

REPORT WRITING

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I. Supreme Court Rule 412

The State shall disclose to defense counsel the following material and information within its possession or control:

1. The names and last known addresses of persons whom the State intends to call as witnesses, together with their relevant written or recorded statements, memoranda containing substantially verbatim reports of their oral statements, and a list of memoranda reporting or summarizing their oral statements,
2. Any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant, and a list of witnesses to the making and acknowledgement of such statements,
3. A transcript of those portions of grand jury minutes containing testimony of the accused and relevant testimony of persons whom the prosecuting attorney intends to call as witnesses at the hearing or trial,
4. Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons, and a statement of qualifications of the expert,
5. Any books, papers, documents, photographs or tangible objects which the prosecuting attorney intends to use in the hearing or trial or which were obtained from or belong to the accused, and
6. Any record of prior criminal convictions, which may be used for impeachment, of persons whom the State intends to call as witnesses at the hearing or trial.

II. Supreme Court Rule 415

Continuing Duty to Disclose. If subsequent to compliance with these rules or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, he shall promptly notify the other party or his counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

III. Bill of Particulars
725 ILCS 114-2

A Bill of Particulars is a request to permit the defendant to receive additional discovery so that he can prepare his defense and to limit the evidence which may be introduced by the prosecution. The answer to a bill may limit the state's evidence as to dates or times if important to a defense of alibi or some other defense.

IV. Brady v. Maryland 83 S. Ct. 1194 (1963)

"Suppression by prosecution of evidence favorable to an accused upon request violated due process where evidence is material either to guilt or to punishment, irrespective of good faith or bad faith of prosecution."

V. Penalties for Discover Violations

Once a trial court determines that a discovery violation has occurred, it may impose any sanctions which, in its discretion, it deems just under the circumstances.

The following is a partial list of options available to the Court should it find that the Prosecution has violated the discovery rules:

- i. Inspect the material in camera
- ii. Order the prosecution to tender the material immediately
- iii. Grant a continuance
- iv. Preclude admission of the evidence at trial and preclude any testimony regarding the excluded evidence.

VI. 725 ILCS 5/114-13

Discovery in criminal cases included "reports, memoranda, and field notes."

(725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

Sec. 114-13. Discovery in criminal cases.

- (a) Discovery procedures in criminal cases shall be in accordance with Supreme Court Rules.

(b) Any public investigative, **law enforcement**, or other public agency responsible for investigating any homicide offense or participating in an investigation of any homicide offense, other than defense investigations, **shall provide to the authority prosecuting the offense all investigative material, including but not limited to reports, memoranda, and field notes, that have been generated by or have come into the possession of the investigating agency concerning the homicide offense being investigated.** In addition, the investigating agency shall provide to the prosecuting authority any material or information, including but not limited to reports, memoranda, and field notes, within its possession or control that would tend to negate the guilt of the accused of the offense charged or reduce his or her punishment for the homicide offense. Every investigative and law enforcement agency in the State shall adopt policies to ensure compliance with these standards. Any investigative, law enforcement or other public agency responsible for investigating any “non-homicide felony” offense or participating in an investigation of any “non-homicide felony” offense, other than defense investigators, shall provide to the authority prosecuting the offense all investigative material, including but not limited to reports and memoranda that have been generated by or have come into the possession of the investigating agency shall provide to the prosecuting authority any material or information, including but not limited to reports and memoranda, within its possession or control that would tend to negate the guilt of the accused of the “non-homicide felony” offense charged or reduce his or her punishment for the “non-homicide felony” offense. This obligation to furnish exculpatory evidence exists whether the information was recorded or documented in any form. Every investigative and law enforcement agency in the State shall adopt policies to ensure compliance with these standards. (Source: P.A. 93-605, eff. 11-19-03).

VII. Request for Investigating Officers’ Personnel File

VIII. What Happens if the State’s Attorney’s Office becomes aware of an Officer’s Dismissal Based upon Misconduct?

IX. The Key to What is Discoverable: The Defense is entitled to any reports/evidence that tends to “Inculcate” or “Exculpate” the defendant.

Dangers of Poor Report Writing (actual case examples)

- (1) Weapons Possession Case:
"Officers entered said residence. Officers disbursed to attendant rooms. A gun was located under chair. A Glock 19 was located in a dresser drawer. Defendants were located and transported to police department. After advising defendants of their Miranda Rights, all stated their knowledge as to the weapons and their various locations."

- (2) Reckless Homicide Case:
"Here are some speed estimates using only two Polaroid's. Not only am I just using photos, but I am using some very outdated tables. The table for the Ford Tempo does not have the data I need. The table for the Mustang is for front impact and this is side impact. Without marks, proper tables, and actually measuring the cars, this is the best estimate I can give. (It has been 3 ¾ years since I have done this, and I have only done it once outside of school. My estimates might be wrong).

- (3) Arson Case:
"On September 17, this R/O responded to a 2-11 at 1475 Elm Street. On arrival, a conversation was had with the first in company officer who indicated an interior fire. The electrical panel was examined and several breakers were blown. A sample of flooring was taken and will be sent to the lab for analysis. Until the lab results are received, the cause of fire is suspicious.

Keys To A Well-Written Report

Proceed With Caution!

"All reports need to be complete and accurate. Officers die slow and agonizing deaths on a witness stand far more often than, frankly, from some criminal's gun or knife. They risk dire consequences when cutting reports short in a number of ways."

-Lt. C. Lee Bennett
as quoted in "Plain English for Cops"

"If it's not written down, it did not happen."

-Adage of Defense Attorneys

Be Clear

If a report can be construed as either helping law enforcement or helping the defendant, the defense attorney will always construe that statement to the benefit of the defendant.

To avoid ambiguous reports, utilize these points to avoid confusion.

1. Before writing your report, write a chronological outline of your thoughts. Then create your report based upon that template. This will allow you to construct a concise report and you will avoid obvious omissions.
2. Plain words, simple sentences
Avoid: "The undersigned then asked the victim's supervisor therein if he recalled the time of the phone call. The victim's supervisor advised undersigned that the call occurred at approximately 3:00 p.m."
Instead: "I asked (name) if he recalled the time of the call. He stated approximately 3:00 p.m."
3. Ambiguity Leads to "Not Guilty" verdicts
Example: "Investigators had four lifts from shotgun. Negative on comparison with defendants' prints."
What Detective Meant: The lifts from the shotgun had not been compared with the prints of either defendant.

Cross-examination at Trial: The defense attorney states "Negative on Comparison" meant the detective had been told by the print specialist that the lifted prints were not made by either defendant.

This confusion resulted in a "not guilty" verdict.

4. Use the "Active" tense
Start a sentence with the person who did the act, what he/she did, and to whom the act was done.
Active: "Officer Meadie found a gun in the dresser drawer."
Passive: "A gun was found in the dresser drawer."
The passive tense creates more questions than it answers.
5. Every report must document facts.
 - (a) Do not add events that have no relevance
 - (b) Never omit a relevant fact
 - (c) The officer has an absolute duty to report the truth even if that means the offender goes unpunished for his actions.
6. Every word you write in a report must be justified in a court of law.
7. Every sentence in a report needs to address one of six areas: who, what, when, where, why, how.
 - a. "Who" is much broader than who committed a crime. Answering the question of "who" involves identifying the complainant, the victim, the suspect, the witnesses, and law enforcement personnel. The identification should include home/work addresses, telephone numbers, physical descriptions, and occupations.
 - b. An example of some "Whats":
 - What evidence was obtained?
 - What was done with that evidence?
 - What statements were taken?
 - What method was used to records those statements? (video? handwritten? summary only?)
 - What agencies responded?
 - What agency had jurisdiction?
 - What officers responded?
 - What were the individual officer assignments?
 - c. "When" is more than date/day/time of assignment. Once an officer identifies "what" persons were at the scene of the crime, the officer must inquire further:
 - When did they arrive?
 - How long did they stay?
 - Where specifically were they positioned?
 - What was their vantage point?
 - Were there any obstructions?
 - What did they see?
 - When did they leave?
 - When did law enforcement arrive at the scene?
 - When did the officer contact the victim/witnesses to take their statements?

- d. Listing "Where" a crime occurred is only the beginning.
 - Where were victims/witnesses interviewed?
 - Where was evidence collected, marked, and stored?
 - Where was suspect arrested?
 - Where was suspect transported?
 - Where was suspect interviewed?

- e. "Why:" We need not prove motive in criminal cases. If we can prove it, then explain it:
 - Why did the suspect commit the crime?
 - Seeking money?
 - Revenge?
 - Jealousy?
 - Betrayal?

- F "How" the offense was committed is critical, especially if you want to use other crimes of the suspect to show modus operandi, motive, or lack of mistake.
 - What tools were used and "how" were they used?
 - How was the crime discovered?
 - How was the crime reported?
 - How was victim transported?
 - How the suspect arrived/departed the scene?
 - How did the witnesses happen to be at the scene?
 - How did the officer identify the victim, witnesses, and suspect?
 - How did the officer locate these individuals?

8. **Formatting: The easiest way to stay organized**
Providing “Headers” to your narrative reports keeps things simple, organized, easy to read, easy to understand, and easy to reference.

Source of Activity-This section of the report is used by the reporting officer to document his/her reason for being at the location of the incident (i.e.: On January 1, 2016 at approximately 0001 hours, I was dispatched to 123 “A” street in reference to a theft investigation).

Observations-This section is used to describe the reporting officer’s observations which lead to the arrest. The reporting officer should cover such things as reasonable suspicion, search and seizure, use of force and any other acts providing probable cause for the arrest.

Arrest-This section is used to describe the reporting officer’s actions at the time of arrest. In this section, the officer once again covers the justification for the arrest. (Pursuant to warrant #2004-00001, the suspect was placed under arrest).

Statements-This section is used to summarize any formal statements made by the arrestee, witnesses, or victims.

Booking-This section is used to record the location of booking along with the charges and transporting officer.

Evidence-This section is used to recap previously mentioned seized property and indicate a disposition of the items.

Additional-This section is used to record any facts which are not included in one of the previously mentioned subtitles.

9. **Accuracy is Vital.**
Defense attorneys thrive on inaccurate information.
10. **Be complete, not confusing.**
Completeness means being concise
Do not be so detail-oriented as to confuse the reader. Likewise, the report should not be so lengthy and detail-laden that the reader must wade through the unimportant to find the useful information.
11. **Proof read.**

The Police Community Improvement Act
Senate Bill 1304
Effective: January 1, 2016

The Act is a sweeping law enforcement bill that prohibits excessive force, lays out guidelines for the use of body cameras, mandates greater oversight respective to stop and frisks, death investigations, and adds some provisions regarding report writing.

Portions of the Police Community Improvement Act that address police report writing:

1. Stop and Frisk
Officers must fill out "receipts" for any individual who is frisked/patted down but not arrested. Officers must detail the reason for the stop, the person's race, and log any contraband or other personal items taken from the person.
2. Stops for Suspicion
Officers are required to issue a "receipt" to citizens stopped for suspicion. The receipt must contain the officer's name, badge number, and reason for the stop.
3. Officer-Involved Deaths
In these cases, if the State's Attorney does not charge the officer with a criminal offense, the investigators shall publicly release a report.
4. If an officer has no reasonable expectation of privacy, the officer may not prohibit any person (who is non-law enforcement) from recording an officer in the performance of his/her duties in a public place.
5. Body Cams
The act does not require officers to use/wear them. The act does set forth guidelines if the department decides to use them. If body cams are used during an arrest, the video must be retained. The defense has the right to those videos in discovery in addition to your reports.
6. Police-Misconduct Database
The Act creates a database for law enforcement to keep track of officers dismissed for misconduct.
7. The Act requires agencies to do a monthly report on the number of officer-involved shootings and arrest-related deaths.
8. The Act requires data collection on pedestrian stops which result in arrest, frisk, or search.

Homicide and Questionable Death Protocol

55 ILCS 5/5-1085.5

Each county, except Home Rule Counties, must establish a written protocol to deal with Homicides and Questionable Deaths.

The protocol must be written by the coroner, sheriff, state's attorney, all fire protection districts in the county, and all police departments within the county.

This protocol directs law enforcement as to what information must be included in its reports.

The protocol must include:

- (1) The types of deaths that fall within its scope
- (2) The agencies concerned with the death
- (3) The area of responsibility for each agency
- (4) Uniform procedures concerning these deaths

Electronic Recording of Custodial Interrogations

I. 725 ILCS 5/103-2.1

If an accused is the subject of a custodial interrogation at a police station or other place of detention for:

First Degree Murder
Intentional Homicide of an Unborn Child
Second Degree Murder
Voluntary Manslaughter of an Unborn Child
Involuntary Manslaughter and Reckless Homicide
Involuntary Manslaughter and Reckless Homicide of an Unborn Child
Drug-Induced Homicide
Aggravated Driving Under the Influence that Results in the Death of another Person,

Then, the following must occur:

1. An electronic recording is made of the custodial interrogation; and
2. The recording is substantially accurate and not intentionally altered.

II. Preservation

III. Exceptions:

1. Of a statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing.
2. Of a statement made during a custodial interrogation that was not recorded as required by this Section, because electronic recording was not feasible.
3. Of a voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness.
4. Of a spontaneous statement that is not made in response to a question.
5. Of a statement made after questioning that is routinely asked during the processing of the arrest of the suspect.
6. Of a statement made during a custodial interrogation by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made of the statement, provided that an electronic recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement.
7. Of a statement made during a custodial interrogation that is conducted out-of-state.
8. Of a statement given at a time when the interrogators are unaware that a death has in fact occurred.
9. Of any other statement that may be admissible under law.

Actual Text of 725 ILCS 5/103-2.1

Electronic Recording of Custodial Interrogations of a Homicide Suspect

725 ILCS 5/103-2.1 An oral, written, or sign language statement of an accused made as a result of a custodial interrogation at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding brought under the following offenses: First Degree Murder, Intentional Homicide of an Unborn Child, Second Degree Murder, Voluntary Manslaughter of an Unborn Child, Involuntary Manslaughter and Reckless Homicide, Involuntary Manslaughter and Reckless Homicide of Unborn Child, Drug Induced Homicide, and Aggravated Driving Under the Influence that results in the Death of Another Person unless: An electronic recording is made of the custodial interrogation; and the recording is substantially accurate and not intentionally altered.

Every electronic recording required under this Section must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offense is barred by law.

Nothing in this Section precludes the admission 1. of a statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing, 2. of a statement made during a custodial interrogation that was not recorded as required by this Section, because electronic recording was not feasible, 3. of a voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness, 4. of a spontaneous statement that is not made in response to a question, 5. of a statement made after questioning that is routinely asked during the processing of the arrest of the suspect, 6. of a statement made during a custodial interrogation by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made of the statement, provided that an electronic recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement, 7. of a statement made during a custodial interrogation that is conducted out-of-state, 8. of a statement given at a time when the interrogators are unaware that a death has in fact occurred, or 9. of any other statement that may be admissible under law.

Case Law Regarding Report Writing

1. People v. Wilson 490 NE2d 701

A dispatch to officer indicated an offender with a gun was wearing a black coat and walking in a northbound direction on Crescent Street. The officer approached this person from the back.

At the Motion to Suppress Hearing, the officer was impeached by the defense attorney:

Q. Did you prepare an arrest report?

A. Yes

Q. Please look at the report. Any place in that report does it say the man had on a black overcoat?

A. No it doesn't

Q. Anyplace in the report does it say a man was walking north?

A. No

2. People v Zamora 560 NE2d 1053

An officer was on patrol and saw a man under a car in an alley. The officer "parked the squad parallel to the front end of the vehicle. A second man stood to the rear of the vehicle." The officer shined his flashlight into the car and "saw drugs in the car."

At a Motion to Suppress, the officer's testimony differed from his report regarding the positioning of the cars, the number of offenders present, and his reason for looking in the car.

Motion to Suppress was granted. All evidence was suppressed.

3. People v. Cunningham 777 NE2d 478

An officer was working "tactical" in plain clothes. An unidentified citizen approached the officer and gives him the name "Gumby" and a telephone number to call to buy drugs. The officer called and spoke to "Gumby" and they arranged a time and place to make the purchase. Hours later, the officer approached "Gumby's car," saw, drugs, and arrested "Gumby."

The officer never included these details in his report:

1. The name of the unidentified citizen and the conversation that led to calling Gumby.
2. The actual phone number that the officer called.
3. Where the officer made the call, the duration, and what was discussed.
4. The date of arrest

On appeal, the court dismissed the case stating that the officer was "Unworthy of Belief."

4. Williams v. Chicago (2013)

Officer saw a fire in a house and Williams, a neighbor, leaving the house. The house had recently been vacated by the owner. Williams told the officer that he got home at 2:30 p.m. and noticed the fire. Williams smelled as if he was soaked in gas. He was charged with arson.

The officer did not put in his report that Williams was seen leaving the house nor did it state that he smelled of gasoline.

Charges were dismissed, the Seventh Circuit Court stated they did not believe an officer who would omit such critical details from a report.

5. People v. Swisher 565 NE2d 281

Defendant was in a parked car in a public parking lot. When he saw a police officer, he quickly ducked down. Then he re-emerged. The officer approached the car and ordered the defendant out of his car. The officer saw cocaine on a mirror. The defendant was charged with Possession of Drugs. The officer did not include in his report the following:

1. That the incident occurred at 2:00 a.m.
2. The area was a high-crime area
3. The area had a high-gang concentration
4. That the defendant had "ducked down"

The Court of Appeals stated that there was not a reasonable suspicion to ask the defendant to exit his car.

Therefore, the evidence was suppressed.

Report Writing in Summary:

1. Be Factual
2. Be objective (The "Greek Lighting" example)
3. Never Speculate
4. Your request should establish the elements of the crime
5. The test of time
 - Judges, Juries, Defense Attorneys, Probation Officers, Civil Attorneys and Insurance Companies will eventually be basing future decisions on your report
6. The importance of signed witness statements