

HOUSE BILL NO. 440

Introduces: 01/21/83

Referred to Committee on Judiciary: 01/21/83

Hearing: 2/3/83

Report: 02/05/83, Do Not Pass, As Amended

Bill Killed: 02/07/83

1 House BILL NO. 440  
2 INTRODUCED BY Hand  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR MUTUAL  
5 AND RECIPROCAL DISCOVERY IN CRIMINAL CASES; AMENDING  
6 SECTIONS 46-15-301 AND 46-15-302, MCA."  
7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9 Section 1. Section 46-15-301, MCA, is amended to read:  
10 "46-15-301. Discovery of witnesses -- notice of  
11 certain defenses. In all criminal cases originally triable  
12 in district court, the following rules apply:  
13 (1) For the purpose of notice only and to prevent  
14 surprise, the prosecution shall furnish to the defendant and  
15 file with the clerk of the court at the time of arraignment  
16 a list of the witnesses the prosecution intends to call. The  
17 prosecution may, any time after arraignment, add to the list  
18 the names of any additional witnesses upon a showing of good  
19 cause. The list shall include the names and addresses of the  
20 witnesses. This subsection does not apply to rebuttal  
21 witnesses.  
22 (2) For the purpose of notice only and to prevent  
23 surprise, the defendant shall furnish to the prosecution and  
24 file with the clerk of court, at the time of entering his  
25 plea of not guilty, within 10 days thereafter, or at such

1 time later as the court may for good cause permit, a list of  
2 witnesses the defendant intends to call at trial other than  
3 himself. The defendant may, any time after the original  
4 list is filed, add to the list the names of any additional  
5 witnesses upon a showing of good cause. The list shall  
6 include the names and addresses of the witnesses. This  
7 subsection does not apply to rebuttal witnesses.  
8 ~~(2)(3)~~ For purpose of notice only and to prevent  
9 surprise, the defendant shall furnish to the prosecution and  
10 file with the clerk of the court, at the time of entering  
11 his plea of not guilty or within 10 days thereafter or at  
12 such later time as the court may for good cause permit:  
13 (a) a statement of intention to interpose the defense  
14 of justifiable use of force (formerly self-defense),  
15 entrapment, compulsion, or alibi or the defense that the  
16 defendant did not have a particular state of mind that is an  
17 essential element of the offense charged; and  
18 (b) if the defendant intends to interpose any of these  
19 defenses, he shall also furnish to the prosecution and file  
20 with the clerk of the court the names and addresses of all  
21 witnesses other than the defendant to be called by the  
22 defense in support thereof. Prior to trial the defendant  
23 may, upon motion and showing of good cause, add to the list  
24 of witnesses the names of any additional witnesses. After  
25 the trial commences, no witnesses may be called by the

defendant in support of these defenses unless the name of the witness is included on the list, except upon good cause shown. This subsection does not apply to rebuttal witnesses.

~~43~~(4) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court no later than 5 days before trial or at such later time as the court may for good cause permit a list of witnesses the prosecution intends to call as rebuttal witnesses to the defenses of justifiable use of force, entrapment, compulsion, alibi, or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged.\*

Section 2. 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~~ either party within a reasonable time before trial, the court may ~~upon a showing of good cause~~ order the prosecution any person 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~~ any person other than the defendant which are material, relevant, and necessary to the preparation or presentation of the ~~defendant's~~ moving party's case. This subsection does not apply to the work product of the prosecution, which 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

1 terms and conditions as are just. If the evidence relates to  
2 scientific tests or experiments, the opposing party shall,  
3 if practicable, be permitted to be present during the tests  
4 and to inspect the results thereof. Upon a sufficient  
5 showing, the court may at any time order that the discovery  
6 or inspection be denied, restricted, or deferred or make  
7 other appropriate orders.

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

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