

**PRELIMINARY HEARING AMENDMENTS**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses preliminary hearings.

**Highlighted Provisions:**

This bill:

- ▶ addresses a preliminary hearing for certain offenses;
- ▶ addresses the right of a defendant in relation to a preliminary hearing; and
- ▶ addresses the function of a preliminary hearing.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

**77-1-9**, Utah Code Annotated 1953

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

Section 1. Section **77-1-9** is enacted to read:

**77-1-9. Preliminary hearing -- Rights of defendant.**

(1) In all cases for a class A misdemeanor or felony offense, the defendant has a right to have a preliminary hearing as described in this section.





28           (2) A preliminary hearing is an adversarial hearing where the prosecuting attorney must  
29 present evidence that is sufficient to establish probable cause that:

30           (a) a criminal offense has been committed; and

31           (b) the defendant committed the criminal offense.

32           (3) For a probable cause showing at a preliminary hearing, the prosecuting attorney  
33 must establish a prima facie case against the defendant.

34           (4) At a preliminary hearing, the defendant shall be:

35           (a) advised of the nature of the charges against the defendant;

36           (b) allowed to conduct discovery;

37           (c) allowed to testify;

38           (d) allowed to cross-examine any witness, including any witness expected to testify  
39 against the defendant;

40           (e) allowed to cross-examine a witness on any matter that will aid the defense,  
41 including the credibility of the witness; and

42           (f) except as provided in Subsection (5), allowed to subpoena witnesses.

43           (5) At a preliminary hearing, a defendant may not subpoena a child who is an alleged  
44 victim of any offense for which the defendant is charged.

45           (6) Upon a preliminary hearing, the magistrate or judge may:

46           (a) determine whether evidence or allegations presented at the preliminary hearing are  
47 credible and establish probable cause in accordance with Subsections (2) and (3); and

48           (b) decline to bind a defendant over for trial if, after careful consideration of the  
49 evidence, the court determines that the evidence is insufficient to establish probable cause.