

COMMONWEALTH OF MASSACHUSETTS

At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the fifth day of November, in the year two thousand and fifteen:

present,

<u>HON. RALPH D. GANTS</u>)	Chief Justice
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<u>HON. FRANCIS X. SPINA</u>)	
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<u>HON. ROBERT J. CORDY</u>)	Justices
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<u>HON. MARGOT BOTSFORD</u>)	
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<u>HON. FERNANDE R.V. DUFFLY</u>)	
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<u>HON. BARBARA A. LENK</u>)	
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<u>HON. GERALDINE S. HINES</u>)	

ORDERED: That the Massachusetts Rules of Criminal Procedure adopted by order dated October 19, 1978, as amended, to take effect on July 1, 1979, are hereby amended as follows:

Rule 14	By deleting the first sentence of Rule 14(b)(2)(B)(i) and inserting in lieu thereof the following sentence: The examination shall include such physical, psychiatric,
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and psychological tests as the court-appointed examiner (examiner) deems necessary to form an opinion as to the mental condition of the defendant at the relevant time;

Rule 14 By deleting the word "Commonwealth's" as it appears before the word "examiner" in the third paragraph of Rule 14(b)(2)(B)(iii);

Rule 14 By renumbering the current Rule 14(b)(2)(C) as Rule 14(b)(2)(D);

Rule 14 By inserting the new Rule 14(b)(2)(C), attached hereto.

The amendments accomplished by this order shall take effect on January 1, 2016.

ORDERED:

<u>RALPH D. GANTS</u>)	Chief Justice
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<u>FRANCIS X. SPINA</u>)	
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<u>ROBERT J. CORDY</u>)	Justices
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<u>MARGOT BOTSFORD</u>)	
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<u>FERNANDE R.V. DUFFLY</u>)	
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<u>BARBARA A. LENK</u>)	
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<u>GERALDINE S. HINES</u>)	

Mass. R. Crim. P. 14(b)(2)(C)

(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, within fourteen days of the court's designation of the examiner, make available to the examiner the following:

(a) All mental health records concerning the defendant, whether psychological, psychiatric, or counseling, in defense counsel's possession;

(b) All medical records concerning the defendant in defense counsel's possession; and

(c) All raw data from any tests or assessments administered to the defendant by the defendant's expert or at the request of the defendant's expert.

(ii) The defendant's duty of production set forth in Rule 14(b)(2)(C)(i) shall continue beyond the defendant's initial production during the fourteen-day period and shall apply to any such mental health or medical record(s) thereafter obtained by defense counsel and to any raw data thereafter obtained from any tests or assessments administered to the defendant by the defendant's expert or at the request of the defendant's expert.

(iii) In addition to the records provided under Rule 14(b)(2)(C)(i) and (ii), 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 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 and shall notify the prosecutor that the examiner has filed a sealed request for records pursuant to Rule 14(b)(2)(C)(iii). 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 and may, in the judge's discretion, hear from the examiner. Records of such hearing shall be sealed until the report of the examiner is disclosed to the parties under Rule 14(b)(2)(B)(iii), at which point the records related to the examiner's request, including the records of any hearing, shall be released to the parties unless the court, in its discretion, determines that it would be unfairly prejudicial to the defendant to do so.

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, subject to a protective order under the same terms as govern disclosure of reports under Rule 14(b)(2)(B)(iii). 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, the defendant, and the prosecutor of the denial.

(iv) Upon completion of the court-ordered examination, the examiner shall make available to the defendant all raw data from any tests or assessments administered to the defendant by the Commonwealth's examiner or at the request of the Commonwealth's examiner.