

CHAPTER NO. 496

HOUSE BILL NO. 603

INTRODUCED BY SIVERTSEN

IN THE HOUSE

February 6, 1979	Introduced and referred to Committee on Judiciary.
February 12, 1979	Committee recommend bill do pass. Report adopted.
February 13, 1979	Second reading, do pass.
February 14, 1979	Considered correctly engrossed.
February 15, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 16, 1979	Introduced and referred to Committee on Judiciary.
March 8, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 10, 1979	Second reading, concurred in.
March 14, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 15, 1979	Returned from second house. Concurred in as amended.
March 16, 1979	Second reading, pass consideration.
March 17, 1979	Amendments rejected.

March 17, 1979 On motion Free Joint Conference  
Committee requested.

March 19, 1979 Free Joint Conference  
Committee appointed.

March 24, 1979 Free Joint Conference  
Committee dissolved.

On motion Free Conference  
Committee requested and appointed.

March 27, 1979 Free Conference Committee  
reported.

March 28, 1979 Second reading adopted.

March 29, 1979 Third reading adopted.

Adopted by Second House.

March 30, 1979 Sent to enrolling.  
Reported correctly enrolled.

1 HOUSE BILL NO. 603  
2 INTRODUCED BY Smitten

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT THE WORK  
5 PRODUCT OF THE PROSECUTION FROM DISCOVERY IN A CRIMINAL  
6 ACTION; AMENDING SECTION 46-15-302, MCA."

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 46-15-302, MCA, is amended to read:  
10 "46-15-302. Discovery of writings and objects. In all  
11 criminal cases originally triable in the district court the  
12 following rules shall apply:

13 (1) Upon motion of either party and upon showing of  
14 good cause, the court may issue a subpoena prior to the  
15 trial directing any person other than the defendant to  
16 produce books, statements, papers, and objects before the  
17 court at a time prior to the trial or prior to the time when  
18 they are to be offered in evidence. Upon their production,  
19 the court may permit the books, statements, papers, objects,  
20 or portions thereof to be inspected, copied, or photographed  
21 by the parties and their attorneys.

22 (2) Upon motion of the defendant within a reasonable  
23 time before trial, the court may, upon a showing of good  
24 cause, order the prosecution to produce, prior to trial at a  
25 time and place designated by the court, for inspection,

1 photographing, or copying by the defendant designated books,  
2 statements, papers, or objects obtained from the defendant  
3 or others by the prosecution which are material, relevant,  
4 and necessary to the preparation of the defendant's case.  
5 This subsection does not apply to the work product of the  
6 prosecution, which includes but is not limited to documents  
7 drawn up by law enforcement officials for internal  
8 communications and law enforcement officers' field notes.

9 (3) (a) On motion of any party within a reasonable  
10 time before trial, each party shall produce at a reasonable  
11 time and place designated by the court all documents,  
12 papers, or things which it intends to introduce in evidence.  
13 Each party shall be permitted to inspect or copy, in the  
14 presence of a person designated by the court, any such  
15 documents, papers, or things. The order shall specify the  
16 time, place, and manner of making the inspection and of  
17 taking the copies or photographs and may prescribe such  
18 terms and conditions as are just. If the evidence relates to  
19 scientific tests or experiments, the opposing party shall,  
20 if practicable, be permitted to be present during the tests  
21 and to inspect the results thereof. Upon a sufficient  
22 showing, the court may at any time order that the discovery  
23 or inspection be denied, restricted, or deferred or make  
24 other appropriate orders.

25 (b) If, subsequent to compliance with an order issued

1 pursuant to this rule and prior to or during trial, a party  
2 discovers additional material previously requested which is  
3 subject to discovery or inspection under this rule, he shall  
4 promptly notify the other party or his attorney or the court  
5 of the existence of the additional material. The court  
6 shall exclude any evidence not presented for inspection or  
7 copying pursuant to this rule unless good cause is shown for  
8 failure to comply. In the latter case the opposing party is  
9 entitled to a recess or a continuance during which it may  
10 inspect or copy the evidence in the manner provided for in  
11 this subsection (3)."

-End-

1 HOUSE BILL NO. 603  
 2 INTRODUCED BY Swerton

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT THE WORK  
 5 PRODUCT OF THE PROSECUTION FROM DISCOVERY IN A CRIMINAL  
 6 ACTION; AMENDING SECTION 46-15-302, MCA."

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 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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 11 criminal cases originally triable in the district court the  
 12 following rules shall apply:

13 (1) Upon motion of either party and upon showing of  
 14 good cause, the court may issue a subpoena prior to the  
 15 trial directing any person other than the defendant to  
 16 produce books, statements, papers, and objects before the  
 17 court at a time prior to the trial or prior to the time when  
 18 they are to be offered in evidence. Upon their production,  
 19 the court may permit the books, statements, papers, objects,  
 20 or portions thereof to be inspected, copied, or photographed  
 21 by the parties and their attorneys.

22 (2) Upon motion of the defendant within a reasonable  
 23 time before trial, the court may, upon a showing of good  
 24 cause, order the prosecution to produce, prior to trial at a  
 25 time and place designated by the court, for inspection,

1 photographing, or copying by the defendant designated books,  
 2 statements, papers, or objects obtained from the defendant  
 3 or others by the prosecution which are material, relevant,  
 4 and necessary to the preparation of the defendant's case.  
 5 ~~This subsection does not apply to the work product of the~~  
 6 ~~prosecution, which includes but is not limited to documents~~  
 7 ~~drawn up by law enforcement officials for internal~~  
 8 ~~communications and law enforcement officers' field notes.~~

9 (3) (a) On motion of any party within a reasonable  
 10 time before trial, each party shall produce at a reasonable  
 11 time and place designated by the court all documents,  
 12 papers, or things which it intends to introduce in evidence.  
 13 Each party shall be permitted to inspect or copy, in the  
 14 presence of a person designated by the court, any such  
 15 documents, papers, or things. The order shall specify the  
 16 time, place, and manner of making the inspection and of  
 17 taking the copies or photographs and may prescribe such  
 18 terms and conditions as are just. If the evidence relates to  
 19 scientific tests or experiments, the opposing party shall,  
 20 if practicable, be permitted to be present during the tests  
 21 and to inspect the results thereof. Upon a sufficient  
 22 showing, the court may at any time order that the discovery  
 23 or inspection be denied, restricted, or deferred or make  
 24 other appropriate orders.

25 (b) If, subsequent to compliance with an order issued

1 pursuant to this rule and prior to or during trial, a party  
2 discovers additional material previously requested which is  
3 subject to discovery or inspection under this rule, he shall  
4 promptly notify the other party or his attorney or the court  
5 of the existence of the additional material. The court  
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7 copying pursuant to this rule unless good cause is shown for  
8 failure to comply. In the latter case the opposing party is  
9 entitled to a recess or a continuance during which it may  
10 inspect or copy the evidence in the manner provided for in  
11 this subsection (3)."

-End-

HOUSE BILL NO. 603  
INTRODUCED BY SIVERTSEN

A BILL FOR AN ACT ENTITLED: "AN ACT TO EXEMPT THE WORK  
PRODUCT OF THE PROSECUTION, EXCEPT EXCULPATORY INFORMATION,  
FROM DISCOVERY IN A CRIMINAL ACTION; AMENDING SECTION  
46-15-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-15-302, MCA, is amended to read:

"46-15-302. Discovery of writings and objects. In all  
criminal cases originally triable in the district court the  
following rules shall apply:

(1) Upon motion of either party and upon showing of  
good cause, the court may issue a subpoena prior to the  
trial directing any person other than the defendant to  
produce books, statements, papers, and objects before the  
court at a time prior to the trial or prior to the time when  
they are to be offered in evidence. Upon their production,  
the court may permit the books, statements, papers, objects,  
or portions thereof to be inspected, copied, or photographed  
by the parties and their attorneys.

(2) Upon motion of the defendant within a reasonable  
time before trial, the court may, upon a showing of good  
cause, order the prosecution to produce, prior to trial at a

time and place designated by the court, for inspection,  
photographing, or copying by the defendant designated books,  
statements, papers, or objects obtained from the defendant  
or others by the prosecution which are material, relevant,  
and necessary to the preparation of the defendant's case.

~~This subsection does not apply to the work product of the  
prosecution, which includes--but-is-not--limited--to IS  
documents drawn up by law enforcement officials for internal  
communications and law enforcement officers' field notes,  
EXCEPT THAT ANY EXCULPATORY INFORMATION CONTAINED IN SUCH  
DOCUMENTS OR NOTES MUST BE PRODUCED.~~

(3) (a) On motion of any party within a reasonable  
time before trial, each party shall produce at a reasonable  
time and place designated by the court all documents,  
papers, or things which it intends to introduce in evidence.  
Each party shall be permitted to inspect or copy, in the  
presence of a person designated by the court, any such  
documents, papers, or things. The order shall specify the  
time, place, and manner of making the inspection and of  
taking the copies or photographs and may prescribe such  
terms and conditions as are just. If the evidence relates to  
scientific tests or experiments, the opposing party shall,  
if practicable, be permitted to be present during the tests  
and to inspect the results thereof. Upon a sufficient  
showing, the court may at any time order that the discovery

1 or inspection be denied, restricted, or deferred or make  
2 other appropriate orders.

3 (b) If, subsequent to compliance with an order issued  
4 pursuant to this rule and prior to or during trial, a party  
5 discovers additional material previously requested which is  
6 subject to discovery or inspection under this rule, he shall  
7 promptly notify the other party or his attorney or the court  
8 of the existence of the additional material. The court  
9 shall exclude any evidence not presented for inspection or  
10 copying pursuant to this rule unless good cause is shown for  
11 failure to comply. In the latter case the opposing party is  
12 entitled to a recess or a continuance during which it may  
13 inspect or copy the evidence in the manner provided for in  
14 this subsection (3)."

-End-



March 8, 1979

SENATE STANDING COMMITTEE REPORT  
(Judiciary)

That House Bill No. 603 be amended as follows:

1. Title, line 5.

Following: "PROSECUTION"

Insert: ", EXCEPT EXCULPATORY INFORMATION,"

2. Page 2, line 6.

Following: "which"

Strike: "includes but is not limited to"

Insert: "is"

3. Page 2, line 8.

Following: "notes"

Insert: ", except that any exculpatory information contained  
in such documents or notes must be produced"