

### **Rule 411. Applicability of Discovery Rules**

These rules shall be applied in all criminal cases wherein the accused is charged with a felony, and all juvenile delinquency cases wherein the accused is charged with an offense that would be a felony if committed by an adult. They shall become applicable following indictment or information or petition for adjudication of wardship and shall not be operative prior to or in the course of any preliminary hearing.

Effective October 1, 1971; amended March 1, 2001, effective immediately, except when in the opinion of the trial, Appellate, or Supreme Court the application of the amended provisions in a particular case pending at the time the amendment becomes effective would not be feasible or would work an injustice, in which case former procedures would apply; [amended December 9, 2011, effective immediately](#).

#### Committee Comments

##### Special Supreme Court Committee on Capital Cases

March 1, 2001

Rule 411, as amended, makes criminal discovery rules applicable to the sentencing hearing in a capital case. A capital sentencing hearing is a unique and complex proceeding, which often takes place immediately following trial on the merits. Allowing pretrial discovery for capital sentencing will assist counsel in preparing for this critical stage of a capital trial and prevent delay and disruption of the sentencing hearing. See also Rule 416(c) (pretrial notice of aggravating factors the State will rely upon in sentencing).

The amendment to Rule 411 does not create new forms of discovery. Instead, the amendment extends the application of existing discovery methods to capital sentencing hearings. The committee notes that any discovery rule that requires disclosure by the defense is subject to constitutional limitations and limitations based on attorney-client or other privilege. Existing discovery rules expressly mention constitutional limitations on defense disclosures (see, *e.g.*, Rule 413) and provide that attorney work product is not subject to disclosure by the State or the defense (Rule 412(j)).

The committee found that the existing discovery rules and associated case law would adequately address constitutional and privilege-based objections to pretrial disclosure of sentencing information by the defense. However, constitutional and privilege-based limitations on discovery do not preclude the possibility that pretrial disclosure of defense sentencing information could directly or indirectly aid the State's case on the merits. The extension of discovery procedures to capital sentencing is not intended to provide such an advantage to the State.

In the event the defense objects to disclosure of specific sentencing information on the ground that disclosure would harm the defense case on the merits, the trial court should take any action necessary to prevent that harm. Options available to the trial court include excision of objectionable material pursuant to Rule 415(e) and the use of protective orders to defer disclosure or restrict the use of information disclosed (Rule 415(d)). *In camera* review of a claim of potential harm from disclosure of sentencing information (Rule 415(f)) may be appropriate to prevent disclosure of defense theories or strategy, or where the identity of a defense sentencing witness is unknown to the State.

### Committee Comments

To avoid confusion, the committee rejected the ABA standard which called for the application of discovery rules in “all serious criminal cases.” No such standard exists in Illinois, and the application of the discovery rules is extended to all offenses carrying a possible penalty of penitentiary imprisonment. The use of the extensive discovery procedures prescribed in these rules at preliminary stages of the criminal trial would serve no valid purpose, and their use is confined to post-indictment procedures. The committee considered but unanimously declined to make the rules applicable in juvenile court proceedings since the nature of such proceedings generally does not require discovery rules. However, if such proceedings become more adversary in nature, it may be desirable or necessary to apply the rules to them at some future date. In any event, the requirements of *In re Gault* (1967), 387 U.S. 1, must be met.