the ground that compliance would subject the person to an undue burden, or would require the disclosure of material that is privileged or otherwise protected from disclosure, or would otherwise be unreasonable.

Standard 11-3.2 Preservation of evidence and testing or evaluation by experts

(a) If either party intends to destroy or transfer out of its possession any objects or information otherwise discoverable under these standards, the party should give notice to the other party sufficiently in advance to afford that party an opportunity to object or take other appropriate action.

(b) Upon motion, either party should be permitted to conduct evaluations or tests of physical evidence in the possession or control of the other party which is subject to disclosure. The motion should specify the nature of the test or evaluation to be conducted, the names and qualifications of the experts designated to conduct evaluations or tests, and the material upon which such test will be conducted. The court may make such orders as are necessary to make the material to be tested or examined available to the designated expert.

(i) The court should condition its order so as to preserve the integrity of the material to be tested or evaluated.

(ii) If the material is contraband material or a controlled substance, the entity having custody of the material may elect to have a representative present during the testing of the material.

PART IV. TIMING AND MANNER OF DISCLOSURE

Standard 11-4.1. Timely performance of disclosure

(a) Each jurisdiction should develop time limits within which discovery should be performed. The time limits should be such that discovery is initiated as early as practicable in the process. The time limit for completion of discovery should be sufficiently early in the process that each party has sufficient time to use the disclosed information adequately to prepare for trial.

(b) The time limits adopted by each jurisdiction should provide that, in the general discovery sequence, disclosure should first be made by the prosecution to the defense. The defense should then be required to make its correlative disclosure within a specified time after prosecution disclosure has been made.

(c) Each party should be under a continuing obligation to produce discoverable material to the other side. If, subsequent to compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, the other party should promptly be notified of the existence of such additional material. If the additional material or information is discovered during or after trial, the court should also be notified.

Standard 11-4.2. Manner of performing disclosure

Disclosure may be accomplished in any manner mutually agreeable to the parties. Absent agreement, the party having the burden of production should:

(a) notify opposing counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed during specified reasonable times; and

(b) make available to opposing counsel at the time specified such material and information and suitable facilities or other arrangements for inspection, testing, copying, and photographing of such material and information.

Standard 11-4.3. Obligation to obtain discoverable material

(a) The obligations of the prosecuting attorney and of the defense attorney under these standards extend to material and information in the possession or control of members of the attorney's staff and of any others who either regularly report to or, with reference to the particular case, have reported to the attorney's office.

(b) The prosecutor should make reasonable efforts to ensure that material and information relevant to the defendant and the offense charged is provided by investigative personnel to the prosecutor's office.

(c) If the prosecution is aware that information which would be discoverable if in the possession of the prosecution is in the possession or control of a government agency not reporting directly to the prosecution, the prosecution should disclose the fact of the existence of such information to the defense.

(d) Upon a party's request for, and designation of, material or information which would be discoverable if in the possession or control of the other party and which is in the possession or control of others, the party from whom the material is requested should use diligent good faith efforts to cause such material to be made available to the opposing party. If the party's efforts are unsuccessful and such material or others are subject to the jurisdiction of the court, the court should issue suitable subpoenas or orders to cause such material to be made available to the party making the request.

(e) Upon a showing that items not covered in the foregoing standards are material to the preparation of the case, the court may order disclosure of the specified material or information.

PART V. DEPOSITIONS

Standard 11-5.1. Depositions to perpetuate testimony

(a) After an indictment or information upon which a defendant is to be tried is filed, upon motion of the defense or the prosecution, the court may order a deposition taken to perpetuate the testimony of a prospective material witness if the court finds that there is reason to believe that the witness will be unable to be present and to testify at trial because of serious illness or other comparably serious reason, and that it is necessary to take the witness's deposition to prevent a failure of justice. The motion should be verified or the grounds for the motion supported by affidavit.

(b) In the order for the deposition, the court may also require that any designated books, papers, documents or tangible objects, not privileged, be produced at the time and place of the deposition.

(c) The court should make provision for the defendant to be present at the taking of the deposition and should make such other provisions as are necessary to preserve the defendant's right to confrontation of witnesses.

(d) A deposition so taken and any evidentiary material produced at such deposition may be introduced in evidence at trial subject to applicable rules of evidence. However, no deposition taken under this section should be used or read in evidence when the attendance of the deposed witness can be procured, except for the purpose of contradicting or impeaching the testimony of the deponent.

Standard 11-5.2. Discovery depositions

(a) On motion of either the prosecution or the defense, the court should order the taking of a deposition upon oral examination of any person other than the defendant concerning information relevant to the offense charged, but only upon a showing that:

(i) the name of the person sought to be deposed has been disclosed to the movant by the opposing party through the exchange of names and addresses of witnesses or has been discovered during the movant's investigation of the case, and

(ii) no writing, summarizing the relevant knowledge of the person sought to be deposed, adequate to prevent surprise at trial, has been furnished to the movant, and

(iii) the movant has taken reasonable steps to obtain a voluntary oral or written statement from the witness, but the witness has refused to cooperate in giving a voluntary statement; and

(iv) the taking of a deposition is necessary in the interests of justice.

(b) The defendant may not be present at the deposition unless the court orders otherwise for good cause shown.

(c) The procedure for taking a discovery deposition, including the scope of the examination, should be in accordance with express rules to be written for depositions in criminal proceedings.

(d) Unless otherwise stipulated by the parties, a discovery deposition should be admissible at a trial or hearing only for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(e) A person whose deposition is sought should have the right to move to quash on the ground that compliance would subject the person to an undue burden, or would require the disclosure of material that is privileged or otherwise protected from disclosure, or would otherwise be unreasonable.

PART VI. GENERAL PROVISIONS GOVERNING DISCOVERY

Standard 11-6.1. Restrictions on disclosure

(a) Disclosure should not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or the defense attorney, or members of the attorney's legal staff.

(b) Disclosure of an informant's identity should not be required where such identity is a prosecution secret and where a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure should not be denied of the identity of witnesses to be produced at a hearing or trial.

(c) Disclosure should not be required where it involves a substantial risk of grave prejudice to national security and where a failure to disclose will not infringe the constitutional rights of the defendant. Disclosure should not be denied regarding witnesses or material to be produced at a hearing or trial.

(d) Disclosure should not be required from the defense of any communications of the defendant, or of any other materials which are protected from disclosure by the state or federal constitutions, statutes or other law.

(e) The court should have the authority to deny, delay, or otherwise condition disclosure authorized by these standards if it finds that there is substantial risk to any person of physical harm, intimidation, or bribery resulting from such disclosure which outweighs any usefulness of the disclosure.

Standard 11-6.2. Failure of a party to use disclosed material at trial

The fact that a party has indicated during the discovery process an intention to offer specified evidence or to call a specified witness is not admissible in evidence at a hearing or trial.

Standard 11-6.3. Investigations not to be impeded

Neither the counsel for the parties nor other prosecution or defense personnel should advise persons (other than the defendant) who have relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor should they otherwise impede opposing counsel's investigation of the case.

Standard 11-6.4. Custody of materials

Any materials furnished to an attorney pursuant to these standards should be used only for the purposes of preparation and trial of the case, and should be subject to such other terms and conditions as the court may provide.

Standard 11-6.5. Protective orders

Upon a showing of cause, the court may at any time order that specified disclosures be restricted, conditioned upon compliance with protective measures, or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled is disclosed in sufficient time to permit counsel to make beneficial use of the disclosure.

Standard 11-6.6. Excision

When some parts of material or information are discoverable under these standards and other parts are not discoverable, the discoverable parts should be disclosed. The disclosing party should give notice that nondiscoverable parts have been withheld and the nondiscoverable parts should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

Standard 11-6.7. In camera proceedings

Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or any portion of such showing, to be made in camera. A record should be made of both in court and in camera proceedings. Upon the entry of an order granting relief following a showing in camera, all confidential portions of the in camera portion of the showing should be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

PART VII. SANCTIONS

Standard 11-7.1. Sanctions

(a) If an applicable discovery rule or an order issued pursuant thereto is not promptly implemented, the court should do one or more of the following:

(i) order the noncomplying party to permit the discovery of the material and information not previously disclosed,

(ii) grant a continuance,

(iii) prohibit the party from calling a witness or introducing into evidence the material not disclosed, subject to the defendant's right to present a defense and provided that the exclusion does not work an injustice either to the prosecution or the defense, or

(iv) enter such other order as it deems just under the circumstances.

(b) The court may subject counsel to appropriate sanctions, including a finding of contempt, upon a finding that counsel willfully violated a discovery rule or order.

instance of a defendant over the objection of any other defendant.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 639 effective May 30, 1985; amended by SCO 157 effective February 15, 1973; and by SCO 1153 effective July 15, 1994)

Annotations

Cases

Denial of motion to take depositions of witnesses who had testified before the grand jury was no error where appellants had not made a showing sufficient under this rule. Merrell v. State, Op. No. 392, 423 P2d 686 (Alaska 1967).

Where the direct penalty for conviction of an offense may be incarceration, loss of a valuable license, or a fine heavy enough to indicate criminality, such offense is a "serious crime" within the public defender statute. A defendant who is charged with any such misdemeanor and who cannot afford to hire his own lawyer is eligible for representation by a public defender. Alexander v. City of Anchorage, Op. No. 738, 490 P2d 910 (Alaska 1971).

Expansion of discovery beyond provisions contained in court rules is most appropriately done through amendment of existing rules after thorough study. Buchanan v. State, Op. No. 1316, 561 P2d 1097 (Alaska 1977).

Where statements of juvenile codefendants were taken in juvenile proceedings, but juveniles testified at trial and statements were not introduced, no violation of the right to silence of a deposition occurred. Linden v. State, Op. No. 1905, 598 P2d 960 (Alaska 1979).

The admission of a witness' pretrial videotaped deposition at trial was reversible error where the state failed to subpoena the witness despite advance knowledge of her plan to be out of the state during the trial. Stores v. Seattle, Op. No. 2252, 625 P2d 820 (Alaska 1981).

Trial court did not err in denying defense motion to admit video deposition of expert witness where defendant failed to demonstrate either that the witness was beyond the jurisdiction of the court or that due diligence was exercised in attempting to secure her appearance. Dunbar v. State, Op. No. 387, 677 P2d 1275 (Alaska App. 1984).

In sexual abuse case, trial court did not abuse its discretion in refusing to allow defendant to depose his sons, who had given statements to the police and testified before the grand jury, but did not wish to be interviewed further, where on appeal the defense did not argue surprise at the children's trial testimony but instead argued, without further amplification, that the denial of discovery impaired its ability to adequately prepare for trial. State v. Covington, Op. No. 552, 711 P2d 1181 (Alaska App. 1985).

Rule 16. Discovery.

(a) **Scope of Discovery.** In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system.

(b) **Disclosure to the Accused.**

(1) *Information within Possession or Control of Prosecuting Attorney.* (A) Except as is otherwise provided as to matters not subject to disclosure and protective orders, the prosecuting attorney shall disclose the following information within the prosecuting attorney's possession or control to defense counsel and make available for inspection and copying:

(i) The names and addresses of persons known by the government to have knowledge of relevant facts and their written or recorded statements or summaries of statements;

(ii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by the accused;

(iii) Any written or recorded statements and summaries of statements and the substance of any oral statements made by a co-defendant;

(iv) Any books, papers, documents, photographs or tangible objects, which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused, and

(v) Any record of prior criminal convictions of the defendant and of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial.

(B) *Expert Witnesses.* Unless a different date is set by the court, as soon as known and no later than 45 days prior to trial, the prosecutor shall inform the defendant of the names and addresses of any expert witnesses performing work in connection with the case or whom the prosecutor is likely to call at trial. The prosecutor shall also make available for inspection and copying any reports or written statements of these experts. With respect to each expert whom the prosecution is likely to call at trial, the prosecutor shall also furnish to the defendant a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the defendant to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the prosecutor from calling the expert at trial or declaring a mistrial.

(2) *Information Provided by Informant — Electronic Surveillance.* The prosecuting attorneys shall inform defense counsel

(i) of any relevant material or information relating to the guilt or innocence of the defendant which has been provided by an informant, and

(ii) of any electronic surveillance, including wiretapping, of

(aa) conversations to which the accused or the accused's attorney was a party,

(bb) premises of the accused or the accused's attorney.

(3) *Information Tending to Negate Guilt or Reduce Punishment.* The prosecuting attorney shall disclose to defense counsel any material or information within the prosecuting attorney's possession or control which tends to negate the guilt of the accused as to the offense or would tend to reduce the accused's punishment therefor.

(4) *Information Within Possession or Control of Other Members of Prosecuting Attorney's Staff.* The prosecuting attorney's obligations extend to material and information in the possession or control of

(i) members of the prosecuting attorney's staff, and

(ii) any others who have participated in the investigation or evaluation of the case and who either regularly report or with reference to the particular case have reported to the prosecuting attorney's office.

(5) *Availability of Information to Defense Counsel.* Whenever defense counsel designates and requests production of material or information which is not in the possession or control of the prosecuting attorney but would be discoverable if in the possession or control of the prosecuting attorney, the court shall issue suitable subpoenas or orders to cause such material to be made available to defense counsel.

(6) *Information Regarding Searches and Seizures — Statements From the Accused — Relationship of Witnesses to Prosecuting Attorney.* Except as otherwise provided the prosecuting attorney shall, upon request of defense counsel, disclose and permit inspection, testing, copying and photographing of any relevant material and information regarding:

(i) Specified searches and seizures;

(ii) The acquisition of specified statements from the accused; and

(iii) The relationship, if any, of specified witnesses to the prosecuting authority.

(7) *Other Information.* Upon a reasonable request showing materiality to the preparation of the defense, the court in its discretion may require disclosure to defense counsel of relevant material and information not covered by subsections (b) (1), (b) (2), (b) (3), and (b) (6).

(8) *Legal Research and Records of Prosecuting Attorney.* Disclosure shall not be required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories or conclusions of the prosecuting attorney or members of the prosecuting attorney's legal staff.

(c) **Disclosure to the Prosecuting Attorney.**

(1) *Non-Testimonial Identification Procedures — Authority.* Upon application of the prosecuting attorney, the court by order may direct any person to participate in one or more of the procedures specified in subsection (c) (2) of this rule if affidavit or testimony shows probable cause to believe that:

(i) An offense has been committed by one of several persons comprising a narrow focal group that includes the subject person;

(ii) The evidence sought may be of material aid in identifying who committed the offense; and

(iii) The evidence sought cannot practicably be obtained from other sources.

(2) *Non-Testimonial Identification Procedures — Scope.* An order issued under subsection (c) (1) of this rule may direct the person to do or submit to any and all of the following:

(i) Appear in a line-up;

(ii) Speak words, phrases or sentences relevant to the case for identification by witnesses;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of a scene;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under the person's fingernails;

(vii) Permit the taking of samples of blood, hair and other materials of the person's body which involve no unreasonable intrusion thereof;

(viii) Provide specimens of the person's handwriting;

(ix) Submit to a reasonable physical or medical inspection of the person's body.

(3) *Right to Counsel.* When issuing an order under subsection (c) (1) of this rule, the court shall also order that the person be represented by counsel or waive the right to be represented by counsel before being required to appear in a lineup, give a specimen of handwriting, or speak for identification by witnesses to an offense.

(4) *Expert Witnesses.* Unless a different date is set by the court, no later than 30 days prior to trial the defendant shall inform the prosecutor of the names and addresses of any expert witnesses the defendant is likely to call at trial. The defendant shall also make available for inspection and copying any reports or written statements of these experts. For each such expert witness, the defendant shall

also furnish to the prosecutor a curriculum vitae and a written description of the substance of the proposed testimony of the expert, the expert's opinion, and the underlying basis of that opinion. Failure to provide timely disclosure under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from calling the expert at trial. Information obtained by the prosecutor under this rule may be used only for cross-examination or rebuttal of defense testimony.

(5) *Notice of Defenses.* Unless a different date is set by the court, no later than 10 days prior to trial, the defendant shall inform the prosecutor of the defendant's intention to rely upon a defense of alibi, justification, duress, entrapment, or other statutory or affirmative defense. Failure to provide timely notice under this rule shall entitle the prosecutor to a continuance. If the court finds that a continuance is not an adequate remedy under the circumstances of the case, the court may impose other sanctions, including prohibiting the defendant from asserting the designated defense. The defendant shall give notice of an insanity defense or a defense of diminished capacity due to mental disease or defect in compliance with AS 12.47.

(6) *Physical Evidence.* Defense counsel shall turn over to the prosecutor any physical evidence of the offense received by counsel. If the physical evidence is received from the client or the client's agent or acquired as a direct result of information communicated by the client, defense counsel may not be compelled to provide any information concerning the source of the evidence or the manner in which it was obtained. In such cases, the prosecutor may not reveal the source of the evidence to the jury. If the physical evidence is not received from the client or the client's agent or acquired as a direct result of information communicated by the client, defense counsel shall reveal the manner in which the physical evidence was obtained unless that information is otherwise privileged.

(d) **Regulation of Discovery.**

(1) *Advice to Refrain From Discussing Case.* Except as is otherwise provided as to matters not subject to disclosure and protective orders, neither counsel for the parties nor other prosecution or defense personnel shall advise persons (except the accused) having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

(2) *Additional or Newly Discovered Information.* If, subsequent to compliance with these rules or orders issued pursuant thereto, a party discovers additional material or information which is subject to disclosure, that party shall promptly notify the other party or the other party's counsel of its existence. If the additional material or information is discovered during trial, the court shall also be notified.

(3) *Materials to Remain in Exclusive Custody of Attorney.*

(A) Materials furnished to an attorney pursuant to these rules shall remain in the attorney's exclusive custody, shall be used only for the purposes of conducting the case, and shall be subject to other terms and conditions that the court may provide if the information is

(i) a criminal history record of a victim or witness;

(ii) a medical, psychiatric, psychological, or counseling record of a victim or witness;

(iii) an adoption record;

(iv) a record that is confidential under AS 47.10.090 or a similar law in another jurisdiction;

(v) a report of a presentence investigation of a victim or witness prepared pursuant to Criminal Rule 32 or a similar law in another jurisdiction;

(vi) a record of the Department of Corrections other than incident report relating to the crime with which the defendant is charged; or

(vii) any other record that the court orders be kept in the exclusive custody of the attorney.

(B) An attorney shall not disclose to a defendant the residence or business address or telephone number of a victim or witness, obtained from information provided under this rule, even if the defendant is acting as co-counsel. If the address and telephone numbers of all victims and witnesses have been obliterated, materials that had contained the address or telephone number of a victim or witness may be provided to a defendant proceeding without counsel only as allowed by AS 12.61.120.

(C) Notwithstanding a defendant's status as co-counsel, materials covered by subsection (d)(3)(A) shall remain in the exclusive custody of the defendant's attorney.

(D) If a defendant is proceeding without counsel, materials covered by subsection (d)(3)(A) may be provided to the defendant. If materials are provided to an unrepresented defendant under this paragraph, the court shall order that the materials remain in the defendant's exclusive custody, be used only for purposes of conducting the case, and be subject to other terms, conditions, and restrictions that the court may provide. The court shall also inform the defendant that violation of an order issued under this paragraph is punishable as a contempt of court.

(4) *Restriction or Deferral of Disclosure of Information.* Upon a showing of cause, the court may at any time order that specified disclosure be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled shall be disclosed in time to permit the party's counsel to make beneficial use thereof.

(5) *Material Partially Discoverable.* When some parts of certain material are discoverable under these rules and other parts are not discoverable, as much of the material shall be disclosed as is consistent with this rule. Excision of certain material and disclosure of the balance shall be preferred to withholding of the whole. Material excised pursuant to court order shall be sealed and preserved in the records of the court, and shall be made available to the court of appeals and the supreme court in the event of an appeal.

(6) *Denial or Regulation of Disclosure — Disclosure to Court in Camera — Record of Proceedings.* Upon request of any party, the court may permit

(i) any showing of cause for denial or regulation of disclosure, or

(ii) any portion of any showing of cause for denial or regulation of disclosure to be made to the court in camera ex parte. A record shall be made of such proceedings. If the court enters an order granting relief following such a showing, the entire record of the proceedings shall be sealed and preserved in the records of the court, to be made available to the court of appeals and the supreme court in the event of an appeal.

(e) **Sanctions.**

(1) *Failure to Comply with Discovery Rule or Order.* If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or an order issued pursuant thereto, the court shall order such party to permit the discovery of material and information not previously disclosed or enter such other order as it deems just under the circumstances.

(2) *Willful Violations.* Willful violation by counsel of an applicable discovery rule or an order issued pursuant thereto may subject counsel to appropriate sanctions by the court.

(f) **Omnibus Hearing.**

(1) *Time for Hearing — When Set.* If the defendant is charged with a felony, the court shall set a time for an omnibus hearing when a plea of not guilty is entered. The omnibus hearing shall be scheduled for a time when the briefing of pretrial motions should be complete.

The omnibus hearing may be cancelled by the court only upon the stipulation of counsel that there are no motions which require hearing and that discovery is complete. Counsel shall also provide the information outlined in section (f)(2)(D).

The court may set an omnibus hearing in a misdemeanor case.

(2) *Duties of Trial Court at Hearing.* At the omnibus hearing the court shall:

(A) ensure that discovery under this rule is complete;

(B) rule on any pending motions which are ripe for decision;

(C) schedule any necessary evidentiary hearings; and

(D) obtain case management information from the parties, including the expected length of trial, the likelihood of trial, and any anticipated scheduling difficulties.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by SCO 211 effective July 15, 1975; by SCO 212 effective July 15, 1975; by SCO 329 effective January 1, 1979; by SCO 331 effective January 1, 1979; by SCO's 640 and 641 effective September 15, 1985; by SCO 1080 effective July 15, 1992; by SCO 1092 effective July 15, 1992; by SCO 1126 effective July 15, 1993; by SCO 1153 effective July 15, 1994; and by SCO 1191 effective July 15, 1995)

Note: AS 12.61.120, added by ch. 57, § 13, SLA 1991, amended Criminal Rule 16 by restricting discovery available to criminal defendants.

Annotations

Cases

I. General
II. Disclosure to Accused
III. Disclosure to Prosecution

I. In General

This rule affords limited discovery in criminal cases. Stastiner v. State, Op. No. 389, 423 P2d 700 (Alaska 1967).

Where a defendant's substantive rights are not affected by the introduction into evidence of a reference to physical evidence which had been negligently destroyed by the police, the admission of the testimony is not "plain error." Torres v. State, Op. No. 1017, 519 P2d 788 (Alaska 1974).

Existence of this rule gives notice to state that evidence might be the object of discovery and should be preserved. Lauderdale v. State, Op. No. 1254, 548 P2d 376 (Alaska 1976).

This rule is designed to further discovery in order to eliminate gamesmanship for tactical advantage and trial by surprise. Hurt Jardines v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Where there is a violation of this rule not of constitutional dimensions the "harmless error" test will be applied. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Even where violations of this rule did not prejudice defendant, matter would be remanded to trial court for hearing on sanctions that might be imposed on prosecutor under Rule 16(e)(2). Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Expansion of discovery beyond provisions contained in this rule is most appropriately done through amendment of existing rules after thorough study. Buchanan v. State, Op. No. 1316, 561 P2d 1197 (Alaska 1977).

Paragraph (d) of this rule, does not justify conducting an ex parte in camera hearing to consider evidence in conjunction with a bail reduction proceeding. Carman v. State, Op. No. 420, 564 P2d 361 (Alaska 1977).

Order denying motion for discovery is a final order and may be appealed even if motion is not renewed. Batson v. State, Op. No. 1486, 568 P2d 973 (Alaska 1977).

Failure to order discovery of relevant material was not reversible error where the material sought to be discovered could have been merely cumulative. Braham v. State, Op. No. 1522, 571 P2d 631 (Alaska 1977).

Superior court's in camera examination of kidnap victim's journal did not deprive defendant of "effective confrontation" and access to evidence which was potentially helpful to his defense where that portion of journal pertaining to defendant was turned over to defense and where defense could reasonably have assumed that the remainder of the journal contained no references to the defendant or the alleged crime. Maxwell v. State, Op. No. 1577, 575 P2d 1200 (Alaska 1978).

Where confession of co-defendant was disclosed by prosecution for the first time after the trial began, but out of the presence of the jury, the trial court acted properly in denying a motion by the other defendants for a mistrial, in granting a continuance, and in refusing to allow the prosecution to use the confession at trial. Hawley v. State, Op. No. 737, 614 P2d 1349 (Alaska 1980).

The remedy of exclusion of significant evidence for a violation of the discovery rules should be imposed only in rare situations, and absent substantial prejudice to the nonoffending party, the appropriate remedies are the granting of continuances, imposition of monetary sanctions, or the exercise of contempt powers by the court. State v. Lewis, Op. No. 35, 632 P2d 547 (Alaska App. 1981).

In the absence of a timely pretrial objection, hearsay testimony presented to and considered by a grand jury should be regarded on appeal as constituting admissible and fully competent evidence. Cassell v. State, Op. No. 91, 645 P2d 132 (Alaska App. 1982).

Fact that indictment charged defendant with theft of upper teeth but did not allege a specific theory of theft did not deny defendant due process since liberal discovery rules permit an accused to obtain adequate discovery of the state's case and to receive adequate notice of the state's theory or theories of prosecution. Williams v. State, Op. No. 106, 648 P2d 603 (Alaska App. 1982).

Defendant's motion to strike telephone record evidence based upon his constitutional right of privacy after the state had already introduced much of the evidence was properly denied on the ground that defendant had waived the objection by not making the motion at the omnibus hearing prior to trial. Buchanan v. State, Op. No. 290, 669 P2d 1316 (Alaska App. 1983).

Motion to dismiss grand jury indictment on the ground that improper information was presented to the grand jury was properly denied as untimely, since the motion was not raised until during or after jury selection, and because the other evidence presented was so strong that the grand jury's decision to indict was clearly not affected by the allegedly improper information. Pritchard v. State, Op. No. 319, 673 P2d 291 (Alaska App. 1983).

Where motion to suppress evidence was filed late but prior to trial, it was abuse of discretion for the trial court to deny the motion as untimely where defendant was not personally responsible for the late filing and his attorney did not act in bad faith for the purpose of delay. Fox v. State, Op. No. 394, 685 P2d 1267 (Alaska App. 1984).

Where charge of being a felon in possession of a firearm was properly joined to kidnapping and other charges, thereby allowing the jury to be informed of defendant's prior felony conviction, which would not have been the case had the firearm possession charge been severed, trial judge did not abuse his discretion in refusing as untimely defendant's severance motion made on the morning of trial. Wortham v. State, Op. No. 414, 689 P2d 1133 (Alaska App. 1984).

A party intending to rely upon a subsistence defense to charges of violating hunting laws must make a preliminary showing at a reasonable time before trial. Failure to give notice of the defense before trial or in the manner prescribed in a pretrial order may, unless excused for good cause, result in the forfeiture of the defense. State v. Flesher, Op. No. 456, 698 P2d 174 (Alaska App. 1985).

Argument that search warrants were improperly broad and premature was not made to trial court and would not therefore be considered on appeal. Stuart v. State, Op. No. 464, 698 P2d 1218 (Alaska App. 1985).

The broad rights to discovery granted a criminal defendant under the Alaska rules will render a bill of particulars unnecessary in most cases. Covington v. State, Op. No. 491, 703 P2d 436 (Alaska App. 1985).

Where the trial court permits an untimely pretrial challenge to the indictment and rules on the merits of that challenge, the challenge will not be deemed forfeited on appeal. Abrusha v. State, Op. No. 502, 705 P2d 1261 (Alaska App. 1985).

An in camera examination of material submitted by the prosecutor must involve more than a cursory determination that the material is not discoverable; where there is a suggestion that the prosecutor has not submitted all the requested material, the court should inquire further. Braaten v. State, Op. No. 504, 705 P2d 1311 (Alaska App. 1985).

Where defendant's discovery request was for evidence which the state was under obligation to provide and defendant did not request action of the court regarding the request and no court action was taken, defendant's discovery request was not a discovery motion; accordingly, trial court erred in excluding the period during which the request was pending from the speedy trial computation. Miller v. State, Op. No. 511, 706 P2d 336 (Alaska App. 1985).

Violation of the affirmative duty to collect and preserve material evidence requires reversal on appeal only where the defendant is denied due process as a result of the violation; due process is violated only if the evidence, if collected and/or preserved, could possibly affect the outcome. Klumb v. State, Op. No. 575, 712 P2d 909 (Alaska App. 1986).

Failure to preserve tissue samples from the area of the victim's wounds did not violate defendant's due process rights where photographs of the wounds and the pathologist's reports provided the necessary evidence. Klumb v. State, Op. No. 575, 712 P2d 909 (Alaska App. 1986).

Although defendant had a right to be present at his omnibus hearing, his absence from the hearing was held harmless beyond a reasonable doubt despite his claim that attendance would have alerted him to the need to peremptorily challenge the trial judge and to affirmatively protect his speedy trial right. Trudeau v. State, Op. No. 581, 714 P2d 362 (Alaska App. 1986).

Failure to raise an objection at trial to the state's reliance on testimony of a sexual assault victim's physician resulted in forfeiture of the objection. Hilburn v. State, Op. No. 800, 765 P2d 1382 (Alaska App. 1988).

Defendant forfeited his argument that the prosecutor, who had participated in a videotaped interrogation of defendant, should be recused, by failing to make a motion to that effect at the omnibus hearing prior to trial. Kanulle v. State, Op. No. 1070, 796 P2d 844 (Alaska App. 1990).

This rule requires disclosure of "rebuttal" witnesses. Bostic v. State, Op. No. 3659, 805 P2d 344 (Alaska 1991).

Constitutional challenge to statute under which defendant is indicted need not be raised before trial. Gudmundson v. State, Op. No. 3780, 822 P2d 1328 (Alaska 1991).

Argument that this rule precludes trial judge from ordering defendant to submit to independent psychiatric examination unless defendant intends to raise insanity defense was rejected. Nelson v. State, Op. No. 1346, 874 P2d 298 (Alaska App. 1994).

II. Disclosure to Accused

The trial court should require the state to produce for in camera examination police reports of oral statements made to them by a witness called by the state who has testified, as well as any reports or summaries that may exist of pretrial statements made by such witness, when demand is made by the defendant. Mahle v. State, Op. No. 84, 371 P2d 21 (Alaska 1962).

The prosecution has an affirmative duty to disclose to an accused any information within its control which tends to negate the defendant's guilt. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

Generally, rebuttal witnesses do not come within the requirement that the prosecution furnish a list of witnesses to the defense, so long as the rebuttal is true rebuttal and not an attempt to present the state's case-in-chief in the rebuttal. McCurry v. State, Op. No. 1173, 538 P2d 100 (Alaska 1975).

Where the state produces a rebuttal witness whose name has not been included on witness list, the court is bound on motion to grant a continuance to allow the defense to investigate the witness' background. McCurry v. State, Op. No. 1173, 538 P2d 100 (Alaska 1975).

District court properly exercised discretion in requiring production of ampules used in breathalyzer test. Lauderdale v. State, Op. No. 1256, 548 P2d 376 (Alaska 1976).

Where failure to disclose oral statements of defendant was harmless and introduction of statement was not objected to by defense, conviction would not be reversed nor would hearing be had on sanctions under Rule 16(e)(2). Kristich v. State, Op. No. 1264, 550 P2d 796 (Alaska 1976).

This rule imposes a duty on the prosecutor to disclose the information listed in subsection (b) and other information as the court may order. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Prosecutor has an obligation to disclose evidence which tends to negate guilt, mitigate the degree of the offense or reduce punishment. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Witness testifying in rebuttal need not be placed on prosecution's witness list. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

When prosecution fails to disclose evidence it is required to provide until just before it plans to use it, trial court should grant a continuance to allow defense adequate time to prepare. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Prosecutor is obliged to use diligent good faith efforts to make discoverable material available to defense counsel. Des Jardins v. State, Op. No. 1245, 551 P2d 181 (Alaska 1976).

Where defense counsel was not furnished discoverable police reports until six days before testimony was taken, but after proceedings had commenced, defense was not entitled to dismissal. Scharver v. State, Op. No. 1397, 561 P2d 1161 (Alaska 1977).

This rule requires only disclosure of information in prosecution's possession. State v. Clark, Op. No. 1497, 574 P2d 806 (Alaska 1977).

Expense logs showing amounts of money and gifts given to defendants by undercover officers were relevant to defense of entrapment and denial of discovery was improper. Batson v. State, Op. No. 1486, 568 P2d 973 (Alaska 1977).

If material of which discovery is sought is relevant to defense, it must be disclosed even if disclosure would be inconsistent with law enforcement or protection of persons unless prosecution is abandoned. Braham v. State, Op. No. 1522, 571 P2d 631 (Alaska 1977).

If claim that disclosure of material sought to be discovered would be inconsistent with law enforcement or protection of persons fails, material must be disclosed to defense counsel and issue of relevance decided in adversary context. Braham v. State, Op. No. 1522, 571 P2d 631 (Alaska 1977).

Defense motion to prevent essential prosecution witness from testifying because of prosecution's failure to comply with court order to turn the witness' personal file over to defense was properly denied in the absence of a showing of prejudice to defendant of such a nature as likely to have a substantial effect on the outcome of the case, since failure of counsel to comply with discovery order should not be utilized as a basis for ultimate disposition of litigation. Johnson v. State, Op. No. 1596, 577 P2d 230 (Alaska 1978).

State's failure to preserve and produce the position and direction of fingerprints found on lamp at scene of crime did not violate Criminal Rule 16(b)(7) where the materiality of the evidence was marginal at best and there was no hint or suggestion of bad faith on the government's part. White v. State, Op. No. 1605, 577 P2d 1056 (Alaska 1978).

Trial court did not err in not dismissing the charge when the state failed to provide immediate discovery, since substa

trial rights of defendant were not impinged. Christie v. State, Op. No. 1644, 580 P2d 310 (Alaska 1978).

Failure of prosecution to disclose police report which contained information used on cross-examination by prosecution to impeach defendant's alibi witnesses clearly contravened the policies which underlie Criminal Rule 16. Stevens v. State, Op. No. 1658, 582 P2d 621 (Alaska 1978).

Failure of prosecution to disclose police report which it used on cross-examination constituted prejudicial error since it could not fairly be said that the error did not appreciably affect the jury's verdict. Stevens v. State, Op. No. 1658, 582 P2d 621 (Alaska 1978).

If a rebuttal witness is a person known by the prosecution to have knowledge of relevant facts, then his name, address and any statement he has given must be disclosed to defense counsel. Howe v. State, Op. No. 1780, 589 P2d 421 (Alaska 1979).

Non-disclosure of the names of rebuttal witnesses whose knowledge is reasonably not thought to be germane to the case, until a position taken by the defense during trial makes it so, is justified. Howe v. State, Op. No. 1780, 589 P2d 421 (Alaska 1979).

The state's failure to preserve and make available to the defendant the physical items from which fingerprint evidence was taken did not violate the defendant's statutory right of discovery. Wyrick v. State, Op. No. 1790, 590 P2d 46 (Alaska 1979).

Where prosecution failed to produce documents pursuant to request for discovery, but violation was in good faith, and where defendant did not request a continuance, it was not error to admit documents. Williams v. State, Op. No. 1939, 608 P2d 741 (Alaska 1979).

State had a responsibility to disclose to defense the fact that reward for witness entitled, that state's witness had been told early on that he was potential recipient, that witness had requested money when he first approached the police, and the fact that witness was paid money after he gave the initial statement. Carman v. State, Op. No. 1994, 604 P2d 1076 (Alaska 1979).

Pre-trial request for a psychiatric report to which the state had access concerning the state's key witness was properly denied where the report would not have contributed in a meaningful way to a more effective cross-examination of the witness. Gunnerud v. State, Op. No. 2091, 611 P2d 69 (Alaska 1980).

Prosecution's failure to disclose oral statement of defendant which destroyed defense theory did not require new trial where the theory was not reasonably credible. Hampton v. State, Op. No. 2283, 623 P2d 318 (Alaska 1981).

Where, on the morning of trial, the prosecutor presented defendant's attorney for the first time with a newly discovered police report containing the name and address of an apparent witness to the alleged crime, it was error for the court to deny defense motion for continuance, but the error was harmless. Russell v. Municipality of Anchorage, Op. No. 14, 626 P2d 96 (Alaska App. 1981).

The imposition of sanctions for the state's failure to make evidentiary material available to the defendant depends upon a degree of culpability as to the state weighed against the prejudice to the defendant. Putnam v. State, Op. No. 2451, 630 P2d 35 (Alaska 1981).

A tape which the prosecution inadvertently failed to disclose to the defendant prior to trial is admissible if the defendant does not suffer substantial prejudice from its admission. Fields v. State, Op. No. 2360, 629 P2d 46 (Alaska 1981).

Destruction of taped evidence which should be preserved under this rule does not deny defendant due process when the evidence merely would have been cumulative of other evidence on trial. Williams v. State, Op. No. 2366, 629 P2d 56 (Alaska 1981).

Trial court's failure to insure that prosecution witness, rather than the state, exposited disclosure of the witness' medical and psychiatric records was error, but the error was harmless where there was nothing in those records bearing on her credibility and competency that was not cumulative to her trial testimony and where those records were not inconsistent with her testimony. Spencer v. State, Op. No. 80, 642 P2d 1371 (Alaska App. 1982).

Failure of defendant at his first trial to request disclosure of evidence taken from the victim, which evidence was destroyed after the trial, waived any right he may have had to the evidence at his second trial on the same charge, reversal of his first conviction not having revived discovery rights which had already lapsed, consequently, the prosecution had no duty to preserve the evidence in question unless it was so clearly exculpatory that the prosecutor was obligated to preserve it absent a request. Carman v. State, Op. No. 206, 658 P2d 131 (Alaska App. 1983).

Where defendant was charged with obtaining or attempting to obtain money by deception from an elderly male friend, trial court's order that the State disclose all financial records upon which it intended to rely, rather than ordering production of all bank records of the victim from May 1980 through March 1981 as requested by defendant, was proper. Linne v. State, Op. No. 324, 674 P2d 1345 (Alaska App. 1983).

Although trial court should have allowed discovery of a police report concerning rape victim's activities during the period the defendant claimed he met her, the error was harmless, since the police report itself did not contain any exculpatory material, nor was there any reason to believe that any other statements taken by the police in connection with the report disclosed exculpatory information. Beaston v. State, Op. No. 504, 705 P2d 1311 (Alaska App. 1985).

Although the prosecution should have given drunk driving defendant pretrial notice of its intent to call an expert witness to testify concerning an analysis of defendant's blood taken following his arrest, it was not an abuse of discretion for trial court to permit the witness to testify. Russell v. Municipality of Anchorage, Op. No. 514, 706 P2d 687 (Alaska App. 1985).

Trial court's decision not to compel disclosure of information relating to the case obtained by police through calls to the "crime stoppers" program, a program which solicits information from the public concerning crimes under investigation, did not substantially impair the fairness of defendant's trial, or otherwise impermissibly infringe upon his constitutionally protected trial rights. Balentine v. State, Op. No. 538, 707 P2d 922 (Alaska App. 1985).

Assuming without deciding that the State had a duty to preserve police dispatch tape, the State met its burden of establishing that the destruction of the tape was done in good faith and that the defendant was not prejudiced by the destruction, that trial court did not abuse its discretion in refusing to sanction the State by dismissing the indictment against defendant. Abdulbaqui v. State, Op. No. 659, 728 P2d 1211 (Alaska App. 1986).

Failure of the prosecution to provide appropriate pretrial discovery did not require preclusion of disputed testimony since the continuance offered by the trial court would have cured any prejudice stemming from the discovery violation; however, the lack of prejudice was purely fortuitous; in future cases appellate courts will continue to scrutinize prosecutorial conduct in this area, and will not hesitate to reverse where it appears that the defendant has been prejudiced by such action. Bostle v. State, Op. No. [illegible] 772 P2d 1089 (Alaska App. 1989).

Where defendant made no showing that he was significantly disadvantaged by the introduction without prior notice of testimony regarding a statement he made to the police, the trial court's offer of a continuance was the proper remedy for the violation of this rule. Longley v. State, Op. No. 940, 776 P2d 339 (Alaska App. 1989).

Where prosecution violates this rule by not disclosing to defense counsel a witness it intends to call, the prosecution has the burden of showing that the defendant has not been prejudiced in the manner he specifically claims; if this burden is not met in regard to a violation of this rule which surfaces during trial, and the prosecution deems the evidence too important to proceed without it, the proper remedy is a mistrial rather than a continuance. Bostle v. State, Op. No. 3659, 805 P2d 344 (Alaska 1991).

A prosecutor should disclose to the defense, upon request, criminal records of jurors, at least in cases where the prosecution intends to rely on them. Tagala v. State, Op. No. 1134, 812 P2d 601 (Alaska App. 1991).

In drug case where an issue was whether the police investigation was the product of an illegal search by police informants, and the state asserted its privilege not to identify the informants, upon which the judge conducted an in camera hearing in which he questioned the informants using questions submitted by the defendant and the state and concluded that the identity of informants did not have to be revealed, the defendant was entitled to see the transcript of the in camera hearing with all information deleted that might identify the informants. Peterson v. State, Op. No. 1139, 813 P2d 685 (Alaska App. 1991).

III. Disclosure to Prosecution

The mere fact that a court orders an accused to submit pretrial information which is not specifically included in this rule does not establish that the court has abused its discretion. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

An order requiring an accused to produce information not expressly provided for in these rules for criminal procedure does not constitute an improper promulgation of a new rule of criminal procedure. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

The privilege against compelled self-incrimination under the Alaska Constitution prohibits extensive pretrial prosecutorial discovery in criminal proceedings. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

The fundamental right not to incriminate one's self applies at every stage of a criminal inquiry or proceedings regardless of any judge made exclusionary or evidentiary rules. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

A pretrial order requiring an accused to disclose the names and addresses of witnesses, to produce for inspection and copying all written or recorded statements of prospective defense or government witnesses which the accused possesses and to produce advance notice of the alibi defense together with information indicating any place or places he claims to have been, violates the accused's privilege against self-incrimination under the state Constitution. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

A pretrial discovery order requiring an accused to furnish notice of the alibi defense does not violate an accused's privilege against self-incrimination under the state Constitution. Scott v. State, Op. No. 1004, 519 P2d 774 (Alaska 1974).

Where there was no indication that defendant ever intended to use the report of a firearms expert at trial, it was error for the court to compel its disclosure to the state. Gipson v. State, Op. No. 2066, 609 P2d 1038 (Alaska 1980).

Criminal Rule 16(c)(1) has no relevance when a person whose fingerprints are sought consents to give them. Henry v. State, Op. No. 2188, 621 P2d 1 (Alaska 1980).

This rule, as it pertains to obtaining identification evidence such as fingerprints, does not apply to persons lawfully in custody. Linton v. State, Op. No. 219, 658 P2d 1346 (Alaska App. 1983).

Trial court did not err in ruling to suppress evidence of palm print taken from defendant without a warrant while defendant was lawfully in custody. Linton v. State, Op. No. 219, 658 P2d 1346 (Alaska App. 1983).

Rule 17. Subpoena.

(a) For Attendance of Witnesses—Form—Issuance.

(1) Subpoenas shall be issued by the clerk under the seal of the court, and shall be signed and sealed but otherwise in blank. The party requesting a subpoena shall fill in the blanks before the subpoena is served.

(2) A subpoena shall

(i) state the name of the court and the title, if any, of the proceeding, and

(ii) state whether the witness is to testify on behalf of the state, a municipality, city or borough and order any witness testifying on behalf of the state, a municipality, city or borough, to appear without the prepayment of any witness fee, and

(iii) command each person to whom the subpoena is directed to attend and give testimony at the time and place specified therein.

(3) Magistrates may issue subpoenas in any proceeding before them.

(b) Defendants Unable to Pay. A subpoena shall be issued by the clerk as provided in section (a) for a defendant financially unable to pay the fees of the witness. The determination of financial inability shall be made in accordance with the criteria