

HJR007S01 compared with HJR007

~~{deleted text}~~ shows text that was in HJR007 but was deleted in HJR007S01.

inserted text shows text that was not in HJR007 but was inserted into HJR007S01.

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Representative Karianne Lisonbee proposes the following substitute bill:

JOINT RESOLUTION AMENDING RULES OF CRIMINAL ~~{~~ PROCEDURE ON ~~{PRELIMINARY EXAMINATIONS}~~ MOTIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This resolution amends the Utah Rules of Criminal Procedure, Rule ~~{7B}~~12, regarding ~~{preliminary examinations}~~motions.

Highlighted Provisions:

This resolution:

- ▶ amends the Utah Rules of Criminal Procedure, Rule ~~{7B}~~12, regarding ~~{preliminary examinations to address the immunity from prosecution for the justifiable use of force in 2021 General Session, House Bill 227, and}~~motions on the justification of the use of force;
- ▶ makes technical and conforming changes.

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Special Clauses:

This resolution provides a special effective date.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule ~~{7B}~~12, Utah Rules of Criminal Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. Rule ~~{7B}~~12, Utah Rules of Criminal Procedure is amended to read:

~~Rule {7B}12. {Preliminary examinations.~~

~~—— (a) Burden of proof. At the preliminary examination, the state has the burden of proof and proceeds first with its case} Motions.~~

(a) Motions. An application to the court for an order shall be by motion, which, unless made during a trial or hearing, shall be in writing and in accordance with this rule. A motion shall state succinctly and with particularity the grounds upon which it is made and the relief sought. A motion need not be accompanied by a memorandum unless required by the court.

(b) Request to Submit for Decision. If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. If a written Request to Submit is filed it shall be a separate pleading so captioned. The Request to Submit for Decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If no party files a written Request to Submit, or the motion has not otherwise been brought to the attention of the court, the motion will not be considered submitted for decision.

(c) Time for filing specified motions. Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion.

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(c) (1) The following shall be raised at least 7 days prior to the trial:

(c) (1) (A) defenses and objections based on defects in the indictment or information;

(c) (1) (B) motions to suppress evidence;

(c) (1) (C) requests for discovery where allowed;

(c) (1) (D) requests for severance of charges or defendants;

(c) (1) (E) motions to dismiss on the ground of double jeopardy; or

(c) (1) (F) motions challenging jurisdiction, unless good cause is shown why the issue could not have been raised at least 7 days prior to trial.

(c) (2) Motions for a reduction of criminal offense at sentencing pursuant to Utah Code § 76-3-402(1) shall be in writing and filed at least 14 days prior to the date of sentencing unless the court sets the date for sentencing within ten days of the entry of conviction. Motions for a reduction of criminal offense pursuant to Utah Code § 76-3-402(2) may be raised at any time after sentencing upon proper service of the motion on the appropriate prosecuting entity.

(d) **Motions to Suppress.** A motion to suppress evidence shall:

(d) (1) describe the evidence sought to be suppressed;

(d) (2) set forth the standing of the movant to make the application; and

(d) (3) specify sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and to enable the court to determine what proceedings are appropriate to address them.

If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the ~~{state's case, the defendant may testify under oath, call witnesses, and present evidence. The defendant may also cross-examine adverse witnesses.~~

~~—— (b) **Probable cause determination.** If from the evidence the magistrate finds probable cause to believe that the crime charged has been committed and that the defendant has committed [it] the crime, the magistrate must order that the defendant be bound over for trial. The findings of probable cause may be based on hearsay, in whole or in part. Objections to~~ evidentiary hearing, the court may provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(e) **Motions on the justification of the use of force.**

(e) (1) A motion on the justification of the use of force shall:

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(e) (1) (A) be in writing;

(e) (1) (B) be filed at least 28 days before trial, unless there is good cause shown to the court to permit the filing of the motion after the 28-day deadline; and

(e) (1) (C) specify sufficient legal and factual grounds for justification of the use of force under Utah Code section 76-2-402, 76-2-405, 76-2-406, 76-2-407, or 76-2-408.

(e) (2) Upon a motion on the justification of the use of force, the court shall:

(e) (2) (A) hold a hearing to hear evidence on the ~~ground that [it] the evidence was acquired by unlawful means are not properly raised at the preliminary examination.~~

~~——~~ (c) If no probable cause. If the magistrate does not find probable cause to believe the crime charged has been committed or} motion; and

(e) (2) (B) determine as a matter of fact and law whether the defendant ~~committed [it] the crime, or} was justified in the use or threatened use of force.~~

(e) (3) At the hearing on the motion, the prosecution has the burden of proving by clear and convincing evidence that the defendant's use or threatened use of force was not justified.

(e) (4) If the court determines that the state has not met the state's burden ~~of proof under Utah Code Section 76-2-410, the magistrate must dismiss the information and discharge the defendant. The magistrate may enter} described in paragraph (e)(3), the court shall dismiss the charge to which the defendant raised the claim of justification.~~

(e) (5) If the court determines that the state has met the state's burden described in paragraph (e)(3):

(e) (5) (A) the issue of justification may be raised by the defendant to the jury at trial; and

(e) (5) (B) if the defendant raises the issue of justification at trial, the state has the burden of proving beyond a reasonable doubt that the defendant's use or threatened use of force was not justified.

(e) (6) If the defendant raises the issue of justification at trial, the court's determination that the state met the state's burden under paragraph (e)(5) is not admissible and may not be referenced by the prosecution.

~~[e)]~~ (f) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.

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[(f)] (g) Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.

[(g)] (h) A verbatim record shall be made of all proceedings at the hearing on motions, including such findings of fact~~(,)~~ and conclusions of law~~(, and an order of dismissal)~~. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

~~—— (d) Witnesses. At a preliminary examination, the magistrate, upon request of either party, may exclude witnesses from the courtroom and may require witnesses not to converse with each other until the preliminary examination is concluded.~~

~~—— (e) Written findings. If the magistrate orders the defendant bound over for trial, the magistrate must execute a bind-over order and include any written findings in the case record.~~

~~—— (f) Assignment on motion to quash. If a defendant files a motion to quash a bind-over order, the motion shall be decided by the judge assigned to the case after bind-over, regardless of whether the judge conducted the preliminary examination in the judge's role as a magistrate. † as are made orally.~~

[(h)] (i) If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that bail be continued for a reasonable and specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect provisions of law relating to a statute of limitations.

Section 2. **Effective date.**

This resolution takes effect upon approval by a constitutional two-thirds vote of all members elected to each house.