

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)
Act 175 of 1927

768.21b Breaking prison; defense of duress; notices; additional witnesses; consideration of conditions.

Sec. 21b.

(1) If a defendant charged with breaking prison proposes to offer in his or her defense testimony to establish the defense of duress at the time of the alleged offense, the defendant at the time of arraignment on the information or within 15 days after that arraignment, but not less than 10 days before the trial of the case, or at such other time as the court directs, shall file and serve upon the prosecuting attorney a notice in writing of the intention to claim that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information relative to the defense.

(2) Within 10 days after the receipt of the defendant's notice but not later than 5 days before the trial of the case, or at such other time as the court may direct, the prosecuting attorney shall file and serve upon the defendant a notice of rebuttal which shall contain, as particularly as is known to the prosecuting attorney, the names of the witnesses whom the prosecuting attorney proposes to call in rebuttal to controvert the defendant's defense at the trial of the case.

(3) Both the defendant and the prosecuting attorney shall be under a continuing duty to promptly disclose the names of additional witnesses which come to the attention of either party after filing the respective notices as provided in this section. Upon motion with notice to the other party and upon a showing by the moving party that the name of an additional witness was not available when the notice required by subsection (1) or (2) was filed, and could not have been available by the exercise of due diligence, the additional witness may be called by the moving party to testify as a witness for the purpose of establishing or rebutting the defense of duress or necessity.

(4) In determining whether or not the defendant broke prison while under duress the jury or court may consider the following conditions if supported by competent evidence:

(a) Whether the defendant was faced with a specific threat of death, forcible sexual attack or substantial bodily injury in the immediate future.

(b) Whether there was insufficient time for a complaint to the authorities.

(c) Whether there was a history of complaints by the defendant which failed to provide relief.

(d) Whether there was insufficient time or opportunity to resort to the courts.

(e) Whether force or violence was not used towards innocent persons in the prison break.

(f) Whether the defendant immediately reported to the proper authorities upon reaching a position of safety from the immediate threat.

History: Add. 1978, Act 600, Imd. Eff. Jan. 4, 1979