The opinion summaries are not part of the Colorado Supreme Court's opinion. They have been prepared solely for the reader's convenience. As such, they may not be cited or relied upon. If there is any discrepancy between the language in the summary and the opinion, the language in the opinion controls.

ADVANCE SHEET HEADNOTE
October 19, 2026
AS MODIFIED November 4, 2026

2026 CO 67M-2

No. 26SA165, *In re People v. Clark*—Forensic Science Integrity Act—Crim. P. 17—*Spykstra* Test—Discovery.

In this original proceeding, the supreme court considers a subpoena served on the Colorado Bureau of Investigation ("CBI") by a defendant awaiting retrial on criminal charges. Through that subpoena, the defendant seeks information about cases other than his own on which a former CBI analyst worked. The supreme court concludes that (1) the subpoena exceeded the bounds of Crim. P. 17 and the defendant failed to satisfy the five-factor test required by *People v. Spykstra*, 234 P.3d 662, 669 (Colo. 2010); and (2) the district court erred by invoking the Colorado Forensic Science Integrity Act, §§ 16-12-301 to -312, C.R.S. (2026). Therefore, the supreme court concludes that the district court erred by denying CBI's motion to quash the subpoena, and it remands the case to the district court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 67M-2

Supreme Court Case No. 26SA165
Original Proceeding Pursuant to C.A.R. 21
Boulder County District Court Case No. 12CR222
Honorable Nancy W. Salomone, Chief Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Michael Martin Clark.

Order Made Absolute
en banc
October 19, 2026

Opinion Modified. EN BANC.

November 4, 2026

Attorneys for Petitioner Colorado Bureau of Investigation:
Philip J. Weiser, Attorney General
Andrew Williams, Assistant Deputy Attorney General
Marianne Combs, Senior Assistant Attorney General
Lisa McCarty, Senior Assistant Attorney General
Denver, Colorado

Attorneys for Respondent Michael Martin Clark:
Frank Law Office LLC

Adam Frank
Denver, Colorado

Mulligan & Mulligan, PLLC
Mary Claire Mulligan
Denver, Colorado

JUSTICE HOOD delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE GABRIEL**, **JUSTICE SAMOUR**, **JUSTICE BERKENKOTTER**, and **JUSTICE BLANCO** joined.

JUSTICE HOOD delivered the Opinion of the Court.

¶1 In this original proceeding, we consider the legality of a wide-ranging subpoena served on the Colorado Bureau of Investigation ("CBI") by the defendant, Michael Martin Clark. Through that subpoena, Clark seeks information about cases other than his own on which former CBI DNA analyst Yvonne "Missy" Woods worked. Because Clark's subpoena exceeds the bounds of the governing rule of criminal procedure, and because the district court's reliance on the Colorado Forensic Science Integrity Act ("FSIA"), §§ 16-12-301 to -312, C.R.S. (2026), fares no better, we conclude that the district court erred by denying CBI's motion to quash the subpoena based on the record before us. Therefore, we remand the case to the district court for further proceedings consistent with this opinion.

I. Facts and Procedural History

¶2 In 2012, Clark was convicted of first degree murder for a crime he allegedly committed in 1994. The court sentenced him to life in prison without the possibility of parole. Clark appealed, and a division of the court of appeals affirmed his conviction and sentence. *People v. Clark*, No. 12CA2502, ¶ 106 (Sep. 29, 2016) ("*Clark I*").

¶3 In 2019, Clark moved for postconviction relief under Crim. P. 35(c). The district court denied the motion, and on appeal, the division affirmed in part and

reversed in part the district court's order. *People v. Clark*, No. 20CA1567 (Dec. 14, 2023) ("*Clark II*"). The division remanded the case to the district court to hold an evidentiary hearing on two of Clark's claims. *Id.* at ¶ 1. The court of appeals issued its mandate in June 2024.

¶4 While *Clark II* was pending, CBI became aware of alleged misconduct by longtime DNA analyst Missy Woods. Woods had been the DNA analyst in Clark's case and had concluded that Clark's DNA was "[t]he major component" of the mixed DNA profile developed from swabbing the inside of a Carmex container collected at the crime scene.

¶5 In August 2024, Clark supplemented his postconviction motion, asserting that he was entitled to a new trial based on the newly discovered information regarding Woods's alleged misconduct. In its response, the prosecution highlighted the division's observation that "the circumstantial evidence in this case was 'weighty,'" and it noted that Clark had acknowledged in his pleadings that the DNA evidence presented against him at trial wasn't decisive. The prosecution also highlighted the results of an independent lab's retest of Woods's original swabs and a test of new samples, showing that Clark couldn't be excluded from being a contributor to the mixed DNA profile developed from swabbing the inside of the Carmex container. Even so, the prosecution concluded that, "given the particular facts and circumstances in this case and after considering the totality

of the issues," it would be "in the interests of justice" to vacate Clark's conviction and grant him a new trial. Therefore, by stipulation, the district court vacated Clark's conviction and set his case for a new trial.

¶6 While awaiting retrial, Clark served CBI with a subpoena, which, as later amended, asked CBI to produce:

> The complete litigation packet, including but not limited to all documents in CBI's possession related to all cases that meet the following criteria: (1) the case involved DNA testing and analysis; (2) Yvonne Woods was the DNA analyst who performed a part or the entirety of the DNA testing or analysis; (3) a CBI report or other searchable file related to the case contains any of the following phrases: "major component", "major contributor", "major profile", or contains both the words "major" and "minor"; (4) a CBI report or other searchable file related to the case contains the word "YSTR"; (5) a CBI report or other searchable file related to the case contains the word "Yfiler" (documents that contain the word "Yfiler+" or "Yfiler plus" would not be responsive); and (6) the ratio between the height of the peaks Yvonne Woods identified as one profile and the height of the peaks Yvonne Woods identified as a different profile in YSTR DNA testing using the Yfiler DNA testing kit is at or below 3:1 at any allele.

CBI moved to quash the subpoena, Clark objected, and the court held a hearing.

¶7 Clark argued that the requested materials were relevant both (1) to negate his guilt or to reduce his punishment and (2) to prove his upcoming motion to dismiss based on outrageous governmental conduct. He argued that the materials would show that, even if Woods had followed CBI's policies and procedures for DNA analysis in his case, CBI's policies and procedures allowed analysts to report

a DNA profile match even when the results fell well below scientifically acceptable standards.

¶8 CBI countered that the subpoena was based on inaccurate assumptions, sought material that wasn't relevant to Clark's case, failed to satisfy the five-part test required by *People v. Spykstra*, 234 P.3d 662, 669 (Colo. 2010), and was overbroad and unduly burdensome. CBI estimated that it would take staff about 2,190 hours to produce the subpoenaed materials and now emphasizes that it would involve revealing victim and third-party information, including genetic data. The prosecution also asserted that it had already provided Clark with the entire packet of information "concerning both the investigation of Woods and every Woods affected case in the state," which included "[l]iterally every one of the hundreds of instances of Woods'[s] misconduct." (And CBI ultimately concluded that there was no wrongful action in Clark's case.)

¶9 At the hearing on the motion to quash, the district court questioned whether the relevancy determination was the same under both *Spykstra* and the FSIA. The court and the parties briefly discussed the scope of the FSIA, but the court didn't rule on the issue. The district court later denied CBI's motion to quash in a written order, finding that Clark's request wasn't unduly burdensome and that the materials "may have relevance" to Clark's upcoming outrageous governmental conduct motion. Anticipating a motion to reconsider, the court also instructed CBI

to address in any such motion whether the scope of the FSIA's relevancy requirement is more expansive than *Spykstra*'s.

¶10 As predicted, CBI moved to reconsider. In denying that motion, the court clarified the permissible scope of the subpoena as follows:

> CBI shall provide a report of cases that are identified by the following criteria after a search of documents in CBI's possession:
>
> i. First, searching for the terms "Yfiler";
>
> ii. From those results, searching for the term "YSTR";
>
> iii. Finally, from those narrowed results, searching for the terms "major component", "major contributor", "major profile", or contains both the words "major" and "minor". The Court notes Defense's willingness to withdraw the request for the last of these search terms if the former search proves burdensome.

¶11 CBI then petitioned this court for an order to show cause under C.A.R. 21, which we issued.[1]

II. Jurisdiction and Standard of Review

¶12 This court has sole discretion to decide whether to exercise original jurisdiction, and we do so only when "no other adequate remedy is available."

---

[1] The issues presented in the petition are as follows:

1. Whether the district court erred by requiring production of documents from unrelated cases, where there has been no finding of "wrongful action" as required by the FSIA.
2. Whether the district court erred by permitting the defendant to use a subpoena to investigate DNA testing in thousands of unrelated cases, contrary to *People v. Spykstra*, 234 P.3d 662 (Colo. 2010).

C.A.R. 21(a)(2). Here, we step in because CBI has no other adequate remedy. If CBI complied with the district court's order and waited to challenge it on appeal, CBI would have already incurred the expense and the harm from complying, regardless of the outcome of the appeal. *See People v. Silva-Jaquez*, 2025 CO 11, ¶¶ 13–14, 564 P.3d 650, 653. Moreover, some issues presented here (or variations on similar themes) have proliferated across the state in recent months. Thus, this case also presents previously unaddressed matters of statewide concern, another familiar tripwire for original jurisdiction. *See id.* at ¶¶ 11, 16, 564 P.3d at 653.

¶13 We typically review a district court's discovery orders for an abuse of discretion. *Id.* at ¶ 18, 564 P.3d at 654. Although such orders are often fact driven, a court abuses its discretion if it exceeds the bounds of its legal authority, *People in Int. of E.G.*, 2016 CO 19, ¶ 6, 368 P.3d 946, 948, or if its decision is manifestly arbitrary, unreasonable, or unfair, or a misapplication of the law, *In re People in Int. of J. P.*, 2023 CO 57, ¶ 17, 538 P.3d 337, 343.

¶14 Of course, we review purely legal issues de novo. *See People v. Dye*, 2024 CO 2, ¶ 34, 541 P.3d 1167, 1175. And here, because the issues presented encompass the scope and meaning of the FSIA, we apply de novo review to the district court's interpretation and application of that statute.

¶15 In interpreting rules and statutes, our primary goal is to discern the drafters' intent. *People v. Soron*, 2026 CO 3, ¶ 22, 581 P.3d 778, 783. We therefore begin with

the provision's plain language, giving words and phrases their commonly understood meanings, and neither adding nor subtracting words. *Id.* at ¶¶ 22–23, 581 P.3d at 783. If the language is unambiguous, we apply it as written. *Dye*, ¶ 35, 541 P.3d at 1176.

III. Analysis

¶16 We begin our analysis with an overview of discovery in Colorado criminal cases, focusing on the scope of a Crim. P. 17 subpoena and *Spykstra*'s five-part test. We then discuss the applicability of the FSIA.

A. Discovery in Criminal Cases

¶17 "In Colorado, there is no right to discovery in criminal cases, and courts have 'no freestanding authority to grant criminal discovery beyond what is authorized by the Constitution, the rules, or by statute.'" *People v. Castorena*, 2026 CO 2, ¶ 14, 582 P.3d 459, 464 (quoting *Silva-Jaquez*, ¶ 19, 564 P.3d at 654).

¶18 Crim. P. 16 governs pretrial discovery in criminal cases. It delineates mandatory and discretionary disclosures, and it authorizes a court to "issue suitable subpoenas" to compel disclosure of "material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel" when requested by a defendant. Crim. P. 16(c); *see also Castorena*, ¶¶ 15–16, 582 P.3d at 464.

¶19 Crim. P. 17, in turn, "'governs subpoenas in criminal prosecutions,' and grants parties 'the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness upon the trial or other hearing.'" *Castorena*, ¶ 28, 582 P.3d at 465 (first quoting *People v. Baltazar*, 241 P.3d 941, 942 (Colo. 2010); and then quoting Crim. P. 17); *see also E.G.*, ¶ 20, 368 P.3d at 951. We have "long emphasized that pretrial subpoenas under Crim. P. 17(c) have a 'limited scope' and may not be used as an investigatory tool." *E.G.*, ¶ 20, 368 P.3d at 951 (quoting *Spykstra*, 234 P.3d at 669); *accord Castorena*, ¶ 30, 582 P.3d at 466. Accordingly, Rule 17 subpoenas allow a defendant "to obtain material, exculpatory evidence from the prosecution, which 'if suppressed, would deprive the defendant of a fair trial,'" *E.G.*, ¶ 23, 368 P.3d at 952 (quoting *United States v. Bagley*, 473 U.S. 667, 675 (1985)), but they may not be used to "provide for expanded discovery," *Castorena*, ¶ 31, 582 P.3d at 466 (quoting *Baltazar*, 241 P.3d at 943).

¶20 Rule 17 also expressly allows the court, upon motion, to "quash or modify the subpoena if compliance would be unreasonable or oppressive." Crim. P. 17(c).

¶21 To ensure that a party's subpoena complies with Rule 17's limitations, we require the subpoenaing party to show:

> (1) A reasonable likelihood that the subpoenaed materials exist, by setting forth a specific factual basis;
>
> (2) That the materials are evidentiary and relevant;

(3) That the materials are not otherwise procurable reasonably in advance of trial by the exercise of due diligence;

(4) That the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and

(5) That the application is made in good faith and is not intended as a general fishing expedition.

Spykstra, 234 P.3d at 669 (footnote omitted); *accord Castorena*, ¶ 31, 582 P.3d at 466.

¶22 Here, the district court addressed only the second *Spykstra* factor, finding that the material Clark requested was relevant to his forthcoming motion to dismiss his criminal case for outrageous governmental conduct: "The crux of [Clark's] claim is that CBI knowing[ly] or recklessly disregarded the risk that wrongful convictions could result from its policies and procedures because those procedures would help law enforcement prosecute more cases." The court noted that, if true, this accusation could plausibly meet Clark's burden to prove outrageous governmental conduct, and so, it concluded, the requested materials were relevant. *See Effland v. People*, 240 P.3d 868, 879 (Colo. 2010) (defining "outrageous government conduct" as "conduct that violates fundamental fairness and is shocking to the universal sense of justice" (quoting *People v. Medina*, 51 P.3d 1006, 1011 (Colo. App. 2001))). We conclude that the district court's reasoning was, at best, premature.

¶23 To be sure, the relevance prong is broad. After all, "'[r]elevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." CRE 401. And evidence may be discoverable if it is relevant to conduct a defense even though it may be inadmissible at trial. *See People v. Dist. Ct.*, 790 P.2d 332, 338 (Colo. 1990).

¶24 But when the district court issued its order regarding Clark's subpoena duces tecum, Clark hadn't yet filed his motion to dismiss the charges for outrageous governmental conduct. And, unlike many other types of criminal defenses, allegations of due process violations that may bar prosecution—including allegations of outrageous governmental conduct—must be resolved through pretrial proceedings. *See* Crim. P. 12; *see also United States v. Leal*, 32 F.4th 888, 896 n.3 (10th Cir. 2022); *People in Int. of M.N.*, 761 P.2d 1124, 1127–29 (Colo. 1988). The defendant, rather than the prosecution, bears the burden of proving this form of due process violation. *See M.N.*, 761 P.2d at 1129 (concluding that the challenged testimony didn't establish that "*the defendant* had made a showing of outrageous governmental conduct" (emphasis added)).

¶25 Because a defendant's burden to prove outrageous governmental conduct is separate from the prosecution's burden to prove the defendant's guilt and to disprove any affirmative defenses raised during the trial, until Clark filed the

relevant pretrial motion, the subpoenaed materials weren't relevant to any fact of consequence to the determination of the action. *See* CRE 401.

¶26 Aside from this timing problem with relevance under the second prong of *Spykstra*, which might strike some as elevating form over substance, there is perhaps a more challenging "fishing expedition" issue under the final prong. In response to CBI's motion to quash, Clark explained that his subpoena "seeks evidence of the other cases in which Ms. Woods applied CBI's scientifically unfounded policy to report potentially false DNA analysis based on the data she received from her YSTR DNA testing using the Yfiler testing kit" and that such materials were "likely to reveal that Mr. Clark's case is not a one-off situation, but instead is just one example of a separate type of misconduct explicitly condoned by the CBI in which the CBI analysts incorrectly reported identifiable major and minor contributors to a mixture." These assertions arguably expanded the scope of the request beyond any potential relevance to his guilt or innocence and demonstrate that Clark "issued the subpoenas based on nothing more than a hope of uncovering something to support" his broader claims about methodological flaws writ large. *Spykstra*, 234 P.3d at 672; *see also Castorena*, ¶¶ 30–31, 582 P.3d at 466; *Baltazar*, 241 P.3d at 944. Whether Clark's request therefore crosses the boundary between potentially relevant material and a prohibited fishing expedition is an issue that requires additional factfinding by the district court.

¶27 Although we conclude that the district court abused its discretion by finding that the requested materials were relevant and that it therefore erred by denying CBI's motion to quash on this basis, we remand this case to the district court to make more complete findings. *See People v. Battigalli-Ansell*, 2021 COA 52M, ¶ 91, 492 P.3d 376, 392 (declining to address the remaining *Spykstra* factors when the defendant failed to satisfy the first two because all five factors must be met). Because Clark has filed his outrageous governmental conduct motion since the district court ruled on CBI's motion to quash, we invite the district court to reconsider CBI's motion to quash in light of Clark's motion and to make the requisite findings under each *Spykstra* factor.

¶28 We now turn to the FSIA to consider whether it provides an independent basis for the requested discovery.

B. The FSIA

¶29 We begin our interpretation of the FSIA by considering the legislature's express purpose in enacting it. We then examine the plain language the legislature used to outline the notice and disclosure procedures and obligations related to an investigation into alleged wrongful action. Next, we discuss how a defendant may obtain materials related to any such investigation and the scope of what is discoverable. Last, we apply our interpretation to the case at hand.

1. The Purpose of the FSIA

¶30 The General Assembly has declared that "[a]n effective criminal justice system requires that crime laboratory employees act with integrity and that crime laboratories have controls to prevent and detect knowing misconduct and violations of procedures and properly investigate and report misconduct when it occurs." § 16-12-302(1)(a), C.R.S. (2026). Thus, individuals must have "an opportunity to timely and fairly litigate cases in which there was misconduct by a crime laboratory employee that could affect, or did affect, the outcome of a case." § 16-12-302(1)(c).

¶31 The section after the legislative declaration defines the terms used in the FSIA. § 16-12-303, C.R.S. (2026). It defines wrongful action by reference to two other terms defined in that section: "'Wrongful action' means knowing misconduct or a significant event." § 16-12-303(8). Incorporating those definitions, the FSIA therefore defines wrongful action for these purposes as (1) "a voluntary act or omission or series of acts or omissions consciously performed by a crime laboratory employee as a result of effort or determination in which the employee is aware that the[ir] . . . conduct is improper or deceptive," § 16-12-303(6) (knowing misconduct), or (2) "an act or omission by a crime laboratory employee that is a gross deviation from the laboratory standard operation procedures . . . of

the crime laboratory . . . that could substantially negatively affect the integrity of the crime laboratory activities," § 16-12-303(7) (significant event).

2. Notice and Disclosure Procedures and Obligations

¶32 Under the FSIA, if a crime lab director "receives a report of wrongful action . . . or receives other information about an act or omission by a crime laboratory employee that may constitute wrongful action," the director "shall forthwith investigate the crime laboratory employee's actions." § 16-12-305(1), C.R.S. (2026). If the allegation involves "wrongful action in a pending case, the crime laboratory director shall, within seven days of beginning the investigation, notify the district attorney with jurisdiction over each pending criminal case that is subject to the investigation about the investigation." § 16-12-305(3)(a). The district attorney must then "notify the defendant in the case that is subject to the investigation." § 16-12-306(1), C.R.S. (2026).

¶33 Next, the director will "determine whether wrongful action occurred in a case identified in the initial investigation notice to the district attorney." § 16-12-305(4)(a). If the director determines that no wrongful action occurred, the director need only deliver a copy of the final report of the investigation to those district attorneys with cases or defendants subject to the investigation. § 16-12-305(5)(a).

¶34 If, however, the director determines that the crime lab employee engaged in wrongful action, the director shall

> (I) Deliver . . . the final report of the investigation, which includes the list of cases described in subsection (2)(f) of this section, to each district attorney who has jurisdiction over any case that the crime laboratory employee worked on in an official capacity; and
>
> (II) Provide the district attorney all materials discoverable by the defendant pursuant to section 16-12-309[, C.R.S. (2026),] on a timely and ongoing basis through the conclusion of post-conviction proceedings.

§ 16-12-305(5)(b). A district attorney who receives such a report "shall notify the defendant in that case, and each defendant whose case was reviewed as part of the investigation, of the determination of wrongful action in the case that is subject to the investigation." § 16-12-306(2)(a).

3. A Defendant's Right to Discovery Under the FSIA

¶35 In addition to those automatic notice and disclosure obligations, which the FSIA imposes on crime lab directors and district attorneys, the FSIA grants defendants a right to discovery "related to the wrongful action" if (1) the defendant receives notice from the district attorney that wrongful action has been reported in their case, or (2) "a court orders discovery after the defendant files a pleading that names a crime laboratory employee who worked on the defendant's case who is the subject of an investigation of wrongful action." § 16-12-309(1)(a)(I)–(II).

¶36 If one of those two triggering events occurs, the defendant may "request discovery by making a written request to the district attorney or filing a motion with the court." § 16-12-309(1)(b). And "[u]pon receiving a valid discovery request or a court order to provide discovery, the district attorney shall provide . . . as soon as practicable and on an ongoing basis through the conclusion of post-conviction proceedings," § 16-12-309(1)(c), the following:

> (a) All material that was previously discovered in the case that is not already in the defendant's present counsel's possession;
>
> (b) All statements, transcripts, and reports about the wrongful action or investigation of the wrongful action, including, but not limited to, statements, transcripts, and reports from the crime laboratory, including an unredacted copy of the final report, law enforcement agencies or officers, and third parties contracted to investigate the wrongful action;
>
> (c) All statements, transcripts, reports, or litigation packets about the handling, testing, retesting, examination, or results related to the physical evidence in the defendant's case;
>
> (d) All communications, reports, or information that relates to accreditation, certification, or licensure related to, or that may be affected by, the wrongful action, which includes accreditation, certification, or licensure of the crime laboratory or the crime laboratory employee alleged to have committed the wrongful action;
>
> (e) Crime laboratory policies and procedures that were applicable during the time of the alleged wrongful action that governed the handling, testing, or examination of the evidence handled, tested, or examined by the crime laboratory for which the crime laboratory employee alleged to have committed the wrongful action worked;

(f) Any information that tends to impeach the credibility or reliability of the handling, testing, or examination of the physical evidence in the case;

(g) All materials or information related to the case that tends to negate the guilt of the accused or would reduce the punishment of the accused; and

(h) Any other material regarding the wrongful action that is requested by the defendant that may be relevant to demonstrating the wrongful action or materiality of the wrongful action in the defendant's case.

§ 16-12-309(2). If a crime lab is, or may be, in possession of discoverable material that hasn't already been provided to the district attorney, "[t]he district attorney shall request" it. § 16-12-309(1)(c). And if a party reasonably believes that materials required to be disclosed under these provisions exist but haven't been provided despite proper requests, the party may seek a court order to assist in obtaining that discovery or a subpoena may be issued. § 16-12-309(3).

¶37 Otherwise, for any materials or requests that don't fall within these parameters, the release of "[a]ll records related to an investigation, including notices and reports," is governed by the Criminal Justice Records Act ("CJRA"), §§ 24-72-301 to -309, C.R.S. (2026). § 16-12-305(8); *see also* § 16-12-305(4)(c); § 24-72-303(4)(a.5), C.R.S. (2026).

4. Application

¶38 To be entitled to discovery related to a crime lab employee's wrongful action, Clark must fall under the purview of the statute either (1) because he

received notice of reported wrongful action from the district attorney or (2) because he filed a pleading naming a crime lab employee who worked on his case and who is under investigation for alleged wrongful action, and the district court ordered discovery based on that pleading. § 16-12-309(1)(a). Here, neither triggering event occurred.

¶39 Regarding the notice trigger, it wasn't until February 2026 that the district attorney's office first notified Clark of CBI's investigation into Woods's alleged misconduct related to Clark's case, as required by section 16-12-306(2)(a). But Clark subpoenaed CBI in January 2026, so this February notice couldn't serve as the trigger for the January discovery request under the FSIA.

¶40 Regarding the pleading trigger, Clark identified Woods as a crime lab employee subject to an investigation in his August 2024 supplemental motion for relief pursuant to Crim. P. 35(c). While this pleading would likely be sufficient under the FSIA for Clark to then request a court order for discovery, the FSIA didn't yet exist. *See* Ch. 352, sec. 1, §§ 16-12-301 to -312, 2025 Colo. Sess. Laws 1891, 1891–1906 (effective June 2, 2025). And, regardless, Clark never requested such an order.

¶41 Because, however, the FSIA was enacted after the triggering pleading was filed and before the district court issued its order on CBI's motion to quash, we

consider whether Clark complied with subsection 309(1)(b)'s procedural requirements.

¶42 The FSIA allows a defendant who is entitled to discovery under the statute to request it "by making a written request to the district attorney or [by] filing a motion with the court." § 16-12-309(1)(b). Clark did neither. Instead, he served a subpoena duces tecum on CBI. And although a subpoena may issue under the FSIA when valid discovery requests fail, a defendant must first make such requests. § 16-12-309(3). Furthermore, the FSIA provides no mechanism for defendants to request materials directly from CBI; rather, the statute directs the district attorney to obtain materials from CBI and then provide them to defendants through discovery procedures. § 16-12-309(1)(b).

¶43 So, we conclude that because Clark failed to follow the FSIA's procedural requirements, the FSIA doesn't entitle him to the requested materials, and the district court therefore erred by finding that the FSIA compelled CBI's compliance with Clark's subpoena. Based on this conclusion, we decline to consider whether the requested materials would fall within the scope of materials the district attorney must disclose under section 16-12-309(2).

IV. Conclusion

¶44 We make the order to show cause absolute and remand the case to the district court for further proceedings consistent with this opinion.[2]

[2] Because we conclude that neither Crim. P. 17, *Spykstra*, nor the FSIA authorize Clark's subpoena duces tecum, we decline to consider whether the district court abused its discretion by failing to modify or quash the subpoena based on CBI's assertion that "compliance would be unreasonable or oppressive." Crim. P. 17(c). However, the burdensomeness of the request is a continuing issue that the district court should reconsider on remand.