

SENATE BILL No. 73

By Committee on Judiciary

1-31

1 AN ACT concerning criminal procedure; relating to discovery; certain
2 visual depictions; amending K.S.A. 2010 Supp. 22-3212 and repealing
3 the existing section.
4

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

6 Section 1. K.S.A. 2010 Supp. 22-3212 is hereby amended to read as
7 follows: 22-3212. (a) Upon request, the prosecuting attorney shall permit
8 the defendant to inspect and copy or photograph the following, if
9 relevant: (1) Written or recorded statements or confessions made by the
10 defendant, or copies thereof, which are or have been in the possession,
11 custody or control of the prosecution, the existence of which is known, or
12 by the exercise of due diligence may become known, to the prosecuting
13 attorney; (2) results or reports of physical or mental examinations, and of
14 scientific tests or experiments made in connection with the particular
15 case, or copies thereof, the existence of which is known, or by the
16 exercise of due diligence may become known, to the prosecuting
17 attorney; (3) recorded testimony of the defendant before a grand jury or at
18 an inquisition; and (4) memoranda of any oral confession made by the
19 defendant and a list of the witnesses to such confession, the existence of
20 which is known, or by the exercise of due diligence may become known
21 to the prosecuting attorney.

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

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

35 (3) Except as provided in subsection (e), this section does not
36 require the prosecuting attorney to provide unredacted vehicle

1 identification numbers or personal identifiers of persons mentioned in
2 such books, papers or documents.

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

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

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

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

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

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

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

1 enters an order granting relief following such a private showing, the
2 entire text of the statement shall be sealed and preserved in the records of
3 the court to be made available to the appellate court in the event of an
4 appeal.

5 (f) Discovery under this section must be completed no later than 20
6 days after arraignment or at such reasonable later time as the court may
7 permit.

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

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

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

30 (j) (1) *In any criminal proceeding, any property or material that*
31 *constitutes a visual depiction, as defined in subsection (a)(2) of section*
32 *74 of chapter 136 of the 2010 Session Laws of Kansas, and amendments*
33 *thereto, shall remain in the care, custody and control of either the*
34 *prosecution, law enforcement or the court.*

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

40 (3) *For the purpose of this subsection, property or material*
41 *described in this subsection shall be deemed to be reasonably available*
42 *to the defendant if the prosecution provides ample opportunity for*
43 *inspection, viewing and examination of such property or material at a*

1 *law enforcement facility by the defendant, the defendant's attorney and*
2 *any individual the defendant may seek to qualify to furnish expert*
3 *testimony at trial.*

4 Sec. 2. K.S.A. 2010 Supp. 22-3212 is hereby repealed.

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

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