

SB0087S01 compared with SB0087

~~{deleted text}~~ shows text that was in SB0087 but was deleted in SB0087S01.

inserted text shows text that was not in SB0087 but was inserted into SB0087S01.

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Senator Todd D. Weiler proposes the following substitute bill:

CRIMINAL PROSECUTION MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses criminal prosecutions.

Highlighted Provisions:

This bill:

- ▶ ~~{defines terms;~~
- ~~clarifies the rights of a defendant in a criminal prosecution;~~
- ~~provides a defendant with a right to depose a witness in a criminal prosecution if the defendant is charged by information with a class A misdemeanor or a felony;~~
- ~~provides exceptions to a defendant's right to depose a witness in a criminal prosecution;~~
- ~~addresses a deposition by a self-represented defendant in a criminal prosecution;~~
- ~~grants a defendant with a right to subpoena a witness to testify at a hearing in certain~~

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circumstances;

- addresses the conduct for a criminal deposition and the examination of a witness at a hearing when a defendant has been unable to depose a witness or the witness terminates the deposition;
- addresses ~~addresses~~ addresses a prosecuting attorney's failure to comply with Rule 16 of the Utah Rules of Criminal Procedure;
 - ▶ addresses written statements submitted as reliable hearsay ~~{in}~~ evidence at preliminary hearings;
 - ▶ requires ~~{a prosecuting attorney to provide certain recordings to a defendant regarding witness statements in}~~ the Administrative Office of the Courts to collect data in regards to preliminary hearings;
 - ▶ ~~{repeals a statute regarding the title of a chapter}~~ requires the State Commission on Criminal and Juvenile Justice to include preliminary hearing data gathered by the Administrative Office of the Courts in the annual report for the State Commission on Criminal and Juvenile Justice; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{77-1-6}~~ 77-1-7, as enacted by Laws of Utah ~~{1980}~~ 1990, Chapter ~~{15}~~ 7

~~{77-7a-103}~~ 78A-2-109.5, as enacted by Laws of Utah ~~{2016}~~ 2020, Chapter ~~{410}~~ 200

ENACTS:

~~{77-7a-201}~~ 77-1-8, Utah Code Annotated 1953

~~{77-7a-202}~~, Utah Code Annotated 1953

REPEALS:

~~77-7a-101~~, as enacted by Laws of Utah 2016, Chapter 410

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

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Section 1. Section ~~{77-1-6}~~77-1-7 is amended to read:

~~{77-1-6}~~77-1-7. {Rights of defendant in criminal prosecution -- Depositions.

~~— [(1) In criminal prosecutions the defendant is entitled]} Dismissal for failure to comply with evidence requirements -- Dismissal without trial -- Custody or discharge of defendant.~~

(1) (a) As used in this Subsection (1), "evidence" means any information, material, or evidence that is required to be disclosed by the prosecuting attorney under Rule 16 of the Utah Rules of Criminal Procedure.

(b) If a prosecuting attorney fails to provide evidence to the defendant within the time period required by Rule 16 of the Utah Rules of Criminal Procedure, the court shall dismiss the information or indictment without prejudice.

~~[(1) (2) [(a) Further]~~ A prosecution for an offense is not barred if the court dismisses an information or indictment based on the ground:

~~[(i)] (a) there was unreasonable delay;~~

~~[(ii)] (b) the court is without jurisdiction;~~

~~[(iii)] (c) the offense was not properly alleged in the information or indictment; or~~

~~[(iv)] (d) there was a defect in the impaneling or the proceedings relating to the grand jury.~~

~~[(b)] (3) The court may make orders regarding custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise, the defendant shall be discharged and bail exonerated.~~

~~[(2)] (4) An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or upon the statute of limitations is a bar to any other prosecution for the offense charged.~~

Section 2. Section 77-1-8 is enacted to read:

77-1-8. Written statements as evidence at a preliminary hearing.

(1) As used in this section:

~~(a) "Victim advocate" means the same as that term is defined in Section 77-38-403.~~

~~— (b) (i) "Witness" means any individual who by reason of having relevant information is called or is likely to be called to testify at trial.~~

~~— (ii) "Witness" includes any alleged victim of an offense for which the defendant is~~

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charged:

- ~~(2) In a criminal prosecution, a defendant has a right:~~
- ~~(a) [To] to appear in person and defend in person or by counsel;~~
- ~~(b) [To] to receive a copy of the accusation filed against [him] the defendant;~~
- ~~(c) [To] to testify in [his] the defendant's own behalf;~~
- ~~(d) [To be confronted by the witnesses against him;] to confront a witness testifying against the defendant;~~
- ~~(e) [To] to have compulsory process to [insure] ensure the attendance of [witnesses in his] a witness on the defendant's behalf;~~
- ~~(f) if the defendant is charged by information with a class A misdemeanor or a felony, to depose a witness by oral examination on any matter that is reasonably related to the offense charged or will aid the defense of the defendant, including the credibility of the witness;~~
- ~~[(f)] (g) [To] to a speedy public trial by an impartial jury of the county or district where the offense is alleged to have been committed;~~
- ~~[(g)] (h) [To] to the right of appeal in all cases; and~~
- ~~[(h)] (i) [To] to be admitted to bail in accordance with [provisions of law, or be entitled to a trial within 30 days after arraignment if unable to post bail and if the business of the court permits.] Chapter 20, Bail.~~
- ~~[(2)] (3) In addition to the rights described in Subsection (2):~~
- ~~(a) [No person shall] an individual may not be put twice in jeopardy for the same offense;~~
- ~~(b) [No accused person shall] an accused individual may not, before final judgment, be compelled to:~~
- ~~(i) advance money or fees to secure rights guaranteed by the [Constitution] constitution or the laws of Utah[, or to]; or~~
- ~~(ii) pay the costs of those rights when received;~~
- ~~(c) [No person shall] an individual may not be compelled to give evidence against [himself] oneself;~~
- ~~(d) [A wife shall not be compelled to testify against her husband nor a husband against his wife] a spouse may not be compelled to testify against the other spouse; and~~
- ~~(e) [No person shall] an individual may not be convicted unless:~~

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- ~~—— (i) by verdict of a jury[, or];~~
- ~~—— (ii) upon a plea of guilty or no contest[, or];~~
- ~~—— (iii) upon a judgment of a court when trial by jury has been waived [or,]; or~~
- ~~—— (iv) in case of an infraction, upon a judgment by a magistrate.~~
- ~~—— (4) (a) Notwithstanding Subsection (2)(f), a defendant does not have a right:~~
 - ~~—— (i) to depose a witness that is younger than 14 years old at the time of the deposition;~~
 - ~~—— (ii) to depose a witness more than once; or~~
 - ~~—— (iii) to be physically present for the deposition of a witness who is an alleged victim of the offense for which the defendant is charged.~~
- ~~—— (b) A defendant may not depose a witness who is 14 years old or older but younger than 18 years old, unless the defendant demonstrates to the court that there are reasonable protections in place to protect the witness, including the presence of the witness's parent or guardian or a victim advocate at the deposition.~~
- ~~—— (c) If a defendant is representing oneself, the defendant may not directly depose a witness who is an alleged victim of the offense but the defendant may request that the court appoint counsel for the purpose of conducting a deposition of the witness on behalf of the defendant.~~
- ~~—— (d) A deposition of a witness must be conducted:~~
 - ~~—— (i) in a manner in which the witness is treated with fairness, respect, and dignity, and is free from harassment and abuse; and~~
 - ~~—— (ii) in accordance with Rule 16 of the Utah Rules of Criminal Procedure.~~
- ~~—— (e) A witness, who is an alleged victim of the offense for which the defendant is charged, may terminate a deposition only if a reasonable individual would conclude that the deposition is not being conducted in accordance with Subsection (4)(d)(i):~~
- ~~—— (5) (a) A defendant has a right to subpoena a witness to testify at an evidentiary hearing on any matter that is reasonably relevant to the offense charged or will aid the defense of the defendant, including the credibility of the witness, if:~~
 - ~~—— (i) the witness refuses or declines to be deposed; or~~
 - ~~—— (ii) the witness terminates a deposition before the defendant or the defendant's attorney is finished deposing the witness, unless the deposition is terminated in accordance with Subsection (4)(e).~~

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- ~~—— (b) A defendant does not have a right:~~
- ~~—— (i) to subpoena a witness under Subsection (5)(a) if the witness is younger than 14 years old at the time of the hearing;~~
- ~~—— (ii) to subpoena a witness under Subsection (5)(a) more than once; or~~
- ~~—— (iii) to be physically present for the testimony of a witness at an evidentiary hearing described in Subsection (5)(a) if the witness is an alleged victim of the offense for which the defendant is charged.~~
- ~~—— (c) A subpoena shall comply with the requirements of Rule 14 of the Utah Rules of Criminal Procedure.~~
- ~~—— (6) (a) If a defendant is representing oneself, the defendant may not directly examine a witness, who is an alleged victim of the offense, at an evidentiary hearing described in Subsection (5)(a) but the defendant may request that the court appoint counsel for the purpose of examining the witness on behalf of the defendant.~~
- ~~—— (b) An examination of a witness at an evidentiary hearing described Subsection (5)(a) must be conducted:~~
- ~~—— (i) in a manner in which the witness is treated with fairness, respect, and dignity, and is free from harassment and abuse; and~~
- ~~—— (ii) in accordance with the Utah Rules of Evidence.~~
- ~~—— **77-1-7. Dismissal without trial -- Custody or discharge of defendant.**~~
- ~~—— (1) (a) Further prosecution for an offense is not barred if the court dismisses an information or indictment based on the ground:~~
- ~~—— (i) there was unreasonable delay;~~
- ~~—— (ii) the court is without jurisdiction;~~
- ~~—— (iii) the offense was not properly alleged in the information or indictment; or~~
- ~~—— (iv) there was a defect in the impaneling or the proceedings relating to the grand jury.~~
- ~~—— (b) The court may make orders regarding custody of the defendant pending the filing of new charges as the interest of justice may require. Otherwise, the defendant shall be discharged and bail exonerated.~~
- ~~—— (2) An order of dismissal based upon unconstitutional delay in bringing the defendant to trial or upon the statute of limitations is a bar to any other prosecution for the offense charged.~~

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~~Section 2. Section 77-7a-103 is amended to read:~~

~~CHAPTER 7a. CRIMINAL INVESTIGATION RECORDINGS~~

~~Part 1. Law Enforcement Use of Body-worn Cameras~~

~~77-7a-103. Definitions:~~

~~[(1)] As used in this part:~~

~~(1) (a) "Body-worn camera" means a video recording device that is carried by, or worn on the body of, a law enforcement officer and that is capable of recording the operations of the officer.~~

~~(b) "Body-worn camera" does not include a dashboard mounted camera or a camera intended to record clandestine investigation activities.~~

~~(2) "Law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.~~

~~(3) "Law enforcement encounter" means:~~

~~(a) an enforcement stop;~~

~~(b) a dispatched call;~~

~~(c) a field interrogation or interview;~~

~~(d) use of force;~~

~~(e) execution of a warrant;~~

~~(f) a traffic stop, including:~~

~~(i) a traffic violation;~~

~~(ii) stranded motorist assistance; and~~

~~(iii) any crime interdiction stop; or~~

~~(g) any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.~~

~~Section 3. Section 77-7a-201 is enacted to read:~~

~~Part 2. Recording Communications for Preliminary Hearings~~

~~77-7a-201. Definitions:~~

~~As used in this part:~~

~~(1) "Communication" means any transmission of information between or among two or more persons by written, oral, electronic, or any other means.~~

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~~(2) "Law enforcement agency" means the same as that term is defined in Section 77-7a-103.~~

~~(3) "Prosecuting agency" means the office of the prosecuting attorney, including the prosecuting attorney and any staff for the office.~~

~~(4) "Reliable hearsay evidence" means evidence defined as reliable hearsay under Rule 1102 of the Utah Rules of Evidence.~~

~~(c) "Witness" means the same as that term is defined in Section 77-1-6.~~

~~Section 4. Section 77-7a-202 is enacted to read:~~

~~77-7a-202. **Recording communications for preliminary hearing -- Reliable hearsay evidence.**~~

~~(1) If a prosecuting attorney seeks to admit a written statement of a witness as reliable hearsay in a preliminary hearing, the prosecuting attorney shall provide any individual who by reason of having relevant information is called, or is likely to be called, to testify at trial.~~

~~(2) If a prosecuting attorney seeks to admit a written statement of a witness as reliable hearsay evidence at a preliminary hearing, the prosecuting agency may not direct, instruct, guide, influence, or suggest language to the witness in the drafting or completion of the written statement.~~

~~Section 3. Section 78A-2-109.5 is amended to read:~~

~~**78A-2-109.5. Court data collection and reporting.**~~

~~(1) As used in this section, "commission" means the Commission on Criminal and Juvenile Justice created in Section 63M-7-201.~~

~~(2) The Administrative Office of the Courts shall [compile and provide] submit the following information to the commission for each criminal case filed with the court:~~

~~(a) case number;~~

~~(b) the defendant's:~~

~~(i) full name;~~

~~(ii) offense tracking number; and~~

~~(iii) date of birth;~~

~~(c) charges filed;~~

~~(d) initial appearance date;~~

~~(e) bail amount set by the court, if any;~~

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(f) whether the defendant ~~{with all communications between the witness and the prosecuting agency or law enforcement agency regarding the drafting or completion of the written statement.~~

~~— (2) The prosecuting agency shall provide the defendant with an audio or visual recording of any oral communication under Subsection (1).~~

~~— (3) A written statement is not reliable hearsay if the prosecuting attorney does not provide the defendant with all communications}~~ was represented by a public defender, private counsel, or pro se; and

(g) final disposition of the charges.

[(3) The information shall be submitted]

(3) (a) The Administrative Office of the Courts shall submit the information described in Subsection (1) at least 48 hours before the day on which the (2) to the commission on the 15th day of July and January of each year for the previous six-month period ending the last day of June and December of each year in the form and manner selected by the commission.

(b) If the last day of the month is a Saturday, Sunday, or state holiday, [the information shall be submitted] the Administrative Office of the Courts shall submit the information described in Subsection (2) to the commission on the next working day.

(4) Before July 1 of each year, the Administrative Office of the Courts shall submit the following data on cases involving individuals charged with class A misdemeanors and felonies, broken down by judicial district, to the commission for each preceding calendar year:

(a) the number of cases in which a preliminary hearing is set and placed on the court calendar;

(b) the median and range of the number of times that a preliminary hearing is continued in cases in which a preliminary hearing is set and placed on the court calendar;

(c) the number of cases in which only written statements from witnesses are submitted as probable cause at the preliminary hearing;

(d) the number of cases in which written statements and witness testimony are submitted as probable cause at the preliminary hearing;

(e) the number of cases in which only witness testimony is submitted as probable cause at the preliminary hearing; and

(f) the number of cases in which a preliminary hearing is held f.

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~~Section 5. Repealer.~~

~~This bill repeals:~~

~~Section 77-7a-101, Title:~~

~~‡ and the defendant is bound over for trial.~~

~~(5) The commission shall include the data collected under Subsection (4) in the commission's annual report described in Section 63M-7-205.~~