

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.** ~~Except as otherwise provided,~~

3 (a)(1) *Mandatory disclosures.* As soon as practicable following the filing of an Information and
4 before the defendant is required to plead, or if applicable, before the preliminary hearing, the
5 prosecutor shall must disclose to the defense ~~upon request~~ the following material or information
6 of which the prosecutor has knowledge and control or government access:

7 (a)(1)(A) relevant written or recorded statements of the defendant ~~or~~ and codefendants, and the
8 substance of any unrecorded oral statements made by the defendant and codefendants to law
9 enforcement officials, before or after arrest;

10 ~~(a)(2)(1)(B)~~ (a)(1)(B) the criminal record of the defendant and co-defendants;

11 (a)(1)(C) reports and results of any physical or mental examination, of any identification
12 procedure, and of any scientific test or experiment performed in connection with the case;

13 ~~(a)(3)(1)(D)~~ (a)(1)(D) physical evidence, including any books, papers, documents, photographs, and digital
14 media recordings, seized from the defendant or codefendant related to the case;

15 (a)(1)(E) written or recorded statements of witnesses in the case;

16 (a)(1)(F) reports and notes prepared by law enforcement officials in connection with the case;

17 ~~(a)(4)(1)(G)~~ (a)(1)(G) evidence ~~known to the prosecutor that tends to negate the guilt of the accused,~~
18 mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced must be
19 disclosed under the United States and Utah constitutions, including all evidence favorable to the
20 defendant that is material to guilt or punishment; and

21 ~~(a)(5)(1)(H)~~ (a)(1)(H) any other item of evidence which the court determines on good cause shown should
22 be made available to the defendant in order for the defendant to adequately prepare a defense.

23 (a)(2) *Disclosures required by statute or rule of evidence.* The prosecutor must comply with all
24 other disclosure requirements imposed by statute or the rules of evidence.

25 (a)(3) *Trial disclosures.* The prosecutor must also disclose to the defense the following
26 information and material no later than 14 days, or as soon as practicable, before trial:

27 (a)(3)(A) a written list of the names, addresses, and criminal records, if any, of all persons whom
28 the prosecution intends to call as witnesses at trial; and

29 (a)(3)(B) any exhibits that the prosecution intends to introduce at trial.

30 (a)(4) Information not subject to disclosure. Unless otherwise ordered by the court on a showing
31 of constitutional, statutory or regulatory right, the prosecution's disclosure obligations do not
32 include:

33 (a)(4)(A) privileged information and material; and

34 (a)(4)(B) attorney work product, except as otherwise provided under rule 26(b)(5) of the Utah
35 Rules of Civil Procedure.

36 ~~(b) **Timing of prosecutor's disclosures.** The prosecutor shall make all disclosures as soon as~~
37 ~~practicable following the filing of charges and before the defendant is required to plead. The~~
38 ~~prosecutor has a continuing duty to make disclosure.~~

39 ~~(c)(b) **Disclosures by defense.** Except as otherwise provided or as privileged,~~

40 (b)(1) *Mandatory disclosures.* ~~†~~The defense shall must disclose to the prosecutor ~~such~~
41 ~~information as required by statute relating to alibi or insanity and any other item of evidence~~
42 ~~which the court determines on good cause shown should be made available to the prosecutor in~~
43 ~~order for the prosecutor to adequately prepare the prosecutor's case for trial.~~

44 (b)(2) *Disclosures required by statute or rule of evidence.* The defense must comply with all
45 other disclosure requirements imposed by statute or the rules of evidence.

46 (b)(3) *Trial disclosures.* The defense must also disclose to the prosecutor the following
47 information and material no later than 14 days, or as soon as practicable, before trial:

48 (b)(3)(A) a written list of the names, addresses, telephone numbers, and dates of birth of all
49 persons, except for the defendant, whom the defense intends to call as witnesses at trial; and

50 (b)(3)(B) any exhibits the defense intends to introduce at trial.

51 (b)(4) *Information not subject to disclosure.* The defendant's disclosure obligations do not
52 include:

53 (b)(4)(A) privileged information and material; and

54 (b)(4)(B) attorney work product, except as otherwise provided under rule 26(b)(5) of the Utah
55 Rules of Civil Procedure.

56 ~~(d) **Timing of defense disclosures.** Unless otherwise provided, the defense attorney shall make~~
57 ~~all disclosures at least 14 days before trial or as soon as practicable. The defense has a continuing~~
58 ~~duty to make disclosure.~~

59 ~~(c)(c) **Methods of disclosure.** When convenience reasonably requires, the prosecutor or defense~~
60 ~~may make disclosure by notifying the opposing party that material and information may be~~

61 inspected, tested or copied at specified reasonable times and places. The prosecutor or defense
62 may impose reasonable limitations on the further dissemination of sensitive information
63 otherwise subject to discovery to prevent improper use of the information or to protect victims
64 and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the
65 further dissemination of ~~videotaped~~ recorded interviews, photographs, or psychological or
66 medical reports.

67 (d) **Continuing duty to disclose.** The prosecutor and defense have a continuing duty to promptly
68 disclose additional evidence subject to this rule that is discovered after any disclosures already
69 made.

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

78 ~~(g)(f)~~ **Relief and sanctions for failing to disclose.** When a party fails to comply with the
79 disclosure requirements of this rule, a court may, subject to constitutional limitations, take the
80 measures or impose the sanctions provided in this subsection that it deems appropriate under the
81 circumstances.

82 ~~(f)(1) If at any time during the course of the proceedings it is brought to the attention of the court~~
83 ~~that a party has failed to comply with this rule, the court may~~

84 ~~(f)(1)(A) order such party to permit the discovery or inspection; of the undisclosed material or~~
85 ~~information;~~

86 ~~(f)(1)(B) grant a continuance; of the proceedings;~~

87 ~~(f)(1)(C) or prohibit the party from introducing evidence not disclosed;~~

88 ~~(f)(1)(D) grant a mistrial; or~~

89 ~~(f)(1)(E) it may enter such other order such other relief as it deems the court considers just under~~
90 the circumstances.

91 (f)(2) If the court also finds that a party has knowingly and willfully failed to comply with the
92 disclosure requirements of this rule, the nondisclosing party or attorney may be held in contempt
93 of court and subject to the penalties therefor.

94 ~~(h)(g)~~ **Additional requirements that may be imposed on the accused Identification**
95 **evidence.**

96 ~~(h)(g)(1)~~ Subject to constitutional limitations and upon good cause shown, the trial court may
97 order the defendant to ~~accused may be required to:~~

98 ~~(h)(1)~~ appear in a lineup;

99 ~~(h)(2)~~ speak for identification;

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

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

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

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

105 ~~(h)(7)~~ provide specimens of handwriting;

106 ~~(h)(8)~~ submit to reasonable physical or medical inspection of the accused's body; and

107 ~~(h)(9)~~ cut hair or allow hair to grow to approximate appearance at the time of the alleged offense.

108 (g)(2) Whenever the personal appearance of the accused defendant is required for the foregoing
109 purposes, reasonable notice of the time and place of such appearance shall be given to the
110 accused defendant and the accused's defendant's counsel.

111 (g)(3) **Unless relieved by order of the court.** Failure of the accused defendant to appear or to
112 comply with the requirements of this subsection rule, unless relieved by order of the court,
113 without reasonable excuse shall be grounds for revocation of pre-trial pretrial release, may be
114 offered as evidence in the prosecutor's case in chief for consideration along with other evidence
115 concerning the guilt of the accused and shall will be subject the defendant to such further
116 sanctions as the court should may deem appropriate, including allowing the prosecutor to offer as
117 evidence at trial the defendant's failure to comply with this subsection.