

**Rule Change #1999 (14)**

**CHAPTER 29. COLORADO RULES OF CRIMINAL PROCEDURE  
IV. ARRAIGNMENT AND PREPARATION FOR TRIAL  
Rule 16. Discovery and Procedure Before Trial**

**Part I. Disclosure to Defendant**

**(a) Prosecutor's Obligations.**

(1) The prosecuting attorney shall make available to the defendant the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case:

(I) Police, arrest and crime or offense reports, including statements of all witnesses ~~the accused, and any codefendant;~~

(II) through (VI)\* \* \* \*[NO CHANGE]

(VII) A written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call ~~upon~~ at trial;

(VIII) ANY WRITTEN OR RECORDED STATEMENTS OF THE ACCUSED OR OF A CODEFENDANT, IF THE TRIAL IS TO BE A JOINT ONE, AND THE SUBSTANCE OF ANY ORAL STATEMENTS MADE TO THE POLICE OR PROSECUTION BY THE ACCUSED OR BY A CODEFENDANT, IF THE TRIAL IS TO BE A JOINT ONE.

(2) AND (3)\* \* \* \*[NO CHANGE]

**(b) Prosecutor's Performance of Obligations.**

\* \* \* \* [NO CHANGE]

**(c) Material Held by Other Governmental Personnel.**

\* \* \* \* [NO CHANGE]

**(d) Discretionary Disclosures.**

(1) \* \* \* \* [NO CHANGE]

(2) The court may deny disclosure authorized by this section if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to defense counsel.

(3) WHERE THE INTERESTS OF JUSTICE WOULD BE SERVED, THE COURT MAY ORDER THE PROSECUTION TO DISCLOSE THE UNDERLYING FACTS OR DATA SUPPORTING THE OPINION IN THAT PARTICULAR CASE OF AN EXPERT ENDORSED AS A WITNESS. IF A REPORT HAS NOT BEEN PREPARED BY THAT EXPERT TO AID IN COMPLIANCE WITH OTHER DISCOVERY OBLIGATIONS OF THIS RULE, THE COURT MAY ORDER THE PARTY CALLING THAT EXPERT TO PROVIDE A WRITTEN SUMMARY OF THE TESTIMONY DESCRIBING THE WITNESS'S OPINIONS AND THE BASES AND REASONS THEREFOR, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATION

AND OF SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS. THE INTENT OF THIS SECTION IS TO ALLOW THE DEFENSE SUFFICIENT MEANINGFUL INFORMATION TO CONDUCT EFFECTIVE CROSS-EXAMINATION UNDER CRE 705.

**(e) Matters not Subject to Disclosure.**

\* \* \* \* [NO CHANGE]

**Part II. Disclosure to Prosecution**

**(a) The Person of the Accused.**

\* \* \* \* [NO CHANGE]

**(b) Medical and Scientific Reports.**

(1) Subject to constitutional limitations, the trial court may require that the prosecuting attorney be informed of and permitted to inspect and copy or photograph any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(2) SUBJECT TO CONSTITUTIONAL LIMITATIONS, AND WHERE THE INTERESTS OF JUSTICE WOULD BE SERVED, THE COURT MAY ORDER THE DEFENSE TO DISCLOSE THE UNDERLYING FACTS OR DATA SUPPORTING THE OPINION IN THAT PARTICULAR CASE OF AN EXPERT ENDORSED AS A WITNESS. IF A REPORT HAS NOT BEEN PREPARED BY THAT EXPERT TO AID IN COMPLIANCE WITH OTHER DISCOVERY OBLIGATIONS OF THIS RULE, THE COURT MAY ORDER THE PARTY CALLING THAT EXPERT TO PROVIDE A WRITTEN SUMMARY OF THE TESTIMONY DESCRIBING THE WITNESS' OPINIONS AND THE BASES AND REASONS THEREFOR, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND OF SCIENTIFIC TESTS, EXPERIMENTS OR COMPARISONS. THE INTENT OF THIS SECTION IS TO ALLOW THE PROSECUTION SUFFICIENT MEANINGFUL INFORMATION TO CONDUCT EFFECTIVE CROSS-EXAMINATION UNDER CRE 705.

**(c) Nature of Defense**

Subject to constitutional limitations, ~~the trial court may require that~~ DEFENSE COUNSEL SHALL DISCLOSE TO the ~~prosecuting attorney be informed of~~ PROSECUTION the nature of any defense, OTHER THAN ALIBI, which defense counsel intends to use at trial. ~~and the~~ THE DEFENSE COUNSEL SHALL ALSO DISCLOSE THE names and addresses of persons whom defense counsel intends to call as witnesses AT TRIAL. ~~in support thereof.~~ AT THE ENTRY OF THE NOT GUILTY PLEA, THE COURT SHALL SET A DEADLINE FOR SUCH DISCLOSURE. IN NO CASE SHALL SUCH DISCLOSURE BE LESS THAN THIRTY (30) DAYS BEFORE TRIAL FOR A FELONY TRIAL, OR SEVEN (7) DAYS BEFORE TRIAL FOR AN NON-FELONY TRIAL, EXCEPT FOR GOOD CAUSE SHOWN. Upon receipt of the information required by this subsection (c), the prosecuting attorney shall notify defense counsel of any additional witnesses which ~~he~~ THE PROSECUTION intends to call to

rebut such defense within a reasonable time ~~before trial~~ after their identity becomes known.

**(d) Notice of Alibi.**

\* \* \* \* [NO CHANGE]

**Part III. Regulation of Discovery**

\* \* \* \* [NO CHANGE]

**Part IV. Procedure**

\* \* \* \* [NO CHANGE]

**Part V. Time Schedules and Discovery Procedures**

**(a) Mandatory Discovery.**

The furnishing of the items discoverable, referred to in Part I (a), (b) and (c) and Part II (b)(1), (c) and (d) herein, is mandatory and no motions for discovery with respect to such items may be filed.

**(b) Time Schedule.**

(1) In the event the defendant enters a plea of not guilty or not guilty by reason of insanity, or asserts the defense of impaired mental condition, ~~defense counsel shall as soon as practicable but not later than thirty days before trial, furnish to the prosecuting attorney~~ THE COURT SHALL SET A DEADLINE FOR SUCH DISCLOSURE TO THE PROSECUTING ATTORNEY OF those items referred to in Parts II (b)(1) and (c) herein, subject to objections which may be raised by defense counsel within that period pursuant to Part III (d) of this rule. IN NO CASE SHALL SUCH DISCLOSURE BE LESS THAN THIRTY (30) DAYS BEFORE TRIAL FOR A FELONY TRIAL, OR SEVEN (7) DAYS BEFORE TRIAL FOR A NON-FELONY TRIAL, EXCEPT FOR GOOD CAUSE SHOWN.

(2) and (3) \* \* \* \* [NO CHANGE]

**(c) Cost and Location of Discovery.**

\* \* \* \* [NO CHANGE]

**(d) Compliance Certificate.**

\* \* \* \* [NO CHANGE]

Amended and Adopted by the Court, En Banc, November 4, 1999, effective January 1, 2000.

BY THE COURT:

Alex J. Martinez  
Justice, Colorado Supreme Court