

EXPERT TESTIMONY NOTICE REQUIREMENT

AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: _____

LONG TITLE

General Description:

This bill removes the limit to felony cases on expert testimony.

Highlighted Provisions:

This bill:

► removes the limitation to felony cases for when notice is required for an expert witness at trial.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-17-13, as last amended by Laws of Utah 2003, Chapter 290

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-17-13** is amended to read:

77-17-13. Expert testimony generally -- Notice requirements.

(1) (a) If the prosecution or the defense intends to call any expert to testify in a [felony] case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah



28 Rules of Criminal Procedure, the party intending to call the expert shall give notice to the
29 opposing party as soon as practicable but not less than 30 days before trial or 10 days before the
30 hearing.

31 (b) Notice shall include the name and address of the expert, the expert's curriculum
32 vitae, and one of the following:

33 (i) a copy of the expert's report, if one exists; or

34 (ii) a written explanation of the expert's proposed testimony sufficient to give the
35 opposing party adequate notice to prepare to meet the testimony; and

36 (iii) a notice that the expert is available to cooperatively consult with the opposing
37 party on reasonable notice.

38 (c) The party intending to call the expert is responsible for any fee charged by the
39 expert for the consultation.

40 (2) If an expert's anticipated testimony will be based in whole or part on the results of
41 any tests or other specialized data, the party intending to call the witness shall provide to the
42 opposing party the information upon request.

43 (3) As soon as practicable after receipt of the expert's report or the information
44 concerning the expert's proposed testimony, the party receiving notice shall provide to the other
45 party notice of witnesses whom the party anticipates calling to rebut the expert's testimony,
46 including the information required under Subsection (1)(b).

47 (4) (a) If the defendant or the prosecution fails to substantially comply with the
48 requirements of this section, the opposing party shall, if necessary to prevent substantial
49 prejudice, be entitled to a continuance of the trial or hearing sufficient to allow preparation to
50 meet the testimony.

51 (b) If the court finds that the failure to comply with this section is the result of bad faith
52 on the part of any party or attorney, the court shall impose appropriate sanctions. The remedy
53 of exclusion of the expert's testimony will only apply if the court finds that a party deliberately
54 violated the provisions of this section.

55 (5) (a) For purposes of this section, testimony of an expert at a preliminary hearing
56 held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the
57 expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the
58 subject matter testified to by the expert at the preliminary hearing.

59 (b) Upon request, the party who called the expert at the preliminary hearing shall
60 provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable
61 prior to trial or any hearing at which the expert may be called as an expert witness.

62 (6) This section does not apply to the use of an expert who is an employee of the state
63 or its political subdivisions, so long as the opposing party is on reasonable notice through
64 general discovery that the expert may be called as a witness at trial, and the witness is made
65 available to cooperatively consult with the opposing party upon reasonable notice.

Legislative Review Note
as of 2-20-14 8:53 AM

Office of Legislative Research and General Counsel