

**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 information is to be disclosed;
- ▶ describes the information that is to be disclosed; and
- ▶ makes technical changes.

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:



28 **Rule 16. Discovery.**

29 (a) Except as otherwise provided, within 14 days of a defendant's request for
30 information favorable to the defendant the prosecutor shall disclose in writing to the defense
31 ~~[upon request the following material or information of which he has knowledge:]~~ the
32 information favorable to the defendant that is known to the prosecutor or to a government
33 agent, peace officer, or other person who has acted as an investigator from a state or local
34 agency that has participated in either the investigation or prosecution of the events underlying a
35 crime charged. As used in this rule, "information favorable to the defendant" means the
36 following:

37 (a) (1) relevant written or recorded statements of the defendant or codefendants;

38 (a) (2) the criminal record of the defendant;

39 (a) (3) physical evidence seized from the defendant or codefendant;

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

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

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

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

53 (b) (2) has disclosed and provided to the defendant the information favorable to the
54 defendant; and

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

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

59 (c) (1) the time period required by subsection (a); or
60 (c) (2) seven days before the day on which the defendant enters a plea of guilty or no
61 contest.

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

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

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

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

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

90 ~~(h)~~ (i) Subject to constitutional limitations, the accused may be required to:
91 ~~(h)~~ (i) (1) appear in a lineup;
92 ~~(h)~~ (i) (2) speak for identification;
93 ~~(h)~~ (i) (3) submit to fingerprinting or the making of other bodily impressions;
94 ~~(h)~~ (i) (4) pose for photographs not involving reenactment of the crime;
95 ~~(h)~~ (i) (5) try on articles of clothing or other items of disguise;
96 (i) (6) permit the taking of samples of blood, hair, fingernail scrapings, and other
97 bodily materials which can be obtained without unreasonable intrusion;
98 (i) (7) provide specimens of handwriting;
99 (i) (8) submit to reasonable physical or medical inspection of ~~his~~ the accused's body;
100 and
101 (i) (9) cut hair or allow hair to grow to approximate appearance at the time of the
102 alleged offense. Whenever the personal appearance of the accused is required for the foregoing
103 purposes, reasonable notice of the time and place of such appearance shall be given to the
104 accused and ~~his~~ the accused's counsel. Failure of the accused to appear or to comply with the
105 requirements of this rule, unless relieved by order of the court, without reasonable excuse shall
106 be grounds for revocation of pre-trial release, may be offered as evidence in the prosecutor's
107 case in chief for consideration along with other evidence concerning the guilt of the accused
108 and shall be subject to such further sanctions as the court should deem appropriate.

109 Section 2. **Effective date.**

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

Legislative Review Note
Office of Legislative Research and General Counsel