

Senator Todd Weiler proposes the following substitute bill:

1 **JOINT RESOLUTION AMENDING RULES OF**
2 **CRIMINAL PROCEDURE**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd Weiler**

6 House Sponsor: Mike K. McKell

7

LONG TITLE

8 **General Description:**

9 This joint resolution amends the Utah Rules of Criminal Procedure.

10 **Highlighted Provisions:**

11 This resolution:

- 12 ▶ describes the information that is to be disclosed;
- 13 ▶ provides sanctions under certain circumstances for failure to comply with
- 14 constitutional disclosure requirements;
- 15 ▶ provides an exemption from sanctions; and
- 16 ▶ makes technical changes.

17 **Special Clauses:**

18 This resolution provides a special effective date.

19 **Utah Rules of Criminal Procedure Affected:**

20 **AMENDS:**

21 **Rule 16**, Utah Code of Criminal Procedure

22

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each
23 of the two houses voting in favor thereof:



26 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend
27 rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of
28 all members of both houses of the Legislature:

29 Section 1. **Rule 16**, Utah Code of Criminal Procedure is amended to read:

30 **Rule 16. Discovery.**

31 (a) As used in this rule, "open file policy" means a policy adopted by a prosecutorial
32 office to make available to the defendant the complete files of the law enforcement agency or
33 any other entity that obtains information on behalf of the law enforcement agency or prosecutor
34 in connection with the investigation of a crime committed or the prosecution of the defendant
35 unless otherwise protected by rule or law, such as work-product, privilege, or a protected
36 record that requires a court order to provide.

37 [(a)] (b) Except as otherwise provided, the prosecutor shall disclose to the defense
38 upon request information required under due process obligations to disclose that are established
39 by case law under the Utah Constitution and the Constitution of the United States, including
40 the following material or information of which [he] the prosecutor has knowledge:

41 [(a)] (b) (1) relevant written or recorded statements of the defendant or codefendants;

42 [(a)] (b) (2) the criminal record of the defendant;

43 [(a)] (b) (3) physical evidence seized from the defendant or codefendant;

44 [(a)] (b) (4) evidence known to the prosecutor that tends to negate the guilt of the
45 accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced
46 punishment; and

47 [(a)] (b) (5) any other item of evidence which the court determines on good cause
48 shown should be made available to the defendant in order for the defendant to adequately
49 prepare [his] the defendant's defense.

50 [(b)] (c) The prosecutor shall make all disclosures as soon as practicable following the
51 filing of charges and before the defendant is required to plead. The prosecutor has a continuing
52 duty to make disclosure.

53 [(c)] (d) Except as otherwise provided or as privileged, the defense shall disclose to the
54 prosecutor such information as required by statute relating to alibi or insanity and any other
55 item of evidence which the court determines on good cause shown should be made available to
56 the prosecutor in order for the prosecutor to adequately prepare [his] the prosecutor's case.

57 [~~(d)~~] (e) Unless otherwise provided, the defense attorney shall make all disclosures at
58 least 14 days before trial or as soon as practicable. [~~He~~] The defense attorney has a continuing
59 duty to make disclosure.

60 [~~(e)~~] (f) When convenience reasonably requires, the prosecutor or defense may make
61 disclosure by notifying the opposing party that material and information may be inspected,
62 tested or copied at specified reasonable times and places. The prosecutor or defense may
63 impose reasonable limitations on the further dissemination of sensitive information otherwise
64 subject to discovery to prevent improper use of the information or to protect victims and
65 witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the
66 further dissemination of videotaped interviews, photographs, or psychological or medical
67 reports.

68 [~~(f)~~] (g) Upon a sufficient showing the court may at any time order that discovery or
69 inspection be denied, restricted, or deferred, that limitations on the further dissemination of
70 discovery be modified or make such other order as is appropriate. Upon motion by a party, the
71 court may permit the party to make such showing, in whole or in part, in the form of a written
72 statement to be inspected by the judge alone. If the court enters an order granting relief
73 following such an ex parte showing, the entire text of the party's statement shall be sealed and
74 preserved in the records of the court to be made available to the appellate court in the event of
75 an appeal.

76 [~~(g)~~] (h) If at any time during the course of the proceedings it is brought to the attention
77 of the court that a party has failed to comply with this rule, the court may order such party to
78 permit the discovery or inspection, grant a continuance, or prohibit the party from introducing
79 evidence not disclosed, or it may enter such other order as [~~it deems~~] the court considers just
80 under the circumstances.

81 (i) (1) A defendant may file a motion for sanctions under this Subsection (i) if the
82 defendant believes that the prosecutor knowingly and wilfully violated Subsection (b). The
83 motion must be made separately from other motions or requests and must describe the specific
84 conduct alleged to violate Subsection (b). The motion may not be filed with or presented to the
85 court unless, within a reasonable period after service of the motion, the failure to disclose is not
86 corrected. The court may award the party who prevails on the motion reasonable expenses and
87 attorney fees incurred in presenting or opposing the motion.

88 (i) (2) On the courts own initiative, the court may enter an order describing the specific
89 conduct that appears to show a knowing and willful violation of Subsection (b) and direct a
90 prosecutor to show cause why the prosecutor has not violated Subsection (b).

91 (i) (3) In addition to the penalties under Subsection (h), a court may impose the
92 following sanctions for a knowing and willful violation of Subsection (b):

93 (i) (3) (A) a public reprimand of the prosecutor;

94 (i) (3) (B) money damages to be paid by the prosecutor, and not the office for which
95 the prosecutor works; ~~S~~→ or ←~~S~~

96 (i) (3) (C) jail time under an order of contempt of court ~~S~~→ [~~; or~~] . ←~~S~~

97 ~~S~~→ ~~(i) (3) (D) being tried for a class B misdemeanor.] ←~~S~~~~

98 (j) Notwithstanding Subsection (h) or (i), a prosecutor is not subject to sanctions for an
99 alleged violation of this rule if the prosecutor is employed by an prosecutorial office that has an
100 open file policy.

101 (j) (1) If a prosecutorial office has an open file policy, a prosecutorial office shall
102 certify conspicuously on the prosecutorial office website that the prosecutorial office has an
103 open file policy and renew that certification annually.

104 ~~[(h)] (k) Subject to constitutional limitations, the accused may be required to:~~

105 ~~[(h)] (k) (1) appear in a lineup;~~

106 ~~[(h)] (k) (2) speak for identification;~~

107 ~~[(h)] (k) (3) submit to fingerprinting or the making of other bodily impressions;~~

108 ~~[(h)] (k) (4) pose for photographs not involving reenactment of the crime;~~

109 ~~[(h)] (k) (5) try on articles of clothing or other items of disguise;~~

110 (k) (6) permit the taking of samples of blood, hair, fingernail scrapings, and other
111 bodily materials which can be obtained without unreasonable intrusion;

112 (k) (7) provide specimens of handwriting;

113 (k) (8) submit to reasonable physical or medical inspection of [his] the accused's body;
114 and

115 (k) (9) cut hair or allow hair to grow to approximate appearance at the time of the
116 alleged offense. Whenever the personal appearance of the accused is required for the foregoing
117 purposes, reasonable notice of the time and place of such appearance shall be given to the
118 accused and [his] the accused's counsel. Failure of the accused to appear or to comply with the

119 requirements of this rule, unless relieved by order of the court, without reasonable excuse shall
120 be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's
121 case in chief for consideration along with other evidence concerning the guilt of the accused
122 and shall be subject to such further sanctions as the court should deem appropriate.

123 **Section 2. Effective date.**

124 This resolution takes effect upon approval by a constitutional two-thirds vote of all
125 members elected to each house.