Rule 413. Disclosure to Prosecution

(a) The Person of the Accused. Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, a judicial officer may require the accused, among other things, to:

(i) appear in a lineup;

(ii) speak for identification by witnesses to an offense;

(iii) be fingerprinted;

(iv) pose for photographs not involving reenactment of a scene;

(v) try on articles of clothing;

(vi) permit the taking of specimens of material under his fingernails;

(vii) permit the taking of samples of his blood, hair and other materials of his body which involve no unreasonable intrusion thereof;

(viii) provide a sample of his handwriting; and

(ix) submit to a reasonable physical or medical inspection of his body.

(b) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the State to the accused and his counsel, who shall have the right to be present. Provision may be made for appearances for such purposes in an order admitting the accused to bail or providing for his release.

(c) Medical and Scientific Reports. Subject to constitutional limitations, the trial court shall, on written motion, require that the State be informed of, and permitted to inspect and copy or photograph, any reports or results, or testimony relative thereto, of physical or mental examinations or of scientific tests, experiments or comparisons, or any other reports or statements of experts which defense counsel has in his possession or control, including a statement of the qualifications of such experts, except that those portions of reports containing statements made by the defendant may be withheld if defense counsel does not intend to use any of the material contained in the report at a hearing or trial.

(d) Defenses. Subject to constitutional limitations and within a reasonable time after the filing of a written motion by the State, defense counsel shall inform the State of any defenses which he intends to make at a hearing or trial and shall furnish the State with the following material and information within his possession or control:

(i) the names and last known addresses of persons he intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements, and record of prior criminal convictions known to him; and

(ii) any books, papers, documents, photographs, or tangible objects he intends to use as evidence or for impeachment at a hearing or trial;

(iii) and if the defendant intends to prove an alibi, specific information as to the place where he maintains he was at the time of the alleged offense.

(e) Additional Disclosure. Upon a showing of materiality, and if the request is reasonable, the court in its discretion may require disclosure to the State of relevant material and information

not covered by this rule.

Effective October 1, 1971; amended October 1, 1976, effective November 15, 1976; amended June 15, 1982, effective July 1, 1982.

Committee Comments

Paragraphs (a) and (b) provide for procedures to secure evidence from or involving the use of defendant's person consistent with the rules enunciated in *Gilbert v. California*, 388 U.S. 263 (1967), and cases cited therein. See also *Williams v. United States*, 419 F.2d 740 (D.C. Cir. 1970) (bail order may provide for appearance of defendant for lineup).

Paragraph (c) provides for the production of medical and scientific evidence in the possession or control of defense counsel. Such evidence does not fall within the attorney-client privilege (*People v. Speck*, 41 Ill. 2d 177), nor does such evidence involve self-incrimination unless it is based upon statements made by defendant. Where statements of defendant are involved they may be excised from reports. When defense counsel intends to use the scientific or medical evidence based upon the defendant's statements to the expert, excision shall not be made.

Paragraph (d) requires that defense counsel inform the State of any defenses he intends to offer. The notice of defenses includes both affirmative defenses, *i.e.*, insanity, and nonaffirmative defenses, *i.e.*, consent to intercourse in rape cases. The notice may include alternative and inconsistent defenses. In addition, defense counsel must produce a list of witnesses and their statements, along with any records or physical evidence he intends to use and any record of prior convictions, known to him. The general justifications for discovery in criminal cases apply to discovery against the defense. Such discovery eliminates unfair surprise and allows the opposing party to establish the truth or falsity of the defense. In addition, discovery against the defense eliminates the argument that criminal discovery is a one-way street. The discovery provisions with respect to the defense case are based upon two further premises: (1) when defense counsel receives full discovery of the evidence the State will introduce, he can then determine what defenses he can offer to that evidence and (2) only when defense counsel states his defense or defenses can the trial court make a full and fair determination of whether the dictates of *Brady v. Maryland*, 373 U.S. 83 (1963), have been fully met.

Paragraph (e) allows the court to order additional discovery not covered by the remainder of the rule but only upon a showing of materiality and reasonableness. The provision is parallel to Rule 412(h).