

1 **Rule 16. Discovery.**

2 (a) **Disclosures by prosecutor.**

3 ~~(a)(1) Mandatory disclosures. Except as otherwise provided,~~ The prosecutor shall must disclose  
4 to the defense ~~upon request~~ the following material or information related to the case of which the  
5 ~~prosecutor prosecution team~~ has knowledge and control:

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

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

10 (a)(1)(C) reports and results of any physical or mental examination, of any identification  
11 procedure, and of any scientific test or experiment;

12 (a)~~(3)~~(1)(D) physical and electronic evidence, including any warrants, warrant affidavits, books,  
13 papers, documents, photographs, and digital media recordings seized from the defendant or  
14 codefendant;

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

16 (a)(1)(F) reports and notes prepared by law enforcement officials;

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

21 (a)~~(5)~~(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 ~~(b)(a)(2)~~ Timing of ~~prosecutor's mandatory~~ disclosures. The prosecutor's duty to disclose under  
24 subsection (a)(1) is a continuing duty as the material or information becomes known to the  
25 prosecutor. The prosecutor's shall make all disclosures must be made as soon as practicable  
26 following the filing of an Information, charges and before In every case, all material or  
27 information listed under subsection (a)(1) that is presently and reasonably available to the  
28 prosecutor must be disclosed before the preliminary hearing, if applicable, or before the  
29 defendant is required to plead or go to trial. ~~The prosecutor has a continuing duty to make~~  
30 ~~disclosure.~~

31 (a)(3) Disclosures upon request. Upon request, the prosecutor must obtain and disclose to the

32 defense any of the material or information listed above which is possessed by another  
33 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,  
34 Government Records Access and Management Act.

35 (a)(4) Trial disclosures. The prosecutor must also disclose to the defense the following  
36 information and material no later than 14 days, or as soon practicable, before trial:

37 (a)(4)(A) Unless otherwise prohibited by statute or rule, a written list of the names, current  
38 contact information, and criminal records, if any, of all persons whom the prosecution intends to  
39 call as witnesses at trial; and

40 (a)(4)(B) Any exhibits that the prosecution intends to introduce at trial.

41 (a)(5) Information not subject to disclosure. Unless otherwise ordered by the court on a showing  
42 of constitutional, statutory, or regulatory right, the prosecution's disclosure obligations do not  
43 include information or material that is privileged or attorney work product. Attorney work  
44 product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil  
45 Procedure.

46 ~~(e)(b)~~ **Disclosures by defense.**

47 (b)(1) Mandatory disclosures. ~~Except as otherwise provided or as privileged, The defense shall~~  
48 must disclose to the prosecutor ~~such information as required by statute relating to alibi or~~  
49 ~~insanity and any other~~ item of evidence which the court determines on good cause shown should  
50 be made available to the prosecutor in order for the prosecutor to adequately prepare the  
51 prosecutor's case for trial.

52 (b)(2) Other disclosures required by statute. The defense must disclose to the prosecutor such  
53 information as required by statute relating to alibi or insanity.

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

56 (b)(3)(A) A written list of the names and current contact information of all persons, except for  
57 the defendant, whom the defense intends to call as witnesses at trial; and

58 (b)(3)(B) Any exhibits that the defense intends to introduce at trial.

59 (b)(4) Information not subject to disclosure. The defendant's disclosure obligations do not  
60 include information or material that is privileged or attorney work product. Attorney work  
61 product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil  
62 Procedure.

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

66 ~~(e)(c)~~ **Methods of disclosure.** When convenience reasonably requires, the prosecutor or defense  
67 may make disclosure by notifying the opposing party that material and information may be  
68 inspected, tested or copied at specified reasonable times and places.

69 **(d) Disclosure limitations and restrictions.**

70 **(d)(1)** The prosecutor or defense may impose reasonable limitations on the further dissemination  
71 of sensitive information otherwise subject to discovery to prevent improper use of the  
72 information or to protect victims and witnesses from harassment, abuse, or undue invasion of  
73 privacy, including limitations on the further dissemination of ~~videotaped~~ **recorded** interviews,  
74 photographs, or psychological or medical reports.

75 ~~(f)(d)(2)~~ **Restrictions on disclosure.** Upon a sufficient showing the court may at any time order  
76 that discovery or inspection be denied, restricted, or deferred, that limitations on the further  
77 dissemination of discovery be modified or make such other order as is appropriate. Upon motion  
78 by a party, the court may permit the party to make such showing, in whole or in part, in the form  
79 of a written statement to be inspected by the judge alone. If the court enters an order granting  
80 relief following such an ex parte showing, the entire text of the party's statement shall be sealed  
81 and preserved in the records of the court to be made available to the appellate court in the event  
82 of an appeal.

83 ~~(g)(e)~~ **Relief and sanctions for failing to disclose.**

84 ~~(e)(1) If at any time during the course of the proceedings it is brought to the attention of the court~~  
85 ~~that When a party fails has failed to comply with the disclosure requirements of this rule, a court~~  
86 ~~may, subject to constitutional limitations and the rules of evidence, take the measures or impose~~  
87 ~~the sanctions provided in this subsection that order such party to permit the discovery or~~  
88 ~~inspection, grant a continuance, or prohibit the party from introducing evidence not disclosed, or~~  
89 ~~it may enter such other order as it deems just appropriate under the circumstances. If a party has~~  
90 ~~failed to comply with this rule, the court may take one or more of the following actions:~~

91 ~~(e)(1)(A) order such party to permit the discovery or inspection of the undisclosed material or~~  
92 ~~information;~~

93 ~~(e)(1)(B) grant a continuance of the proceedings;~~

94 (e)(1)(C) prohibit the party from introducing evidence not disclosed; or

95 (e)(1)(D) order such other relief as the court considers just under the circumstances.

96 (e)(2) If after a hearing the court finds that a party has knowingly and willfully failed to comply  
97 with an order of the court compelling disclosure under this rule, the nondisclosing party or  
98 attorney may be held in contempt of court and subject to the penalties thereof.

99 **(f) Identification evidence.**

100 (f)(1) Subject to constitutional limitations and upon good cause shown, the trial court may order  
101 the defendant to appear in a lineup; speak for identification; submit to fingerprinting or the  
102 making of other bodily impressions; pose for photographs not involving reenactment of the  
103 crime; try on articles of clothing or other items of disguise; permit the taking of samples of  
104 blood, hair, fingernail scrapings, and other bodily materials which can be obtained without  
105 unreasonable intrusion; provide specimens of handwriting; submit to reasonable physical or  
106 medical inspection of the accused's body; and cut hair or allow hair to grow to approximate  
107 appearance at the time of the alleged offense.

108 ~~(h) Additional requirements that may be imposed on the accused. Subject to constitutional~~  
109 ~~limitations, the accused may be required to:~~

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

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

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

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

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

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

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

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

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

120 (f)(2) Whenever the personal appearance of the ~~accused~~ defendant is required for the foregoing  
121 purposes, reasonable notice of the time and place of such appearance ~~shall~~ must be given to the  
122 ~~accused~~ defendant and the ~~accused's~~ defendant's counsel.

123 (f)(3) Unless relieved by order of the court, failure of the ~~accused~~ defendant to ~~appear or to~~  
124 comply with the requirements of this ~~rule subsection~~, unless relieved by order of the court,

125 without reasonable excuse shall be grounds for revocation of pretrial release and will subject the  
126 defendant to such further consequences or sanctions as the court may deem appropriate,  
127 including allowing the prosecutor to offer as evidence at trial the defendant's failure to comply  
128 with this subsection ~~may be offered as evidence in the prosecutor's case in chief for consideration~~  
129 ~~along with other evidence concerning the guilt of the accused and shall be subject to such further~~  
130 ~~sanctions as the court should deem appropriate.~~