



# LAWS OF ALASKA

1996

Source  
CSHB 25(FIN)

Chapter No.  
95

## AN ACT

Revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery and inspection in criminal proceedings; and providing for an effective date.

---

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: June 25, 1996  
Actual Effective Date: July 1, 1996

AN ACT

1 Revising Rule 16, Alaska Rules of Criminal Procedure, relating to discovery and inspection in  
2 criminal proceedings; and providing for an effective date.

3

4 \* Section 1. Rule 16, Alaska Rules of Criminal Procedure, is repealed and reenacted to read:

5 Rule 16. Discovery.

6 (a) Objectives of Pretrial Discovery.

7 (1) Procedures before trial should, consistent with the constitutional rights  
8 of the defendant, the victim, and the prosecution,

9 (i) promote a fair and expeditious disposition of the charges;

10 (ii) provide the defendant with sufficient information to make an  
11 informed plea;

12 (iii) permit thorough preparation for trial and minimize surprise  
13 at trial;

14 (iv) reduce interruptions and complications during trial and avoid  
15 unnecessary and repetitious trials by identifying and resolving before trial a

Chapter 95

1 avoid unnecessary and repetitious trials by identifying and resolving before trial  
2 a procedural, collateral, or constitutional issue;

3 (v) minimize the procedural and substantive inequities among  
4 similarly situated defendants;

5 (vi) effect economies in time, money, judicial resources, and  
6 professional skills by minimizing paperwork, avoiding repetitious assertions of  
7 issues, and reducing the number of separate hearings; and

8 (vii) minimize the burden upon victims and witnesses.

9 (2) These needs can be served by

10 (i) full and free exchange of appropriate discovery;

11 (ii) simpler and more efficient procedures; and

12 (iii) procedural pressures for expediting the processing of cases.

13 (b) Disclosure to the Defendant. Except as is otherwise provided as to matters  
14 not subject to disclosure and protective orders, the prosecuting attorney shall disclose  
15 the following to the defense and make available for inspection and copying, as  
16 appropriate:

17 (1) the names, addresses, and phone numbers, if known, of persons  
18 known by the government to have knowledge of relevant facts and their written or  
19 recorded statements;

20 (2) any written or recorded statements and any oral statements made  
21 by the defendant;

22 (3) any written or recorded statements and any oral statements made  
23 by a co-defendant;

24 (4) any books, papers, documents, photographs, or tangible objects,  
25 which the prosecuting attorney is likely to use as evidence in the hearing or trial, or  
26 which were obtained from or belong to the defendant, other than models, charts,  
27 pictures, compilations of evidence, or other demonstrative evidence created by or on  
28 behalf of the prosecuting attorney;

29 (5) any record of prior criminal convictions of the defendant and of  
30 persons whom the prosecuting attorney is likely to call as witnesses at the hearing or  
31 trial;

1 (6) any material, documents, or information relating to lineups,  
2 showups, and picture or voice identifications in relation to the case;

3 (7) any material or information within the prosecuting attorney's  
4 possession or control that tends to negate the guilt of the defendant as to the offense  
5 or would tend to reduce the defendant's punishment therefor;

6 (8) any relevant material or information relating to the guilt or  
7 innocence of the defendant that has been provided by an informant, and any electronic  
8 surveillance, including wiretapping, of conversations to which the defendant or the  
9 defendant's attorney was a party, or of premises of the defendant or the defendant's  
10 attorney;

11 (9) any relevant material or information regarding the relationship, if  
12 any, of witnesses to the prosecuting authority, including the nature and circumstances  
13 of any agreement, understanding, or representation between the prosecution and the  
14 witness that constitutes an inducement for the cooperation or testimony of the witness;  
15 however, the prosecution does not have to disclose any payments or provision for  
16 witness travel, housing, or meals in order to enable the witness to attend a specific  
17 court proceeding;

18 (10) any relevant material and information regarding

19 (i) searches and seizures of the property or person of the  
20 defendant; and

21 (ii) the acquisition of statements from the defendant;

22 (11) if the prosecution is likely to use character, reputation, or other act  
23 evidence relating to the defendant, notice of that likelihood and disclosure of the  
24 substance of that evidence;

25 (12) unless a different date is set by the court, as soon as known and  
26 no later than 45 days before trial, the prosecution shall provide the defense with any  
27 written report or written statement of experts made in connection with the case; with  
28 respect to each expert the prosecution is likely to call at trial or another court  
29 proceeding, (i) the prosecution shall also provide to the defendant the address, phone  
30 number, and a curriculum vitae of the expert, and (ii) if a written report by the expert  
31 is not made or is not adequate to provide fair notice of the expert's opinion and the

## Chapter 95

1 basis for that opinion, (aa) the prosecution shall provide the defendant with a written  
2 description of the substance of the proposed testimony, including the expert's opinion  
3 and the basis for that opinion, and (bb) upon request, the defense is entitled to conduct  
4 a telephonic or in-person deposition or recorded interview of the expert, at the expense  
5 of the defense; failure to provide timely disclosure entitles the defendant to a  
6 continuance; if the court finds that a continuance is not an adequate remedy under the  
7 circumstances of the case, the court may impose other sanctions, including prohibiting  
8 the prosecutor from calling the expert at trial or declaring a mistrial;

9 (13) upon a reasonable request showing materiality to the preparation  
10 of the defense, the court in its discretion may require disclosure to defense counsel of  
11 relevant and admissible information not covered by (b)(1) - (12) of this rule.

12 (c) Disclosure to the Prosecution. Except as is otherwise provided as to  
13 matters not subject to disclosure and protective orders, the defense shall disclose the  
14 following to the prosecution and make available for inspection and copying, as  
15 appropriate:

16 (1) the names, addresses, and phone numbers, if known, of persons the  
17 defendant is likely to call as witnesses and their written or recorded statements;

18 (2) any books, papers, documents, photographs, or tangible objects the  
19 defense is likely to use as evidence at a hearing or trial and which are not otherwise  
20 disclosed under (b) of this rule, other than models, charts, pictures, compilations of  
21 evidence, or other demonstrative evidence created by or on behalf of the defendant's  
22 attorney;

23 (3) if the defense is likely to use character, reputation, or other act  
24 evidence not relating to the defendant, notice of that likelihood and disclosure of the  
25 substance of that evidence;

26 (4) any relevant material or information regarding the relationship, if  
27 any, of witnesses to defense counsel and the defendant, including the nature and  
28 circumstances of any agreement, understanding, or representation between the defense  
29 and the witness that constitutes an inducement for the cooperation or testimony of the  
30 witness; however, the defense does not have to disclose any payments or provisions  
31 for witness travel, housing, or meals in order to enable the witness to attend a specific

1 court proceeding;

2 (5) unless a different date is set by the court, no later than 10 days  
3 before trial in misdemeanor cases and 30 days in felony cases, notice of defenses if  
4 the defendant is likely to rely upon a defense of alibi, justification, duress, entrapment,  
5 or other statutory or affirmative defense; failure to provide timely notice shall entitle  
6 the prosecutor to a continuance; if the court finds that a continuance is not an adequate  
7 remedy under the circumstances of the case, the court may impose other sanctions,  
8 including prohibiting the defendant from asserting the designated defense;

9 (6) unless a different date is set by the court, as soon as known and no  
10 later than 30 days before trial, the defense shall provide the prosecution with the  
11 address, phone number, curriculum vitae, and any report or written statement of any  
12 expert witness likely to be called at trial or another court proceeding; with respect to  
13 each expert, if a written report by the expert is not made or is not adequate to provide  
14 fair notice of the expert's opinion and the basis for that opinion, (i) the defense shall  
15 provide the prosecution with a written description of the substance of the proposed  
16 testimony, including the expert's opinion and the basis for that opinion, and (ii) upon  
17 request, the prosecution is entitled to conduct a telephonic or in-person deposition or  
18 recorded interview of the expert, at the expense of the prosecution; failure to provide  
19 timely disclosure entitles the prosecution to a continuance; if the court finds that a  
20 continuance is not an adequate remedy under the circumstances of the case, the court  
21 may impose other sanctions, including prohibiting the defense from calling the expert  
22 at trial or declaring a mistrial;

23 (7) notice of an insanity defense or a defense of diminished capacity  
24 due to mental disease or defect in compliance with AS 12.47;

25 (8) turn over to the prosecutor any physical evidence of the offense  
26 received by defense counsel; if the physical evidence is received from the attorney's  
27 client or the client's agent or acquired as a direct result of information communicated  
28 by the client, defense counsel may not be compelled to provide any information  
29 concerning the source of the evidence or the manner in which it was obtained; in such  
30 cases, the prosecutor may not reveal the source of the evidence to the jury; if the  
31 physical evidence is not received from the client or the client's agent or acquired as

## Chapter 95

1 a direct result of information communicated by the client, defense counsel shall reveal  
2 the manner in which the physical evidence was obtained unless that information is  
3 otherwise privileged;

4 (9) upon a reasonable request showing materiality to the preparation of  
5 the prosecution, the court in its discretion may require disclosure to the prosecution of  
6 relevant and admissible information not covered by (c)(1) - (8) of this rule.

7 (d) Regulation of Discovery.

8 (1) Timing of Discovery.

9 (i) Defense counsel has an immediate obligation to disclose  
10 evidence subject to (c)(8) of this rule.

11 (ii) When the prosecution has provided the discovery required  
12 under (b)(1) - (8) of this rule, the prosecuting attorney shall provide written  
13 notice to defense counsel or to the defendant if the defendant is not  
14 represented by counsel. Within 10 days of receiving notice from the  
15 prosecuting attorney, or such later date as agreed by the prosecuting attorney  
16 or ordered by the court, the defense shall provide to the prosecution the  
17 discovery required under (c)(1) and (2) of this rule.

18 (iii) Discovery required of the prosecution under (b)(9) - (11)  
19 and of the defense under (c)(3) and (4) of this rule shall be provided as agreed  
20 by the parties or as ordered by the court.

21 (iv) Other discovery required by (b) and (c) of this rule shall be  
22 provided as set out in the specific provision or as ordered by the court.

23 (2) Advice to Refrain From Discussing Case. Except as is otherwise  
24 provided as to matters not subject to disclosure and protective orders, neither counsel  
25 for the parties nor other prosecution or defense personnel shall advise persons (except  
26 the defendant) having relevant material or information to refrain from discussing the  
27 case with opposing counsel or showing opposing counsel any relevant material, nor  
28 shall they otherwise impede opposing counsel's investigation of the case.

29 (3) Additional or Newly Discovered Information. If, subsequent to  
30 compliance with these rules or orders issued pursuant thereto, a party discovers  
31 additional material or information which is subject to disclosure, that party shall

1 promptly notify the other party or the other party's counsel of its existence. If the  
2 additional material or information is discovered during trial, the court shall also be  
3 notified.

4 (4) Materials to Remain in Exclusive Custody of Attorney.

5 (i) Materials furnished to an attorney pursuant to these rules  
6 shall remain in the attorney's exclusive custody, shall be used only for the  
7 purposes of conducting the case, and shall be subject to other terms and  
8 conditions that the court may provide if the information is

9 (aa) a criminal history record of a victim or witness;

10 (bb) a medical, psychiatric, psychological, or counseling  
11 record of a victim or witness;

12 (cc) an adoption record;

13 (dd) a record that is confidential under AS 47.10.090 or  
14 a similar law in another jurisdiction;

15 (ee) a report of a presentence investigation of a victim  
16 or witness prepared pursuant to Criminal Rule 32 or a similar law in  
17 another jurisdiction;

18 (ff) a record of the Department of Corrections other than  
19 an incident report relating to the crime with which the defendant is  
20 charged; or

21 (gg) any other record that the court orders be kept in the  
22 exclusive custody of the attorney.

23 (ii) An attorney shall not disclose to a defendant the residence  
24 or business address or telephone number of a victim or witness, obtained from  
25 information provided under this rule, even if the defendant is acting as co-  
26 counsel. If the address and telephone numbers of all victims and witnesses  
27 have been obliterated, materials that had contained the address or telephone  
28 number of a victim or witness may be provided to a defendant proceeding  
29 without counsel only as allowed by AS 12.61.120.

30 (iii) Notwithstanding a defendant's status as co-counsel,  
31 materials covered by (d)(4)(i) or (ii) of this rule shall remain in the exclusive

## Chapter 95

1 custody of the defendant's attorney. If an attorney violates (d)(4)(i) or (ii) of  
2 this rule, regardless of whether the defendant is co-counsel, the court shall refer  
3 the attorney's violation to the Disciplinary Board of the Alaska Bar Association  
4 as a grievance.

5 (iv) If a defendant is proceeding without counsel, materials  
6 covered by (d)(4)(i) of this rule may be provided to the defendant. If materials  
7 are provided to an unrepresented defendant under this paragraph, the court shall  
8 order that the materials remain in the defendant's exclusive custody, be used  
9 only for purposes of conducting the case, and be subject to other terms,  
10 conditions, and restrictions that the court may provide. The court shall also  
11 inform the defendant that violation of an order issued under this paragraph is  
12 punishable as a contempt of court.

13 (5) Restriction or Deferral of Disclosure of Information. Upon a  
14 showing of cause, the court may at any time order that specified disclosure be  
15 restricted or deferred, or make such other order as is appropriate, provided that all  
16 material and information to which a party is entitled shall be disclosed in time to  
17 permit the party's counsel to make beneficial use thereof.

18 (6) Material Partially Discoverable. When some parts of certain  
19 material are discoverable under these rules, and other parts are not discoverable, as  
20 much of the material shall be disclosed as is consistent with this rule. Excision of  
21 certain material and disclosure of the balance shall be preferred to withholding of the  
22 whole. Material excised pursuant to court order shall be sealed and preserved in the  
23 records of the court, and shall be made available to the court of appeals and the  
24 supreme court in the event of an appeal.

25 (7) Denial or Regulation of Disclosure--Disclosure to Court in Camera--  
26 Record of Proceedings. Upon request of any party, the court may permit:

27 (i) any showing of cause for denial or regulation of disclosure;

28 or

29 (ii) any portion of any showing of cause for denial or regulation  
30 of disclosure to be made to the court in camera ex parte; a record shall be  
31 made of such proceedings; if the court enters an order granting relief following

1 such a showing, the entire record of the proceedings shall be sealed and  
2 preserved in the records of the court, to be made available to the court of  
3 appeals and the supreme court in the event of an appeal.

4 (8) Information Within Possession or Control of Other Members of  
5 Prosecuting Attorney's or Defense Counsel's Staff. The prosecuting attorney's or  
6 defense counsel's obligations under this rule extend to material and information in the  
7 possession or control of

8 (i) members of the prosecuting attorney's or defense counsel's  
9 staff, respectively; and

10 (ii) any others who have participated in the investigation or  
11 evaluation of the case and who either regularly report or with reference to the  
12 particular case have reported to the prosecuting attorney's office or defense  
13 counsel, respectively.

14 (9) Legal Research and Records of Prosecuting Attorney or Defense  
15 Counsel. Disclosure shall not be required of legal research or those portions of  
16 records, correspondence, reports or memoranda that contain the opinions, theories, or  
17 conclusions of the

18 (i) prosecuting attorney or members of the prosecuting attorney's  
19 legal staff; or

20 (ii) defense counsel or members of the defense counsel's legal  
21 staff.

22 (e) Sanctions.

23 (1) Failure to Comply with Discovery Rule or Order. If at any time  
24 during the course of the proceedings it is brought to the attention of the court that a  
25 party has failed to comply with an applicable discovery rule or an order issued  
26 pursuant thereto, the court shall order such party to permit the discovery of material  
27 and information not previously disclosed or enter such other order as it deems just  
28 under the circumstances.

29 (2) Willful Violations. Willful violation by counsel of an applicable  
30 discovery rule or an order issued pursuant thereto may subject counsel to appropriate  
31 sanctions by the court.

**Chapter 95**

1 (f) Omnibus Hearing.

2 (1) Time for Hearing--When Set. If the defendant is charged with a  
3 felony, the court shall set a time for an omnibus hearing when a plea of not guilty is  
4 entered. The omnibus hearing shall be scheduled for a time when the briefing of  
5 pretrial motions should be complete.

6 The omnibus hearing may be canceled by the court only upon the stipulation  
7 of counsel that there are no motions which require hearing and that discovery is  
8 complete. Counsel shall also provide the information outlined in (f)(2)(iv) of this rule.

9 The court may set an omnibus hearing in a misdemeanor case.

10 (2) Duties of Trial Court at Hearing. At the omnibus hearing the court  
11 shall:

12 (i) ensure that discovery under this rule is complete;

13 (ii) rule on any pending motions which are ripe for decision;

14 (iii) schedule any necessary evidentiary hearings; and

15 (iv) obtain case management information from the parties,  
16 including the expected length of trial, the likelihood of trial, and any  
17 anticipated scheduling difficulties.

18 (g) Non-Testimonial Identification Procedures.

19 (1) Authority. Upon application of the prosecuting attorney, the court  
20 by order may direct any person to participate in one or more of the procedures  
21 specified in (g)(2) of this rule if affidavit or testimony shows probable cause to believe  
22 that:

23 (i) an offense has been committed by one of several persons  
24 comprising a narrow focal group that includes the subject person;

25 (ii) the evidence sought may be of material aid in identifying  
26 who committed the offense; and

27 (iii) the evidence sought cannot practicably be obtained from  
28 other sources.

29 (2) Scope. An order issued under (g)(1) of this rule may direct the  
30 person to do or submit to any and all of the following:

31 (i) appear in a lineup;

- 1 (ii) speak words, phrases or sentences relevant to the case for  
2 identification by witnesses;
- 3 (iii) be fingerprinted;
- 4 (iv) pose for photographs not involving reenactment of a scene;
- 5 (v) try on articles of clothing;
- 6 (vi) permit the taking of specimens of material under the  
7 person's fingernails;
- 8 (vii) permit the taking of samples of blood, hair, and other  
9 materials of the person's body which involve no unreasonable intrusion thereof;
- 10 (viii) provide specimens of the person's handwriting;
- 11 (ix) submit to a reasonable physical or medical inspection of the  
12 person's body.

13 (3) Right to Counsel. When issuing an order under (g)(1) of this rule,  
14 the court shall also order that the person be represented by counsel or waive the right  
15 to be represented by counsel before being required to appear in a lineup, give a  
16 specimen of handwriting, or speak for identification by witnesses to an offense.

17 (h) Material not in Possession or Control of Prosecuting Attorney; Confidential  
18 Records.

19 (1) Whenever defense counsel provides notice to the prosecuting attorney  
20 and designates and requests production of material or information that is not in the  
21 possession or control of the prosecuting attorney, other than confidential records under  
22 (h)(2) of this rule, but would be discoverable if in the possession or control of the  
23 prosecuting attorney, the court shall issue suitable subpoenas or orders to cause such  
24 material to be made available to defense counsel.

25 (2) If a defendant makes a particularized showing that confidential  
26 records not in the possession of the prosecuting attorney are likely to contain relevant  
27 information that would negate guilt or reduce the defendant's punishment, the court may  
28 conduct an in camera review of the records after providing an opportunity to be heard  
29 to the person who is the subject of the records and the agency keeping the records. If  
30 the court determines during its in camera review that such information exists, the court  
31 shall (i) provide a copy of that portion of the records that contains the information to the

## Chapter 95

1 defense, (ii) provide a copy of the material provided to the defense to the prosecution,  
2 except for any statements by the defendant the disclosure of which would violate the  
3 defendant's right against compulsory self-incrimination, and (iii) enter an order that a  
4 hearing be held before the information may be introduced, used, or mentioned during an  
5 open court proceeding. The hearing conducted by the court under (h)(2)(iii) of this rule  
6 will be outside the presence of the jury, and the court shall determine how the records  
7 may be used after taking into consideration, among other things the court may find  
8 appropriate, whether use of the records violates the right of privacy of the subject of the  
9 records, hampers the ability of the agency to collect records, or violates the constitutional  
10 or statutory rights of crime victims. The hearing to determine admissibility shall be  
11 conducted in camera if there is a danger of unwarranted invasion of privacy.

12 (i) As used in this rule,

13 (1) "oral statement" means the substance of a statement of any kind by  
14 a person, whether or not reflected in any existing writing or recording;

15 (2) "written or recorded statement" means

16 (i) any statement made by a person in writing that is signed,  
17 adopted, or approved by that person; or

18 (ii) a statement of any kind made by a person that is embodied  
19 or summarized in a writing or recording, whether or not specifically signed or  
20 adopted by that person; the term is intended to include statements contained in  
21 police or investigative reports, or notes taken by police officers or investigators,  
22 but does not include attorney work product or notes taken by the attorney.

23 \* Sec. 2. PROVISIONS OF SEC. 1 NOT SEVERABLE. Notwithstanding AS 01.10.030,  
24 the provisions of sec. 1 of this Act are not severable.

25 \* Sec. 3. RETROACTIVITY. This Act is retroactive and applies to all criminal cases  
26 pending on or arising after the effective date of this Act.

27 \* Sec. 4. This Act supersedes Criminal Rule 16 and amendments to Criminal Rule 16  
28 adopted by the Alaska Supreme Court before the effective date of this Act.

29 \* Sec. 5. This Act takes effect July 1, 1996.