

AMENDMENTS TO THE OHIO RULES OF PRACTICE AND PROCEDURE

The following amendments to the Ohio Rules of Civil Procedure (4.7, 5, 11, 16, 26, 28, and 31), the Ohio Rules of Criminal Procedure (3, 4, 12.1, 12.2, 29, and 33), the Ohio Rules of Evidence (404, 502, 606, 801, and 803), and the Ohio Rules of Juvenile Procedure (7, 16, and 24). The history of these amendments is as follows:

September 20, 2021	First publication for public comment (ENDED Nov. 4, 2021)
January 7, 2022	Second publication for public comment (ENDED Feb. 21, 2022)
January 12, 2022	First filing with General Assembly
April 12, 2022	Final approval by conference
April 26, 2022	Final filing with General Assembly
June 1, 2022	General Assembly disapproval of rules (Civ.R. 1, 1.1, 30, 39, and 43; Crim.R. 1, 2, 10, 40, and 43; Evid.R. 101; and Juv.R. 1, 2, 20, 25, 27, 29, 34, and 41) (S.C.R. 16)
July 1, 2022	Effective date of amendments not disapproved by the General Assembly

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

Summary

1. OHIO RULES OF CIVIL PROCEDURE

- iCourt Task Force Proposals
(Civ.R. 5, 11, 16, 26, 28, and 31)

The Commission recommended these amendments from the iCourt Task Force, which are focused on making the use of technology in Courts more prevalent and effective.

These amendments include things like allowing parties under Civ.R. 5 to serve other parties on mutually agreeable electronic platforms other than e-mail; requiring courts to provide for the filing of documents by electronic means; and clarifying that electronic signature is acceptable under Civ.R. 11. Relatedly, and based on public comment seeking clarification as to whether court reporters can administer oaths to people testifying remotely from outside this state, the Commission recommended an amendment to Civ.R. 28 specifically authorizing such oaths.

Based on public comment seeking clarification as to whether the remote technology provisions apply to pretrial procedures, the Commission recommended a staff note to Civ.R. 16, which specifically governs pretrial procedure.

- Removing Domestic Relations Cases from Waiver of Service
(Civ.R. 4.7)

The Commission recommended this amendment in response to a request from Ohio domestic relations judges. In 2019, Civ.R. 4.7 created a new waiver of service provision modeled after the Federal rule. Under the rule, if a defendant agrees to waive service, they receive an extended time to file an answer. Domestic relations judges have indicated this creates problems in family law cases where temporary orders are common and waiting for a responsive pleading can be problematic.

2. OHIO RULES OF CRIMINAL PROCEDURE AND OHIO TRAFFIC RULES

- iCourt Task Force Proposals
(Traf.R. 1, 2, and 8)

The Commission put forth these amendments from the iCourt Task Force, which are focused on making the use of technology in Courts more prevalent and effective. The amendment to Traf.R. 8 allows a defendant to enter a not guilty plea by electronic transmission as approved by the court, rather than just in person or by mail. That change also extends the time for such action from 4 days to 10 days after receipt of the ticket.

- Transferring OVI charges to Common Pleas Court
(Crim.R. 3; Traf.R. 2)

The Commission proposed these amendments on the suggestion of the Ohio Judicial Conference. The scenario this is meant to address is one where a criminal defendant is charged with felonies along with an OVI charge. While the felonies can be easily bound over to common pleas court, some courts have expressed concern that the Multi-Count Uniform Traffic Ticket (“MUTT”) does not meet the definition of “complaint” under Crim.R. 3.

Accordingly, this amendment is intended to make it clear that a charge filed using the MUTT can be accepted by the Common Pleas court should it be bound over. This would eliminate the need to create a separate charging document for the OVI.

- E-Citation for Misdemeanor Cases
(Crim.R. 4)

The Commission proposed this amendment to allow for the creation and filing of criminal complaints and summonses that are electronically produced. This suggestion came from the Commission’s prosecutor and law director representative, who indicates it is a request from local law enforcement in his jurisdiction.

The rule, modeled after a similar rule that allows for electronic traffic citations, allows for “e-citations” to be used in criminal cases. The law enforcement officer is required to give the defendant a paper copy of the citation, if issued at the time of the incident. Also, the law enforcement officer that files the complaint is required to have their signature attested to by an appropriate individual, so as to verify the complaint.

- Motion for New Trial
(Crim.R. 29 and 33)

The Commission proposed amendments to Crim.R. 29 and 33, as a follow up to recent amendments to Crim.R. 33.

In 2020, Crim.R. 33 was amended in response to the Supreme Court of Ohio’s decision in *State v. Ramirez*, 2020-Ohio-602. In *Ramirez*, the Court held that while Crim.R. 33 implies the defendant would receive a new trial, a finding of insufficient evidence for a conviction would mean double jeopardy should attach and bar any new trial. As such, the Commission proposed removing the option to grant a new trial if the evidence is not sufficient to sustain a conviction. The defendant can still raise that same argument by way of Crim.R. 29 (per a motion for acquittal), making Crim.R. 33 in compliance with current case law.

This amendment goes further by moving certain remaining language in Crim.R. 33 that references insufficient evidence to a more appropriate place in Crim.R. 29.

- Notice of Alibi and Self-Defense
(Crim.R. 12.1 and 12.2)

The Commission proposed new rule Crim.R. 12.2 in response to recent statutory changes, which place the burden of disproving self-defense on the prosecution. Previously in Ohio, self-defense was an affirmative defense. The General Assembly recently placed the burden on the state to show any criminal act was not made in self-defense, if the defendant offered some evidence of such.

This has led to the prosecution being surprised by evidence of self-defense just before trial and having to prepare at the last minute to meet its burden of proof. The Commission previously recommended for the new rule to require a defendant to provide notice of any intent to put forth evidence of self-defense at least 14 days before trial. Based on public comment, the Commission recommended instead that that notice be given 30 days before trial in felony cases, and 14 days before trial in misdemeanor cases.

The Commission also recommended the same notice requirement in Crim.R. 12.1, which requires the defendant to provide notice of alibi.

- Pre-Trial Defenses in Traffic Cases
(Traf.R. 11)

The Commission proposed this amendment to Traf.R. 11, which would extend the time during which defendants may raise certain defenses. The current rule requires certain types of defenses to be made at the arraignment or earlier. In practice, many attorneys in traffic cases are not able to investigate a client's case before the arraignment. The extension of this time frame would allow sufficient time to determine if any of the listed defenses are appropriate.

3. OHIO RULES OF EVIDENCE

- Prior Bad Acts Evidence
(Evid.R. 404)

This amendment closely mirrors changes made to Fed.Evid.R. 404 in 2008. Specifically, it requires that the proponent provide reasonable, written notice of any prior bad acts evidence. This notice must also articulate the permitted purpose for which the proponent intends to use this evidence. The current rule does not require this notice be in writing.

- Waiver of Privilege
(Evid.R. 502)

This new rule is based on current Fed.Evid.R. 502, which was enacted in 2008. It provides clarity as to when and how waiver of privilege for certain communications would occur. The new rule does nothing to change what materials are privileged but does seek to provide uniformity on how waiver is handled, particularly in cases where it is done inadvertently.

- Testimony of Jurors
(Evid.R. 606)

This amendment comes at the request of the Office of the Ohio Attorney General. The current rule allows for jurors to testify about information improperly brought to the jury's attention or improper outside influence on the jury – but only if “outside evidence” of that issue is presented. The Attorney General's office indicated the requirement of “outside evidence” has faced several constitutional challenges, and that this amendment would help remedy those challenges. The amendment closely mirrors existing Fed.Evid.R. 606.

- Definition of Hearsay
(Evid.R. 801)

This amendment clarifies that hearsay must be a statement offered to prove the truth of the matter asserted “in the statement.” The current version of the rule does not include the words “in the statement.” Inclusion of this phrase more closely aligns with existing Fed.Evid.R. 801.

- Statements in Ancient Documents
(Evid.R. 803)

Current Evid.R. 803(16) exempts from hearsay “statements in a document in existence twenty years or more the authenticity of which is established.” The corresponding federal rule used to have the same language but was changed in 2017 to allow only documents made before “January 1, 1998.” This federal amendment was made to protect against the admittance of written statements from unreliably stored electronic documents, which would become more and more common with the passage of time.

The Commission's proposal also requires any ancient document be prepared before January 1, 1998.

4. OHIO RULES OF JUVENILE PROCEDURE

- Docketing and Discovery
(Juv.R. 16 and 24)

The Commission recommended aligning provisions of Juv.R. 16 and 24 to match similar provisions in the Civil Rules regarding service and discovery.

- Serious Youthful Offender and Dispositional Hearings
(Juv.R. 7)

The Commission recommended amendments to Juv.R. 7 specifying that the release of a juvenile adjudicated as a serious youthful offender shall be considered under Crim.R. 46.

1 **OHIO RULES OF CIVIL PROCEDURE**

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3 **RULE 4.7 Process: Waiving Service**

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5 **[Existing language unaffected by the amendments is omitted to conserve space]**

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7 **(B) Limited to Courts of Common Pleas.** The waiver of service provisions in this
8 rule are limited to civil actions filed in the courts of common pleas ~~and does~~ but they do not apply
9 to civil protection orders pursuant to Civ.R. 65.1 or to domestic relations matters as defined in
10 R.C. 3105.011.

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12 **[Existing language unaffected by the amendments is omitted to conserve space]**

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15 Proposed Staff Note (July 1, 2022)

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17 Division (B) is amended to eliminate this method of service for domestic relations cases as well as
18 civil protection order cases. The additional time required to obtain a waiver, and the automatic extension
19 of Answer Day interject too much delay in these categories of cases.

20 **RULE 5. Service and Filing of Pleadings and Other Papers Subsequent to the**
21 **Original Complaint**

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23 **[Existing language unaffected by the amendments is omitted to conserve space]**
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25 **(B) Service: how made.**

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27 **(1) Serving a party; serving an attorney.** Whenever a party is not represented by an
28 attorney, service under this rule shall be made upon the party. If a party is represented by an
29 attorney, service under this rule shall be made on the attorney unless the court orders service on
30 the party. Whenever an attorney has filed a notice of limited appearance pursuant to Civ.R. 3(B),
31 service shall be made upon both that attorney and the party in connection with the proceedings for
32 which the attorney has filed a notice of limited appearance.
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34 **(2) Service in general.** A document is served under this rule by:

35 (a) handing it to the person;

36 (b) leaving it:

37 (i) at the person's office with a clerk or other person in charge or, if
38 no one is in charge, in a conspicuous place in the office; or

39 (ii) if the person has no office or the office is closed, at the person's
40 dwelling or usual place of abode with someone of suitable age and
41 discretion who resides there;

42 (c) mailing it to the person's last known address by United States mail, in which
43 event service is complete upon mailing;

44 (d) delivering it to a commercial carrier service for delivery to the person's
45 last known address within three calendar days, in which event service is
46 complete upon delivery to the carrier;

47 (e) leaving it with the clerk of court if the person has no known address; or

48 (f) sending it by electronic means to a facsimile number or e-mail address
49 provided-in accordance with Civ.R. 11 by the attorney or party to be served, or, if
50 mutually agreed in writing by all counsel and unrepresented parties, any other
51 electronic media platform(s), in which event service is complete upon transmission,
52 but is not effective if the serving party learns that it did not reach the person served.
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54 **(3) Using court facilities.** If a local rule so authorizes, a party may use the court's
55 transmission facilities to make service under Civ.R. 5(B)(2)(f).
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65 (4) **Proof of service.** The served document shall be accompanied by a completed proof
66 of service which shall state the date and manner of service, specifically identify the division of
67 Civ.R. 5(B)(2) by which the service was made, and be signed in accordance with Civ.R. 11.
68 Documents filed with the court shall not be considered until proof of service is endorsed thereon
69 or separately filed.

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71 **[Existing language unaffected by the amendments is omitted to conserve space]**
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73 (E) **Filing with the court defined.** The filing of documents with the court, as required
74 by these rules, shall be made by filing them with the clerk of court, except that the judge may
75 permit the documents to be filed with the judge, in which event the judge shall note the filing date
76 on the documents and transmit them to the clerk. A court ~~may~~ shall provide, by court order or
77 ~~local rules adopted pursuant to the Rules of Superintendence rule,~~ for the filing of documents by
78 electronic means. ~~If the court adopts such~~ The court order or local rules, they rule shall include all
79 of the following:

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81 (1) Any signature on electronically transmitted documents shall be considered that of
82 the attorney or party it purports to be for all purposes. If it is established that the documents were
83 transmitted without authority, the court shall order the filing stricken.
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85 (2) A provision shall specify the days and hours during which electronically
86 transmitted documents will be received by the court, and a provision shall specify when documents
87 received electronically will be considered to have been filed.
88

89 (3) Any document filed electronically that requires a filing fee may be rejected by the
90 clerk of court unless the filer has complied with the mechanism established by the court for the
91 payment of filing fees.
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94 Proposed Staff Note (July 1, 2022)

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96 Although no firm deadline is stated in the rule by which all courts must complete arrangements for
97 filing documents by electronic means, this should be a priority for all courts. Receiving and filing facsimile
98 or electronic mail documents is readily and economically done, and avoids difficulty with delay in United
99 States Postal Service mail delivery.

100 **RULE 11. Signing of Pleadings, Motions, or Other Documents**

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102 Every pleading, motion, or other document of a party represented by an attorney shall be
103 signed, by electronic signature or by hand, by at least one attorney of record in the attorney's
104 individual name, whose address, attorney registration number, telephone number, facsimile
105 number, if any, and business e-mail address, if any, shall be stated. A party who is not represented
106 by an attorney shall sign, by electronic signature or by hand, the pleading, motion, or other
107 document and state the party's address. ~~A party who is not represented by an attorney may further~~
108 ~~state, a telephone number, facsimile number or, if any, and personal e-mail address, if any,~~ for
109 service by electronic means under Civ.R. 5(B)(2)(f). Except when otherwise specifically provided
110 by these rules, pleadings, as defined by Civ.R. 7(A), need not be verified or accompanied by
111 affidavit. The signature of an attorney or pro se party constitutes a certificate by the attorney or
112 party that the attorney or party has read the document; that to the best of the attorney's or party's
113 knowledge, information, and belief there is good ground to support it; and that it is not interposed
114 for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it
115 may be stricken as sham and false and the action may proceed as though the document had not
116 been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party
117 or upon the court's own motion, may be subjected to appropriate action, including an award to the
118 opposing party of expenses and reasonable attorney fees incurred in bringing any motion under
119 this rule. Similar action may be taken if scandalous or indecent matter is inserted.

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RULE 16. Pretrial Procedure

[Existing language unaffected by the amendments is omitted to conserve space]

Proposed Staff Note (July 1, 2022)

Conferences pursuant to this rule may be held by physical or remote presence, in the discretion of the presiding judicial officer.

129 **RULE 26. General Provisions Governing Discovery**

130 [Existing language unaffected by the amendments is omitted to conserve space]

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133 **(B) Scope of discovery.** Unless otherwise ordered by the court in accordance with
134 these rules, the scope of discovery is as follows:

135 [Existing language unaffected by the amendments is omitted to conserve space]

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138 **(3) Initial Disclosure by a Party**

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140 **(a)** Without awaiting a discovery request, a party must provide to the other
141 parties, except as exempted by Civ.R. 26(B)(3)(b) or as otherwise stipulated, or ordered by
142 the court:

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144 **(i)** the name and, if known, the address ~~and~~, telephone number, and e-
145 mail address of each individual likely to have discoverable information -
146 along with the subjects of that information - that the disclosing party may
147 use to support its claims or defenses, unless the use would be solely for
148 impeachment;

149
150 **(ii)** a copy - or a description by category and location - of all documents,
151 electronically stored information, and tangible things that the disclosing
152 party has in its possession, custody, or control and may use to support its
153 claims or defenses, unless the use would be solely for impeachment;

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155 **(iii)** a computation of each category of damages claimed by the
156 disclosing party - who must also make available for inspection and copying
157 as under Civ.R. 34 the documents or other evidentiary material, unless
158 privileged or protected from disclosure, on which each computation is
159 based, including materials bearing on the nature and extent of injuries
160 suffered; and

161
162 **(iv)** for inspection and copying as under Civ. R. 34, any insurance
163 agreement under which an insurance business may be liable to satisfy all or
164 part of a possible judgment in the action or to indemnify or reimburse for
165 payments made to satisfy the judgment.

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167 **(b)** The following proceedings are exempt from initial disclosure:

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169 **(i)** an action for review on an administrative record;

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171 **(ii)** an action brought without an attorney by a person in the custody of
172 the United States, a state, or a state subdivision;

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174 (iii) an action to enforce or quash an administrative summons or
175 subpoena;

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177 (iv) a proceeding ancillary to a proceeding in another court; and
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179 (v) an action to enforce an arbitration award.
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181 (c) A party must make the initial disclosures no later than the parties' first pre-
182 trial or case management conference, unless a different time is set by stipulation or court
183 order, or unless a party objects. In ruling on the objection, the court must determine what
184 disclosures, if any, are to be made and must set the time for disclosure.
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186 (d) A party that is first served or otherwise joined after the first pre-trial or case
187 management conference must make the initial disclosures within 30 days after being served
188 or joined, unless a different time is set by stipulation or court order.
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190 (e) A party must make its initial disclosures based on the information then
191 reasonably available to it. A party is not excused from making its disclosures because it
192 has not fully investigated the case or because it challenges the sufficiency of another party's
193 disclosures or because another party has not made its disclosures.
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195 **[Existing language unaffected by the amendments is omitted to conserve space]**

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RULE 28. Persons Before Whom Depositions May be Taken

[Existing language unaffected by the amendments is omitted to conserve space]

(B) Depositions outside state. Depositions may be taken outside this state before: a person authorized to administer oaths in the place where the deposition is taken, a person appointed by the court in which the action is pending, a person agreed upon by written stipulation of all the parties, or, in any foreign country, by any consular officer of the United States within ~~his~~ the consular district. Depositions may also be taken of witnesses located outside this state via remote means before a person authorized to administer any oath by the laws of Ohio.

[Existing language unaffected by the amendments is omitted to conserve space]

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RULE 31. Depositions of Witnesses Upon Written Questions

[Existing language unaffected by the amendments is omitted to conserve space]

(B) Officer to take responses and prepare record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(C), (E), and (F), to take the testimony of the witness in response to the questions and to prepare, certify, and file ~~or~~ mail, or deliver the deposition by electronic means, attaching thereto the copy of the notice and the questions received by ~~him~~ the officer.

[Existing language unaffected by the amendments is omitted to conserve space]

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OHIO RULES OF CRIMINAL PROCEDURE

RULE 3. Complaint

(A) The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.

(B) In addition, a traffic ticket that complies with Traf.R. 2 shall constitute a complaint for an alleged violation of a law, ordinance, or regulation governing the operation and use of vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or equipment, or vehicles drawn or moved on highways and bridges, except for alleged violations of Title 29 of the Revised Code.

233 **RULE 4. Warrant or Summons; Arrest**

234 [Existing language unaffected by the amendments is omitted to conserve space]

235 **(G) Use of Electronically Produced Criminal Complaint and Summons.**

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239 (1) Local rules adopted by a court pursuant to the Rules of Superintendence for the
240 Courts of Ohio may provide for the use of a criminal complaint and summons that is produced by
241 computer or other electronic means. A criminal complaint and summons produced by computer or
242 other electronic means shall conform in all substantive respects to the "Ohio Rules of Criminal
243 Procedure" set forth in the Appendix of Forms. The complaint and summons paper shall be of
244 sufficient quality to allow the court record copy to remain unchanged for the period of the retention
245 schedule for the various criminal offenses as prescribed by Rule 26.05 of the Rules of
246 Superintendence for the Courts of Ohio. The court record for the complaint and summons shall be
247 filed with the court or may be filed electronically as authorized by local rule and division (G)(2)
248 of this rule.

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250 (2) Local rules adopted by a court pursuant to the Rules of Superintendence for the
251 Courts of Ohio may also provide for the filing of the criminal complaint and summons by electronic
252 means. If a criminal complaint and summons is issued at the scene of an alleged offense, the local
253 rule shall require that the issuing officer serve the defendant with the defendant's paper copy of the
254 criminal complaint and summons as required by division (D) of this rule. A law enforcement
255 officer who files a criminal complaint and summons pursuant to divisions (G)(1) or (G)(2) of this
256 rule and electronically affixes the officer's signature thereto, shall also have his/her signature
257 attested to by either a "peace officer," "judge," "clerk," or "deputy clerk" after which the complaint
258 and summons shall be considered to have been certified and shall have the same rights,
259 responsibilities, and liabilities as with all other criminal complaints and summons issued pursuant
260 to these rules.

261 **RULE 12.1 Notice of Alibi**

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263 Whenever a defendant in a criminal case proposes to offer testimony to establish an alibi
264 on his behalf, ~~he~~ the defendant shall, not less than ~~seven~~ thirty days before trial in a felony case
265 and fourteen days before trial in a misdemeanor case, file and serve upon the prosecuting attorney
266 a notice in writing of ~~he~~ the defendant's intention to claim alibi. The notice shall include specific
267 information as to the place at which the defendant claims to have been at the time of the alleged
268 offense. If the defendant fails to file such written notice, the court may exclude evidence offered
269 by the defendant for the purpose of proving such alibi, unless the court determines that in the
270 interest of justice such evidence should be admitted.

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RULE 12.2. Notice of Self-Defense

Whenever a defendant in a criminal case proposes to offer evidence or argue self-defense, defense of another, or defense of that person’s residence, the defendant shall, not less than thirty days before trial in a felony case and fourteen days before trial in a misdemeanor case, give notice in writing of such intent. The notice shall include specific information as to any prior incidents or circumstances upon which defendant intends to offer evidence related to conduct of the alleged victim, and the names and addresses of any witnesses defendant may call at trial to offer testimony related to the defense. If the defendant fails to file such written notice, the court may exclude evidence offered by the defendant related to the defense, unless the court determines that in the interest of justice such evidence should be admitted.

Proposed Staff Note (July 1, 2022)

In 2019, the General Assembly amended R.C. 2901.05(B)(1) to shift the burden of proof in a self-defense case from the defendant to the prosecution. If there is evidence presented by the defense that tends to support that the defendant acted in self-defense, defense of another, or defense of the person’s residence, the prosecution must prove beyond a reasonable doubt that the defendant did not act in self-defense. This rule was added in response to that change in the law.

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RULE 29. Motion for Acquittal

[Existing language unaffected by the amendments is omitted to conserve space]

(C) **Motion after verdict or discharge of jury.** If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen days after the jury is discharged or within such further time as the court may fix during the fourteen day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If the evidence shows the defendant is not guilty of the degree of crime for which the defendant was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly and shall pass sentence on such verdict or finding as modified. If no verdict is returned, the court may enter judgment of acquittal. It shall not be a prerequisite to the making of such motion that a similar motion has been made prior to the submission of the case to the jury.

305 **RULE 33. New Trial**
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307 **(A) Grounds.** A new trial may be granted on motion of the defendant for any of the
308 following causes affecting materially ~~his~~ the defendant's substantial rights:
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310 (1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of
311 discretion by the court, because of which the defendant was prevented from having a fair trial;
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313 (2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;
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315 (3) Accident or surprise which ordinary prudence could not have guarded against;
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317 (4) That the verdict is contrary to law. ~~If the evidence shows the defendant is not guilty
318 of the degree of crime for which he was convicted, but guilty of a lesser degree thereof, or of a
319 lesser crime included therein, the court may modify the verdict or finding accordingly, without
320 granting or ordering a new trial, and shall pass sentence on such verdict or finding as modified;~~
321

322 (5) Error of law occurring at the trial;
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324 (6) When new evidence material to the defense is discovered which the defendant
325 could not with reasonable diligence have discovered and produced at the trial. When a motion for
326 a new trial is made upon the ground of newly discovered evidence, the defendant must produce at
327 the hearing on the motion, in support thereof, the affidavits of the witnesses by whom such
328 evidence is expected to be given, and if time is required by the defendant to procure such affidavits,
329 the court may postpone the hearing of the motion for such length of time as is reasonable under all
330 the circumstances of the case. The prosecuting attorney may produce affidavits or other evidence
331 to impeach the affidavits of such witnesses.
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333 **[Existing language unaffected by the amendments is omitted to conserve space]**

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OHIO TRAFFIC RULES

RULE 1. Scope of Rules; Applicability; Authority and Construction

[Existing language unaffected by the amendments is omitted to conserve space]

(C) As used in these rules, any option to use live two-way video or audio technology shall not be construed to limit the power of a judge or magistrate to order that a party, attorney, or witness physically appear at a proceeding without the use of live two-way video or audio technology.

344 **RULE 2. Definitions**

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346 As used in these rules:

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348 (A) “Traffic case” means any proceeding, other than a proceeding ~~resulting from a~~
349 ~~felony indictment~~ that includes an alleged violation of Title 29 of the Revised Code, that involves
350 one or more alleged violations of a law, ordinance, or regulation governing the operation and use
351 of vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or
352 equipment, or vehicles drawn or moved on highways and bridges. ~~“Traffic case” does not include~~
353 ~~any proceeding that results in a felony indictment.~~

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355 **[Existing language unaffected by the amendments is omitted to conserve space]**

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357 (K) “Appear,” “appearance,” or “in person” mean the physical or remote presence of
358 an individual.

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360 (L) “Attendance” means the physical or remote presence of an individual.

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362 (M) “Open court” includes a court proceeding open to the public in person or by
363 remote access to the live proceeding.

364

365 (N) “Personal” or “Personally” means the physical or remote presence of an
366 individual except as provided by Traf.R. 3(E)(1).

367

368 (O) “Present” means the physical or remote presence of an individual.

369

370 (P) “Remote presence” means the presence of a person who is using live two-way
371 video and/or audio technology.

372 **RULE 8. Arraignment**
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374 **(A) Arraignment time.** Where practicable, every defendant shall be arraigned before
375 contested matters are taken up. Trial may be conducted immediately following arraignment.
376

377 **(B) Arraignment procedure.** Arraignment shall be conducted in open court and shall
378 consist of reading the complaint to the defendant, or stating to ~~him~~ the defendant the substance of
379 the charge, and calling on ~~him~~ the defendant to plead thereto. The defendant shall be given a copy
380 of the complaint, or shall acknowledge receipt thereof, before being called upon to plead and may
381 in open court waive the reading of the complaint.
382

383 **(C) Presence of defendant.** The defendant must be present at the arraignment, but the
384 court may allow the defendant to enter a not guilty plea at the clerk's office in person, or by
385 electronic transmission as approved by the court, by ~~his~~ the defendant's attorney in person, or by
386 ~~his~~ by the defendant's attorney by mail, within ~~four~~ ten days after receipt of the ticket by the
387 defendant.
388

389 **(D) Explanation of rights.** Before calling upon a defendant to plead at arraignment
390 the judge shall cause ~~him~~ the defendant to be informed and shall determine that the defendant
391 knows and understands:
392

393 (1) That ~~he~~ the defendant has a right to counsel and the right to a reasonable continuance
394 in the proceedings to secure counsel, and, pursuant to ~~Criminal Rule~~ Crim.R. 44, the right to have
395 counsel assigned without cost to ~~himself~~ defendant if ~~he~~ the defendant is unable to employ counsel;
396

397 (2) That ~~he~~ the defendant has a right to bail as provided in Rule 4;
398

399 (3) That ~~he~~ the defendant need make no statement at any point in the proceeding; but any
400 statement made may be used against ~~him~~ the defendant;
401

402 (4) That ~~he~~ the defendant has, where such right exists, a right to jury trial and that ~~he~~ the
403 defendant must, in petty offense cases, make a demand for a jury pursuant to ~~Criminal Rule~~
404 Crim.R 23;
405

406 (5) That if ~~he~~ the defendant is convicted a record of the conviction will be sent to the
407 Bureau of Motor Vehicles and become part of ~~his~~ defendant's driving record.
408

409 **(E) Joint arraignment.** If there are multiple defendants to be arraigned, the judge may
410 advise, or cause them to be advised, of their rights by general announcement.

411 **RULE 11. Pleadings and Motions before Plea and Trial: Defenses and**
412 **Objections**

413
414 **[Existing language unaffected by the amendments is omitted to conserve space]**
415

416 **(B) Motions before plea and trial.** Any defense, objection, or request which is capable
417 of determination without the trial of the general issue may be raised before plea or trial by motion.

418
419 (1) The following defenses and objections ~~must~~ may be raised before plea, but not later
420 than trial:

421
422 (a) Defenses and objections based on defects in the institution of the prosecution;

423
424 (b) Defenses and objections based on defects in the complaint other than failure to
425 show jurisdiction in the court or to charge an offense, which objections shall be noticed by the
426 court at any time during the pendency of the proceeding.

427
428 (2) The following motions and requests must be made before trial:

429
430 (a) Motions to suppress evidence, including but not limited to identification testimony,
431 on the ground that it was illegally obtained;

432
433 (b) Requests and motions for discovery under Criminal Rule 16;

434
435 (c) Motions for severance of charges or defendants under Criminal Rule 14.

436
437 **(C) Motion date.** Pre-plea motions ~~shall~~ may be made before or at arraignment.
438 All pretrial motions, except as provided in Criminal Rule 16(M), shall be made within thirty-five
439 days after arraignment or seven days before trial, whichever is earlier. The court, in the interest of
440 justice, may extend the time for making pre-plea or pretrial motions.

441
442 **[Existing language unaffected by the amendments is omitted to conserve space]**

443 OHIO RULES OF EVIDENCE

444 **RULE 404. Character Evidence not Admissible to Prove Conduct; Exceptions;**
445 **Other Crimes, Wrongs, or Acts**

446 [Existing language unaffected by the amendments is omitted to conserve space]

447
448
449 **(B) Other crimes, wrongs or acts.**

450
451
452 **(1) Prohibited uses.** Evidence of ~~any other crimes, crime, wrongs, wrong or acts~~ act is
453 not admissible to prove ~~the character of a person~~ person's character in order to show ~~action~~ that
454 on a particular occasion the person acted in conformity therewith ~~accordance with the character.~~

455
456 **(2) Permitted uses; notice.** ~~It~~ This evidence may, ~~however,~~ be admissible for ~~other~~
457 ~~purposes~~ another purpose, such as ~~proof of~~ proving motive, opportunity, intent, preparation, plan,
458 knowledge, identity, ~~or~~ absence of mistake, or lack of accident. ~~In criminal cases, the~~ The
459 proponent of evidence to be offered under this rule shall:

460
461 (a) provide reasonable notice in advance of trial, or during trial if the court excuses
462 pretrial notice on good cause shown, of the general nature of any such evidence if the proponent
463 intends to introduce at trial so that an opposing party may have a fair opportunity to meet it;

464
465 (b) articulate in the notice the permitted purpose for which the proponent intends to
466 offer the evidence, and the reasoning that supports the purpose; and

467
468 (c) do so in writing in advance of trial, or in any form during trial if the court, for good
469 cause, excuses lack of pretrial notice.

470
471
472 Proposed Staff Note (July 1, 2022)

473
474 Ohio Evid.R. 404(B) is amended to more closely mirror changes made in December 2020 to
475 Fed.R.Evid. 404(b). As amended, Ohio Evid.R.404(B) includes the "written notice" and "permitted purpose"
476 elements of newly amended Fed.R.Evid. 404(b), but unlike Fed.R.Evid. 404(b), applies to both sides and
477 in both criminal and civil actions.

478 **RULE 502. Attorney-Client Privilege and Work Product; Limitations on Waiver**

479 The following provisions apply, in the circumstances set out, to disclosure of a
480 communication or other information covered by the attorney-client privilege or work-product
481 protection.

482
483 **(A) Disclosure made in an Ohio proceeding or to an Ohio office or agency; Scope**
484 **of waiver.** When a disclosure is made in an Ohio proceeding or to an office or agency of an Ohio
485 state, county, or local government that waives the attorney-client privilege or work-product
486 protection, the waiver extends to an undisclosed communication or information in any proceeding
487 only if:

488
489 (1) the waiver is intentional;

490
491 (2) the disclosed and undisclosed communications or information concern the same
492 subject matter; and

493
494 (3) they ought in fairness to be considered together.

495
496 **(B) Inadvertent Disclosure.** When made in an Ohio proceeding or to an office or
497 agency of an Ohio state, county, or local government, the disclosure does not operate as a waiver
498 in any proceeding if:

499
500 (1) the disclosure is inadvertent;

501
502 (2) the holder of the privilege or protection took reasonable steps to prevent disclosure;
503 and

504
505 (3) the holder promptly took reasonable steps to rectify the error, including (if
506 applicable) following Ohio Civ.R. 26(B)(8)(b).

507
508 **(C) Disclosure Made in Another Jurisdiction.** When the disclosure is made in a
509 proceeding in a federal court or the court of another state and is not the subject of a court order
510 concerning waiver, the disclosure does not operate as a waiver in an Ohio proceeding if the
511 disclosure:

512
513 (1) would not be a waiver under this rule if it had been made in an Ohio proceeding; or

514
515 (2) is not a waiver under the law governing the state or federal proceeding where the
516 disclosure occurred.

517
518 **(D) Controlling Effect of a Court Order.** An Ohio court may order that the privilege
519 or protection is not waived by disclosure connected with the litigation pending before the court, in
520 which event the disclosure is also not a waiver in any other proceeding.

521

546 **RULE 606. Competency of Juror as Witness**

547

548 [Existing language unaffected by the amendments is omitted to conserve space]

549

550 **(B) Inquiry into validity of verdict or indictment.**

551

552 **(1) Prohibited Testimony or other Evidence.** Upon an inquiry into the validity of a
553 verdict or indictment, a juror may not testify as to any matter or statement occurring during the
554 course of the jury's deliberations or to the effect of anything upon that or any other juror's mind or
555 emotions as influencing the juror to assent to or dissent from the verdict or indictment or
556 concerning the juror's mental processes in connection therewith. ~~A juror may testify on the~~
557 ~~question whether extraneous prejudicial information was improperly brought to the jury's attention~~
558 ~~or whether any outside influence was improperly brought to bear on any juror, only after some~~
559 ~~outside evidence of that act or event has been presented. However a juror may testify without the~~
560 ~~presentation of any outside evidence concerning any threat, any bribe, any attempted threat or~~
561 ~~bribe, or any improprieties of any officer of the court. A juror's affidavit or evidence of any~~
562 statement by the juror concerning a matter about which the juror would be precluded from
563 testifying will not be received by the court for these purposes.

564

565 **(2) Exceptions.** A juror may testify about whether:

566

567 (a) extraneous prejudicial information was improperly brought to the jury's attention;

568

569 (b) any outside influence was improperly brought to bear on any juror; or,

570

571 (c) any threat, any bribe, any attempted threat or bribe, or any improprieties of any
572 officer of the court occurred.

573

574

575 Proposed Staff Note (July 1, 2022)

576

577 **Evid.R. 606(B)**

578

579 Ohio Evid.R. 606(B) is being amended to more closely mirror Fed.Evid.R. 606(B), and is intended
580 to address constitutional challenges to the former rule as being violative of a criminal defendant's
581 constitutional rights because it infringed upon the defendant's fair trial rights.

582 **RULE 801. Definitions**

583

584 The following definitions apply under this article:

585

586 **[Existing language unaffected by the amendments is omitted to conserve space]**

587

588 **(C) Hearsay.** "Hearsay" is a statement, other than one made by the declarant while
589 testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted in the
590 statement.

591

592 **[Existing language unaffected by the amendments is omitted to conserve space]**

593

594

595

Proposed Staff Note (July 1, 2022)

596

597 **Evid.R. 801(C)**

598

599 For clarity purposes, Ohio Evid.R. 801(C) is being amended with the addition of the words "in the
600 statement" at the end of the standard hearsay definition.

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RULE 803. Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

[Existing language unaffected by the amendments is omitted to conserve space]

(16) Statements in ancient documents. Statements in a document ~~in existence twenty years or more~~ that was prepared before January 1, 1998, and whose authenticity of which is established.

[Existing language unaffected by the amendments is omitted to conserve space]

613 **OHIO RULES OF JUVENILE PROCEDURE**

614 **RULE 7. Detention and Shelter Care**

615 [Existing language unaffected by the amendments is omitted to conserve space]

616
617
618
619 **(F) Detention hearing.**

620
621 **(1) Hearing: time; notice.** When a child has been admitted to detention or shelter
622 care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is
623 placed in detention or shelter care or the next court day, whichever is earlier, to determine whether
624 detention or shelter care is required. Reasonable oral or written notice of the time, place, and
625 purpose of the detention hearing shall be given to the child and to the parents, guardian, or other
626 custodian, if that person or those persons can be found.

627
628 **(2) Hearing: advisement of rights.** Prior to the hearing, the court shall inform the
629 parties of the right to counsel and to appointed counsel if indigent and the child's right to remain
630 silent with respect to any allegation of a juvenile traffic offense, delinquency, or unruliness.

631
632 **(3) Hearing procedure.** The court may consider any evidence, including the reports
633 filed by the person who brought the child to the facility and the admissions officer, without regard
634 to formal rules of evidence. Unless it appears from the hearing that the child's detention or shelter
635 care is required under division (A) of this rule, and except as provided in division (F)(4) of this
636 rule, the court shall order the child's release to a parent, guardian, or custodian. Whenever abuse,
637 neglect, or dependency is alleged, the court shall determine whether there are any appropriate
638 relatives of the child who are willing to be temporary custodians and, if so, appoint an appropriate
639 relative as the temporary custodian of the child. The court shall make a reasonable efforts
640 determination in accordance with Juv. R. 27(B)(1).

641
642 **(4) Release of child; serious youthful offender.** With respect to a child alleged to be
643 or adjudicated a serious youthful offender, the juvenile court shall set the terms and conditions for
644 release of the child in accordance with Crim.R. 46.

645
646 [Existing language unaffected by the amendments is omitted to conserve space]

647 **RULE 16. Process: Service**
648

649 **(A) Summons: service, return.** Except as otherwise provided in these rules, summons
650 shall be served as provided in Civil Rules 4(A), (C) and (D), 4.1, 4.2, 4.3, 4.5 and 4.6. The
651 summons shall direct the party served to appear at a stated time and place. Where service is by
652 certified mail, the time shall not be less than seven days after the date of mailing.
653

654 Except as otherwise provided in this rule, when the residence of a party is unknown and
655 cannot be ascertained with reasonable diligence, service shall be made by publication. Service by
656 publication upon a non-custodial parent is not required in delinquent child or unruly child cases
657 when the person alleged to have legal custody of the child has been served with summons pursuant
658 to this rule, but the court may not enter any order or judgment against any person who has not been
659 served with process or served by publication unless that person appears. Before service by
660 publication can be made, an affidavit of a party or party's counsel shall be filed with the court. The
661 affidavit shall aver that service of summons cannot be made because the residence of the person is
662 unknown to the affiant and cannot be ascertained with reasonable diligence and shall set forth the
663 last known address of the party to be served.
664

665 Service by publication shall be made by newspaper publication, by posting and mail, or by
666 a combination of these methods. The court, by local rule, shall determine which method or
667 methods of publication shall be used. If service by publication is made by newspaper publication,
668 upon the filing of the affidavit, the clerk shall serve notice by publication in a newspaper of general
669 circulation in the county in which the complaint is filed. If no newspaper is published in that
670 county, then publication shall be in a newspaper published in an adjoining county. The publication
671 shall contain the name and address of the court, the case number, the name of the first party on
672 each side, and the name and last known address, if any, of the person or persons whose residence
673 is unknown. The publication shall also contain a summary statement of the object of the complaint
674 and shall notify the person to be served that the person is required to appear at the time and place
675 stated. The time stated shall not be less than seven days after the date of publication. The
676 publication shall be published once and service shall be complete on the date of publication.
677

678 After the publication, the publisher or the publisher's agent shall file with the court an
679 affidavit showing the fact of publication together with a copy of the notice of publication. The
680 affidavit and copy of the notice shall constitute proof of service.
681

682 If service by publication is made by posting and mail, upon the filing of the affidavit, the
683 clerk shall cause service of notice to be made by posting in a conspicuous place in the courthouse
684 in which the division of the common pleas court exercising jurisdiction over the complaint is
685 located and in additional public places in the county that have been designated by local rule for
686 the posting of notices pursuant to this rule. The number of additional public places to be designated
687 shall be either two places or the number of state representative districts that are contained wholly
688 or partly in the county in which the courthouse is located, whichever is greater. Alternatively, the
689 postings may be made on the website of the clerk of courts, if available, in a section to be
690 designated for such purpose. The notice shall contain the same information required to be
691 contained in a newspaper publication. The notice shall be posted in the required locations for
692 seven consecutive days. The clerk also shall cause the summons and accompanying pleadings to

693 be mailed by ordinary mail, address correction requested, to the last known address of the party to
694 be served. The clerk shall obtain a certificate of mailing from the United States Postal Service. If
695 the clerk is notified of a corrected or forwarding address of the party to be served within the seven
696 day period that notice is posted pursuant to this rule, the clerk shall cause the summons and
697 accompanying pleadings to be mailed to the corrected or forwarding address. The clerk shall note
698 the name, address, and date of each mailing in the docket.

699
700 After the seven days of posting, the clerk shall note on the docket where and when notice
701 was posted. Service shall be complete upon the entry of posting.

702
703 The clerk shall forthwith enter on the appearance docket delivery to the United States
704 Postal Service for mailing, or delivery to a specified commercial carrier service for delivery, and
705 make a similar entry when the return receipt is received. If the return shows failure of delivery,
706 the clerk shall forthwith notify the attorney of record or, if there is no attorney of record, the party
707 at whose instance process was issued and enter the method of notification on the appearance
708 docket. The clerk shall file the return receipt, or returned envelope, in the records of the action.

709
710 **[Existing language unaffected by the amendments is omitted to conserve space]**

711 **RULE 24. Discovery**

712
713 **(A) Request for discovery.** Upon written request sent either by mail or remotely
714 through a mutually agreed upon electronic platform, each party of whom discovery is requested
715 shall, to the extent not privileged or otherwise prohibited from disclosure by law, produce promptly
716 for inspection, copying, or photographing the following information, documents, and ~~material~~
717 materials in that the party's custody, control, or possession:

718
719 (1) The names and last known addresses of each witness, telephone number and e-mail
720 address of each individual likely to have discoverable information, along with the subjects of that
721 information that forms the basis of the charge or defense or that the disclosing party may use to
722 support its claims and defenses, unless the use would be solely for impeachment to the occurrence
723 that forms the basis of the charge or defense;

724
725 (2) Copies of any written statements made by any party or witness;

726
727 (3) Transcriptions, recordings, and summaries of any oral statements of any party or
728 witness, except the work product of counsel;

729
730 (4) Any scientific or other reports that a party intends to introduce at the hearing or that
731 pertain to physical evidence that a party intends to introduce;

732
733 (5) Photographs and any physical evidence which a party intends to introduce at the
734 hearing;

735
736 (6) Except in delinquency and unruly child proceedings, other evidence favorable to
737 the requesting party and relevant to the subject matter involved in the pending action. In
738 delinquency and unruly child proceedings, the prosecuting attorney shall disclose to respondent's
739 counsel all evidence, known or that may become known to the prosecuting attorney, favorable to
740 the respondent and material either to guilt or punishment.

741
742 **[Existing language unaffected by the amendments is omitted to conserve space]**

743
744
745 Proposed Staff Note (July 1, 2022)

746
747 Regarding these amendments, the court retains discretion to determine the manner in which
748 discovery will be conducted, except as otherwise limited by statute or other controlling Rules of Procedure.