



HB 288
Effective November 1, 2021

1 DISCOVERY:

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3 AGO Prosecutors will comply with Utah Rule of Criminal Procedure Rule 16.

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5 (a)(1) **Mandatory disclosures.** The prosecutor must disclose to the defense the following
6 material or information related to the case of which the prosecution team has knowledge and
7 control:

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9 (a)(1)(A) written or recorded statements of the defendant and any codefendants and the
10 substance of any unrecorded oral statements made by the defendant and any codefendants to
11 law enforcement officials;

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

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

15 (a)(1)(D) physical and electronic evidence, including any warrants, warrant affidavits, books,
16 papers, documents, photographs, and digital media recordings.

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

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

19 (a)(1)(G) evidence that must be disclosed under the United States and Utah constitutions,
20 including all evidence favorable to the defendant that is material to guilt or punishment; and

21 (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.

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24 (a)(2) **Timing of mandatory disclosures.** The prosecutor's duty to disclose under paragraph
25 (a)(1) is a continuing duty as the material or information becomes known to the prosecutor.

26 The prosecutor's disclosures must be made as soon as practicable following the filing of an
27 Information. In every case, all material or information listed under subsection (a)(1) that is



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28 presently and reasonably available to the prosecutor must be disclosed before the preliminary
29 hearing, if applicable, or before the defendant is required to plead or go to trial.

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

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

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

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

42 (a)(5) Information not subject to disclosure. Unless otherwise ordered by the court on a
43 showing of constitutional, statutory, or regulatory right, the prosecution's disclosure
44 obligations do not include information or material that is privileged attorney work product.

45 Attorney work product protection is not subject to the exception in Rule 26(b)(5) of the Utah
46 Rules of Civil Procedure. [*see URCrP 16, approved July 8, 2020*]

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48 When convenience reasonably requires, the prosecutor may make disclosure by notifying the
49 opposing party that material and information may be inspected, tested or copied at reasonable
50 times and places. [*see Methods of disclosure, URCrP 16 (c)*]

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52 The prosecutor may impose reasonable limitations on the further dissemination of sensitive
53 information otherwise subject to discovery to prevent improper use of the information and
54 protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including



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55 limitations on the further dissemination of videotape interviews, photographs, or psychological
56 or medical reports. [*see Disclosure limitations and restrictions, URCrP 16 (d)(1)*]

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58 The prosecutor shall make timely disclosure of exculpatory and mitigating evidence pursuant to
59 Brady v. Maryland, 373 U.S. 83, 87 (1963) and its progeny.

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61 Prior to providing discovery, a prosecutor should redact from materials provided as discovery all
62 information reasonably necessary to protect the safety and privacy of a victim or witness.

63 When portions of materials are discoverable and other portions are not, a prosecutor should make
64 good faith efforts to redact the non-discoverable portions in a way that does not cause confusion
65 or prejudice to the accused. If counsel for the accused requests information previously redacted
66 by a prosecutor, the prosecutor should provide the information when it is relevant to the
67 accused's criminal case and the prosecutor can implement reasonable measures for the protection
68 of the victim, witness, or any personal identifying information. If redacted or restricted material
69 is ordered by a court to be produced or disclosed, a prosecutor should seek protective orders as
70 necessary to control the dissemination of that material.

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72 If at any point in the pretrial or trial proceedings the prosecutor discovers additional
73 witnesses, information, or other material previously requested or ordered which is subject
74 to disclosure or inspection, the prosecutor should promptly notify defense counsel and
75 provide the required information.

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77 A prosecutor should, at all times, carry out discovery obligations in good faith and in a manner
78 that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for
79 effective cross-examination, expedite trials, and meet the requirements of due process.