

SJR007S01 compared with SJR007

~~{deleted text}~~ shows text that was in SJR007 but was deleted in SJR007S01.

Inserted text shows text that was not in SJR007 but was inserted into SJR007S01.

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Senator Todd Weiler proposes the following substitute bill:

JOINT RESOLUTION AMENDING RULES OF ~~}~~

CRIMINAL ~~{~~

~~}~~ PROCEDURE

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This joint resolution amends the Utah Rules of Criminal Procedure.

Highlighted Provisions:

This resolution:

- ▶ ~~{specifies times when certain}~~ describes the information that is to be disclosed;
- ▶ ~~{describes the information that is to be disclosed}~~ provides sanctions under certain circumstances for failure to comply with constitutional disclosure requirements;
- ▶ provides an exemption from sanctions; and
- ▶ makes technical changes.

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Special Clauses:

This resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 16, Utah Code of Criminal Procedure

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

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

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

Rule 16. Discovery.

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

~~[(a)]~~ (b) Except as otherwise provided, { within 14 days of a defendant's request for information favorable to the defendant} the prosecutor shall disclose {in writing to the defense [upon request]} to the defense upon request information required under due process obligations to disclose that are established by case law under the Utah Constitution and the Constitution of the United States, including the following material or information of which [he { has knowledge:}] the information favorable to the defendant that is known to the prosecutor or to a government agent, peace officer, or other person who has acted as an investigator from a state or local agency that has participated in either the investigation or prosecution of the events underlying a crime charged. As used in this rule, "information favorable to the defendant" means the following:

~~— (a)]~~ the prosecutor has knowledge:

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

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

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

~~[(a)]~~ ~~[(b)]~~ (4) ~~{} evidence known to the prosecutor {}~~ ~~information in any form, whether or not admissible,~~ that tends to negate the guilt of the accused ~~{ or exculpate the defendant }~~, mitigate the guilt of the defendant, ~~{} or {}~~ mitigate the degree of the offense for reduced punishment ~~{, or adversely impact the credibility of a government witness or evidence }~~; and

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

~~[(b)]~~ ~~[(c)]~~ ~~{} The prosecutor shall make all disclosures as soon as practicable following the filing of charges and before the defendant is required to plead. {} The prosecutor has a continuing duty to make disclosure { of information favorable to the defendant }. { The written disclosure required by the prosecutor shall certify that the prosecutor:~~

~~—— (b) (1) has exercised due diligence in locating information favorable to the defendant within the files or knowledge of the government;~~

~~—— (b) (2) has disclosed and provided to the defendant the information favorable to the defendant; and~~

~~—— (b) (3) acknowledges the prosecutor's obligation until final judgment is entered to disclose information favorable to the defendant.~~

~~—— (c) A prosecutor shall disclose in writing to the defendant the information favorable to the defendant described in subsection (a) the sooner of:~~

~~—— (c) (1) the time period required by subsection (a); or~~

~~—— (c) (2) seven days before the day on which the defendant enters a plea of guilty or no contest.~~

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

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

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

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

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

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

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

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

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

(i) (3) (B) money damages to be paid by the prosecutor, and not the office for which the prosecutor works;

(i) (3) (C) jail time under an order of contempt of court; or

(i) (3) (D) being tried for a class B misdemeanor.

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

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

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

~~(h)~~ ~~(f)(k)~~ (1) appear in a lineup;

~~(h)~~ ~~(f)(k)~~ (2) speak for identification;

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

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

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

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

~~(f)(k)~~ (7) provide specimens of handwriting;

~~(f)(k)~~ (8) submit to reasonable physical or medical inspection of ~~his~~ the accused's body; and

~~(f)(k)~~ (9) cut hair or allow hair to grow to approximate appearance at the time of the alleged offense. Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given to the accused and ~~his~~ the accused's counsel. Failure of the accused to appear or to comply with the requirements of this rule, unless relieved by order of the court, without reasonable excuse shall be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's case in chief for consideration along with other evidence concerning the guilt of the accused

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and shall be subject to such further sanctions as the court should deem appropriate.

Section 2. **Effective date.**

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

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Legislative Review Note

Office of Legislative Research and General Counsel