

**Mass. R. Crim. P. 14**

**(b) Special Procedures**

*(2) Mental Health Issues.*

(A) Notice. If a defendant intends at trial to raise as an issue his or her mental condition at the time of the alleged crime, or if the defendant intends to introduce expert testimony on the defendant's mental condition at any stage of the proceeding, the defendant shall, within the time provided for the filing of pretrial motions by Rule 13(d)(2) or at such later time as the judge may allow, notify the prosecutor in writing of such intention. The notice shall state:

(i) whether the defendant intends to offer testimony of expert witnesses on the issue of the defendant's mental condition at the time of the alleged crime or at another specified time;

(ii) the names and addresses of expert witnesses whom the defendant expects to call; and

(iii) whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to his or her mental condition.

The defendant shall file a copy of the notice with the clerk. The judge may for cause shown allow

late filing of the notice, grant additional time to the parties to prepare for trial, or make such other order as may be appropriate.

(B) Examination. If the notice of the defendant or subsequent inquiry by the judge or developments in the case indicate that statements of the defendant as to his or her mental condition will be relied upon by a defendant's expert witness, the court, on its own motion or on motion of the prosecutor, may order the defendant to submit to an examination consistent with the provisions of the General Laws and subject to the following terms and conditions:

(i) The examination shall include such physical, psychiatric, and psychological tests as the examiner deems necessary to form an opinion as to the mental condition of the defendant at the relevant time. No examination based on statements of the defendant may be conducted unless the judge has found that (a) the defendant then intends to offer into evidence expert testimony based on his or her own statements or (b) there is a reasonable likelihood that the defendant will offer that evidence.

(ii) No statement, confession, or admission, or other evidence of or obtained from the defendant

during the course of the examination, except evidence derived solely from physical examinations or tests, may be revealed to the prosecution or anyone acting on its behalf unless so ordered by the judge.

(iii) The examiner shall file with the court a written report as to the mental condition of the defendant at the relevant time.

Unless the parties mutually agree to an earlier time of disclosure, the examiner's report shall be sealed and shall not be made available to the parties unless (a) the judge determines that the report contains no matter, information, or evidence which is based upon statements of the defendant as to his or her mental condition at the relevant time or which is otherwise within the scope of the privilege against self-incrimination; or (b) the defendant files a motion requesting that the report be made available to the parties; or (c) after the defendant expresses the clear intent to raise as an issue his or her mental condition, the judge is satisfied that (1) the defendant intends to testify, or (2) the defendant intends to offer expert testimony based in whole or in part on statements made by the defendant as to his or her mental condition at the relevant time.

At the time the report of the Commonwealth's examiner is disclosed to the parties, the defendant shall provide the Commonwealth with a report of the defense psychiatric or psychological expert(s) as to the mental condition of the defendant at the relevant time.

The reports of both parties' experts must include a written summary of the expert's expected testimony that fully describes: the records relied upon; the defendant's history and present symptoms; any physical, psychiatric, and psychological tests relevant to the expert's opinion regarding the issue of mental condition and their results; any oral or written statements made by the defendant relevant to the issue of the mental condition for which the defendant was evaluated; the expert's opinions as to the defendant's mental condition, including the bases and reasons for these opinions; and the witness's qualifications.

If these reports contain both privileged and nonprivileged matter, the court may, if feasible, at such time as it deems appropriate prior to full disclosure of the reports to the parties, make available to the parties the nonprivileged portions.

(iv) If a defendant refuses to submit to an examination ordered pursuant to and subject to the terms and conditions of this rule, the court may prescribe such remedies as it deems warranted by the circumstances, which may include exclusion of the testimony of any expert witness offered by the defense on the issue of the defendant's mental condition or the admission of evidence of the refusal of the defendant to submit to examination.

(C) Discovery for the purpose of a court-ordered examination under Rule 14(b)(2)(B).

(i) If the judge orders the defendant to submit to an examination under Rule 14(b)(2)(B), the defendant shall make available to the examiner all of the records that were provided to, considered by, or generated by the defendant's expert, including any physical, psychiatric, and psychological tests that the defendant's expert conducted.

(ii) In addition to the records provided under Rule 14(b)(2)(C)(i), the examiner may request records from any person or entity by filing with the court under seal, in such form as the Court may prescribe, a writing that identifies the requested records and states the reason(s) for the request. The examiner

shall not disclose the contents of the request to the prosecutor without either leave of court or agreement of the defendant.

Upon receipt of the examiner's request, the court shall issue a copy of the request to the defendant. Within thirty days of the court's issuance to the defendant of the examiner's request, or within such other time as the judge may allow, the defendant shall file in writing any objection that the defendant may have to the production of any of the material that the examiner has requested. The judge may hold an ex parte hearing on the defendant's objections.

If the judge grants any part of the examiner's request, the judge shall indicate on the form prescribed by the Court the particular records to which the examiner may have access, and the clerk shall subpoena the indicated record(s). The clerk shall notify the examiner and the defendant when the requested record(s) are delivered to the clerk's office and shall make the record(s) available to the examiner and the defendant for examination and copying. The clerk's office shall maintain these records under seal except as provided herein. If the

judge denies the examiner's request, the judge shall notify the examiner and the defendant of the denial.

(iii) Upon completion of the court-ordered examination, the examiner shall make available to the defendant all records, including any physical, psychological, or psychiatric tests, considered by or generated by the examiner not previously exchanged under Rule 14(b)(2)(C)(i) or (C)(ii).

(D) Additional discovery. Upon a showing of necessity, the Commonwealth and the defendant may move for other material and relevant evidence relating to the defendant's mental condition.