

**JOINT RESOLUTION AMENDING RULES OF PROCEDURE
AND EVIDENCE REGARDING CRIMINAL PROSECUTIONS**

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: _____

LONG TITLE

General Description:

This joint resolution amends court rules of procedure and evidence regarding criminal prosecutions.

Highlighted Provisions:

This joint resolution:

- ▶ amends Rule 7B of the Utah Rules of Criminal Procedure to address the use of reliable hearsay and the admission of evidence in preliminary hearings;
- ▶ amends Rule 14 of the Utah Rules of Criminal Procedure to address a defendant's right to a discovery deposition in a criminal prosecution;
- ▶ amends Rule 16 of the Utah Rules of Criminal Procedure to allow for depositions for the purpose of discovery in a criminal prosecution;
- ▶ amends Rule 22 of the Utah Rules of Juvenile Procedure to address the use of reliable hearsay in preliminary hearings;
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address the admission of reliable hearsay statements in preliminary hearings; and
- ▶ makes technical and conforming changes.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:



28 AMENDS:

29 **Rule 7B**, Utah Rules of Criminal Procedure

30 **Rule 14**, Utah Rules of Criminal Procedure

31 **Rule 16**, Utah Rules of Criminal Procedure

32 **Utah Rules of Juvenile Procedure Affected:**

33 AMENDS:

34 **Rule 22**, Utah Rules of Juvenile Procedure

35 **Utah Rules of Evidence Affected:**

36 AMENDS:

37 **Rule 1102**, Utah Rules of Evidence



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

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

44 Section 1. **Rule 7B**, Utah Rules of Criminal Procedure is amended to read:

45 **Rule 7B. Preliminary examinations.**

46 (a) **Burden of proof.** At the preliminary examination, the state has the burden of proof
47 and proceeds first with its case. At the conclusion of the state's case, the defendant may testify
48 under oath, call witnesses, and present evidence. The defendant may also cross-examine
49 adverse witnesses.

50 (b) **Probable cause determination.** If from the evidence the magistrate finds probable
51 cause to believe that the crime charged has been committed and that the defendant has
52 committed it, the magistrate must order that the defendant be bound over for trial. The findings
53 of probable cause may ~~[be based on hearsay, in whole or in part]~~ not be based solely on hearsay
54 evidence. Objections to evidence on the ground that it was acquired by unlawful means are not
55 properly raised at the preliminary examination.

56 (c) **If no probable cause.** If the magistrate does not find probable cause to believe the
57 crime charged has been committed or the defendant committed it, the magistrate must dismiss
58 the information and discharge the defendant. The magistrate may enter findings of fact,

59 conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the
60 state from instituting a subsequent prosecution for the same offense.

61 (d) Probable cause evidence. A prosecutor must disclose any evidence that the
62 prosecutor intends to use at the preliminary examination to establish probable cause, and all
63 communications described in Utah Code section 77-7a-202, to the defendant at least 48 hours
64 before the day on which the preliminary examination is held.

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

68 [~~(e)~~] (f) **Written findings.** If the magistrate orders the defendant bound over for trial,
69 the magistrate must execute a bind-over order and include any written findings in the case
70 record.

71 [~~(f)~~] (g) **Assignment on motion to quash.** If a defendant files a motion to quash a
72 bind-over order, the motion shall be decided by the judge assigned to the case after bind-over,
73 regardless of whether the judge conducted the preliminary examination in the judge's role as a
74 magistrate.

75 Section 2. **Rule 14**, Utah Rules of Criminal Procedure is amended to read:

76 **Rule 14. Subpoenas.**

77 (a) **Subpoenas requiring the attendance of a witness or interpreter and**
78 **production or inspection of records, papers, or other objects.**

79 (a) (1) A subpoena to require the attendance of a witness or interpreter before a court,
80 magistrate or grand jury in connection with a criminal investigation or prosecution may be
81 issued by the magistrate with whom an information is filed, the prosecuting attorney on his or
82 her own initiative or upon the direction of the grand jury, or the court in which an information
83 or indictment is to be tried. The clerk of the court in which a case is pending must issue in
84 blank to the defendant, without charge, as many signed subpoenas as the defendant may
85 require. An attorney admitted to practice in the court in which the action is pending may also
86 issue and sign a subpoena as an officer of the court.

87 (a) (2) A subpoena may command the person to whom it is directed to appear and
88 testify or to produce in court or to allow inspection of records, papers or other objects, other
89 than those records pertaining to a victim covered by Subsection (b). The court may quash or

90 modify the subpoena if compliance would be unreasonable.

91 (a) (3) A subpoena may be served by any person over the age of 18 years who is not a
92 party. Service must be made by delivering a copy of the subpoena to the witness or interpreter
93 personally and notifying the witness or interpreter of the contents. A peace officer must serve
94 any subpoena delivered for service in the peace officer's county.

95 (a) (4) Written return of service of a subpoena must be made promptly to the court and
96 to the person requesting that the subpoena be served, stating the time and place of service and
97 by whom service was made.

98 (a) (5) A subpoena may compel the attendance of a witness from anywhere in the state.

99 (a) (6) When a person required as a witness is in custody within the state, the court may
100 order the officer having custody of the witness to bring the witness before the court.

101 (a) (7) Failure to obey a subpoena without reasonable excuse may be deemed a
102 contempt of the court responsible for its issuance.

103 (a) (8) If a party has reason to believe a material witness is about to leave the state, will
104 be too ill or infirm to attend a trial or hearing, or will not appear and testify pursuant to a
105 subpoena, the party may, upon notice to the other, apply to the court for an order that the
106 witness be examined conditionally by deposition. The party must file an affidavit providing
107 facts to support the party's request. Attendance of the witness at the deposition may be
108 compelled by subpoena. The defendant shall be present at the deposition and the court will
109 make whatever order is necessary to effect such attendance. A deposition may be used as
110 substantive evidence at the trial or hearing to the extent it would otherwise be admissible under
111 the Rules of Evidence if the witness is too ill or infirm to attend, the party offering the
112 deposition has been unable to obtain the attendance of the witness by subpoena, or the witness
113 refuses to testify despite a court order to do so. Nothing in this paragraph (a)(8) shall be
114 construed to prevent a defendant from deposing a witness under Rule 16.

115 (b) **Subpoenas for the production of records of victim.**

116 (b) (1) No subpoena or court order compelling the production of medical, mental
117 health, school, or other privileged records pertaining to a victim shall be issued by or at the
118 request of any party unless the court finds after a hearing, upon notice as provided below, that
119 the records are material and the party is entitled to production of the records sought under
120 applicable rules of privilege, and state and federal law.

121 (b) (2) The request for the subpoena or court order shall identify the records sought
122 with particularity and be reasonably limited as to subject matter.

123 (b) (3) The request for the subpoena or court order shall be filed with the court as soon
124 as practicable, but no later than 28 days before trial, or by such other time as permitted by the
125 court. The request and notice of any hearing shall be served on counsel for the victim or
126 victim's representative and on the opposing party. Service on an unrepresented victim must be
127 facilitated through the prosecutor. The prosecutor must make reasonable efforts to provide a
128 copy of the request for the subpoena to the victim or victim's representative within 14 days of
129 receiving it.

130 (b) (4) If the court makes the required findings under subsection (b)(1), it must issue a
131 subpoena or order requiring the production of the records to the court. The court will then
132 conduct an in camera review of the records and disclose to the defense and prosecution only
133 those portions that the requesting party has demonstrated a right to inspect.

134 (b) (5) Any party issuing a subpoena for non-privileged records, papers or other objects
135 pertaining to a victim must serve a copy of the subpoena upon the victim or victim's
136 representative. Service on an unrepresented victim must be facilitated through the prosecutor.
137 The prosecutor must make reasonable efforts to provide a copy of the subpoena to the victim
138 within 14 days of receiving it. The subpoena may not require compliance in less than 14 days
139 after service on the prosecutor or victim's representative.

140 (b) (6) The court may, in its discretion or upon motion of either party or the victim or
141 the victim's representative, issue any reasonable order to protect the privacy of the victim or to
142 limit dissemination of disclosed records.

143 ~~[(b) (7) For purposes of this rule, "victim" and "victim's representative" are used as~~
144 ~~defined in Utah Code § 77-38-2.]~~

145 (b) (7) For purposes of this rule:

146 (b) (7) (A) "victim" means the same as the term "victim of a crime" is defined in Utah
147 Code section 77-38-2.

148 (b) (7) (B) "victim's representative" means the same as the term "representative of a
149 victim" is defined in Utah Code section 77-38-2.

150 (b) (8) Nothing in this rule alters or supersedes other rules, privileges, statutes or
151 caselaw pertaining to the release or admissibility of an individual's medical, psychological,

152 school or other records.

153 (c) Applicability of Rule 45, Utah Rules of Civil Procedure. The provisions of Rule 45,
154 Utah Rules of Civil Procedure, will govern the content, issuance, objections to, and service of
155 subpoenas to the extent those provisions are consistent with the Utah Rules of Criminal
156 Procedure.

157 Section 3. **Rule 16**, Utah Rules of Criminal Procedure is amended to read:

158 **Rule 16. Discovery.**

159 (a) **Disclosures by prosecutor.**

160 (1) Mandatory disclosures. The prosecutor must disclose to the defendant the following
161 material or information directly related to the case of which the prosecution team has
162 knowledge and control:

163 (A) written or recorded statements of the defendant and any codefendants, and the
164 substance of any unrecorded oral statements made by the defendant and any codefendants to
165 law enforcement officials;

166 (B) reports and results of any physical or mental examination, of any identification
167 procedure, and of any scientific test or experiment;

168 (C) physical and electronic evidence, including any warrants, warrant affidavits, books,
169 papers, documents, photographs, and digital media recordings;

170 (D) written or recorded statements of witnesses;

171 (E) reports prepared by law enforcement officials and any notes that are not
172 incorporated into such a report; and

173 (F) evidence that must be disclosed under the United States and Utah constitutions,
174 including all evidence favorable to the defendant that is material to guilt or punishment.

175 (2) Timing of mandatory disclosures. The prosecutor’s duty to disclose under
176 paragraph (a)(1) is a continuing duty as the material or information becomes known to the
177 prosecutor. The prosecutor’s disclosures must be made as soon as practicable following the
178 filing of an Information. In every case, all material or information listed under paragraph (a)(1)
179 that is presently and reasonably available to the prosecutor must be disclosed before the
180 preliminary ~~hearing~~ examination, if applicable, or before the defendant enters a plea of guilty
181 or no contest or goes to trial, unless otherwise waived by the defendant.

182 (3) Disclosures upon request.

183 (A) Upon request, the prosecutor must obtain and disclose to the defendant any of the
184 material or information listed in paragraph (a)(1) which is in a record possessed by another
185 governmental agency and may be shared with the prosecutor under Title 63G, Chapter 2,
186 Government Records Access and Management Act. The request must identify with
187 particularity the record sought and the agency that possesses it, and must demonstrate that the
188 information in the record is directly related to the case.

189 (B) If the government agency refuses to share with the prosecutor the record containing
190 the requested material or information under paragraph (a)(3)(A), or if the prosecution
191 determines that it is prohibited by law from disclosing to the defense the record shared by the
192 governmental agency, the prosecutor must promptly file notice stating the reasons for
193 noncompliance. The defense may thereafter file an appropriate motion seeking a subpoena or
194 other order requiring the disclosure of the requested record.

195 (4) Good cause disclosures. The prosecutor must disclose any other item of evidence
196 which the court determines on good cause shown should be made available to the defendant in
197 order for the defendant to adequately prepare a defense.

198 (5) Trial disclosures. The prosecutor must also disclose to the defendant the following
199 information and material no later than 14 days, or as soon as practicable, before trial:

200 (A) Unless otherwise prohibited by law, a written list of the names and current contact
201 information of all persons whom the prosecution intends to call as witnesses at trial; and

202 (B) Any exhibits that the prosecution intends to introduce at trial.

203 (C) Upon order of the court, the criminal records, if any, of all persons whom the
204 prosecution intends to call as a witness at trial.

205 (6) Information not subject to disclosure. Unless otherwise required by law, the
206 prosecution's disclosure obligations do not include information or material that is privileged or
207 attorney work product. Attorney work product protection is not subject to the exception in Rule
208 26(b)(5) of the Utah Rules of Civil Procedure.

209 (b) **Disclosures by defense.**

210 (1) Good cause disclosures. The defense must disclose to the prosecutor any item of
211 evidence which the court determines on good cause shown should be made available to the
212 prosecutor in order for the prosecutor to adequately prepare the prosecutor's case for trial.

213 (2) Other disclosures required by statute. The defense must disclose to the prosecutor

214 such information as required by statute relating to alibi or insanity.

215 (3) Trial disclosures. The defense must also disclose to the prosecutor the following
216 information and material no later than 14 days, or as soon as practicable, before trial:

217 (A) A written list of the names and current contact information of all persons, except
218 for the defendant, whom the defense intends to call as witnesses at trial; and

219 (B) Any exhibits that the defense intends to introduce at trial.

220 (4) Information not subject to disclosure. The defendant's disclosure obligations do not
221 include information or material that is privileged or attorney work product. Attorney work
222 product protection is not subject to the exception in Rule 26(b)(5) of the Utah Rules of Civil
223 Procedure.

224 (c) **Methods of disclosure.**

225 (1) The prosecutor or defendant may make disclosure by notifying the opposing party
226 that material and information may be inspected, tested, or copied at specified reasonable times
227 and places.

228 (2) If the prosecutor concludes any disclosure required under this rule is prohibited by
229 law, or believes disclosure would endanger any person or interfere with an ongoing
230 investigation, the prosecutor must file notice identifying the nature of the material or
231 information withheld and the basis for non-disclosure. If disclosure is then requested by the
232 defendant, the court must hold an in camera review to decide whether disclosure is required
233 and whether any limitations or restrictions will apply to disclosure as provided in paragraph

234 (d).

235 (d) **Disclosure limitations and restrictions.**

236 (1) The prosecutor or defendant may impose reasonable limitations on the further
237 dissemination of sensitive information otherwise subject to discovery to prevent improper use
238 of the information or to protect victims and witnesses from harassment, abuse, or undue
239 invasion of privacy, including limitations on the further dissemination of recorded interviews,
240 photographs, or psychological or medical reports.

241 (2) Upon a sufficient showing the court may at any time order that discovery or
242 inspection be denied, restricted, or deferred, that limitations on the further dissemination of
243 discovery be modified or make such other order as is appropriate. Upon motion by a party, the
244 court may permit the party to make such showing, in whole or in part, in the form of a written

245 statement to be inspected by the judge alone. If the court enters an order granting relief
246 following such an ex parte showing, the entire text of the party's statement shall be sealed and
247 preserved in the records of the court to be made available to the appellate court in the event of
248 an appeal.

249 (e) **Relief and sanctions for failing to disclose.**

250 (1) When a party fails to comply with the disclosure requirements of this rule, the court
251 may, subject to constitutional limitations and the rules of evidence, take the measures or
252 impose the sanctions provided in this paragraph that it deems appropriate under the
253 circumstances. If a party has failed to comply with this rule, the court may take one or more of
254 the following actions:

255 (A) order such party to permit the discovery or inspection, of the undisclosed material
256 or information;

257 (B) grant a continuance of the proceedings;

258 (C) prohibit the party from introducing evidence not disclosed; or

259 (D) order such other relief as the court deems just under the circumstances.

260 (2) If after a hearing the court finds that a party has knowingly and willfully failed to
261 comply with an order of the court compelling disclosure under this rule, the nondisclosing
262 party or attorney may be held in contempt of court and subject to the penalties thereof.

263 (f) **Identification evidence.**

264 (1) Subject to constitutional limitations and upon good cause shown, the trial court
265 may order the defendant to: appear in a lineup; speak for identification; submit to
266 fingerprinting or the making of other bodily impressions; pose for photographs not involving
267 reenactment of the crime; try on articles of clothing or other items of disguise; permit the
268 taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be
269 obtained without unreasonable intrusion; provide specimens of handwriting; submit to
270 reasonable physical or medical inspection of the accused's body; and cut hair or allow hair to
271 grow to approximate appearance at the time of the alleged offense.

272 (2) Whenever the personal appearance of the accused is required for the foregoing
273 purposes, reasonable notice of the time and place of such appearance shall be given to the
274 accused and the accused's counsel.

275 (3) Unless relieved by court order, failure of the accused to appear or to comply with

276 the requirements of this paragraph without reasonable excuse shall be grounds for revocation of
277 pre-trial release and will subject the defendant to such further consequences or sanctions as the
278 court may deem appropriate, including allowing the prosecutor to offer as evidence at trial the
279 defendant's failure to comply with this paragraph.

280 (g) Discovery depositions for class A misdemeanors and felonies.

281 (1) Generally.

282 (A) If a defendant is charged by information with a class A misdemeanor or a felony,
283 the defendant may depose a witness by oral examination in accordance with Utah Code section
284 77-1-6.

285 (B) A defendant may not depose a witness under this paragraph (g) more than once.

286 (C) A prosecutor, or a representative from the prosecuting agency, must be present at a
287 deposition unless the witness requests that the prosecutor or a representative not be present.

288 (2) Notice of deposition.

289 (A) A defendant must provide the witness and the prosecutor with written notice of the
290 defendant's intent to depose the witness.

291 (B) The written notice must:

292 (i) state the name of the witness;

293 (ii) if the name of the witness is not known, sufficiently describe the witness with
294 enough information that the prosecutor can identify the individual that the defendant seeks to
295 depose;

296 (iii) designate any documents and tangible things to be produced by the witness; and

297 (iv) state the method by which the deposition will be recorded.

298 (3) Time, place, and location of deposition.

299 (A) The defendant must make a good faith effort to coordinate the date, time, and
300 location of a deposition and to accommodate the schedule and preferred location of the witness
301 to be deposed.

302 (B) A deposition may be taken by videoconference or other remote electronic means.

303 (C) If the defendant and the witness are unable to agree upon the location of the
304 deposition:

305 (i) for a witness that is an alleged victim of the offense for which the defendant is
306 charged, the witness may select the location at which the deposition is held or to have the

307 deposition taken by video conference or other remote electronic means; and

308 (ii) for any other witness, the deposition must be held at the courthouse location where
309 the defendant's initial appearance was held.

310 (4) Presence of defendant.

311 (A) The defendant may not be present in person at a deposition of a witness who is an
312 alleged victim of the offense for which the defendant is charged unless the witness and the
313 prosecutor consent to the in-person presence of the defendant.

314 (B) If the defendant is in custody and the witness and the prosecutor consent to the
315 defendant's presence in person at the deposition, the defendant may only be present in person
316 by leave of the court.

317 (C) If a deposition is conducted by video conference or other remote electronic means,
318 a defendant may not be visible to a witness who is an alleged victim of the offense for which
319 the defendant is charged, unless the witness and the prosecutor consent to the defendant being
320 visible to the witness.

321 (5) Presence of other parties.

322 (A) A witness may have an attorney present for a deposition.

323 (B) If the defendant seeks to depose a witness who is an alleged victim of the offense
324 for which the defendant is charged, the witness may have an advocate or another individual
325 present for a deposition but the advocate or individual may not assist the witness in answering
326 questions.

327 (6) Requirements for deposition.

328 (A) A deposition must be conducted under oath in accordance with Utah Code sections
329 78B-1-142 through 78B-1-144.

330 (B) A prosecutor, a defendant's attorney, or a witness's attorney may administer an oath
331 to a witness.

332 (C) A deposition must begin with a statement on the record that includes:

333 (i) the name of the individual who administers the oath to the witness;

334 (ii) the date, time, and place of the deposition;

335 (iii) the name of the witness;

336 (iv) the administration of the oath to the witness;

337 (v) an identification of all persons present at the deposition; and

338 (vi) if the prosecutor or a representative from the prosecuting agency is not present,
339 whether the witness consents to the prosecutor or a representative not being present at the
340 deposition.

341 (D) If the deposition is recorded other than stenographically, the individual who
342 administers the oath to the witness shall repeat paragraphs (g)(6)(C)(i) through (iii) at the
343 beginning of each unit of the recording.

344 (E) At the end of the deposition, the individual who administers the oath to the witness
345 must state on the record that the deposition is complete and any stipulations regarding the
346 deposition.

347 (F) Any questioning of a witness in a deposition may not exceed 90 minutes.

348 (G) A deposition must be recorded by sound, sound-and-visual, or stenographic means.

349 (H) The defendant must bear any cost of recording a deposition.

350 (I) The appearance, demeanor, or statements of the witness or attorneys at a deposition
351 may not be distorted through recording techniques.

352 (7) Objections.

353 (A) A witness's attorney or a prosecutor may object to any question asked by the
354 defendant's attorney.

355 (B) An objection must be recorded but the questioning must proceed and the testimony
356 taken subject to the objection.

357 (C) Any objection must be stated concisely and in a non-argumentative and
358 non-suggestive manner.

359 (D) A witness's attorney may instruct a witness to not answer a question to preserve a
360 privilege or to enforce a limitation on evidence directed by the court.

361 (8) Continuance or termination of a deposition.

362 (A) The defendant or the defendant's attorney may not delay or continue the deposition
363 of the victim after the date, time, and location of the deposition are established.

364 (B) A witness may only terminate a deposition in accordance with Utah Code section
365 [77-6-1](#).

366 (9) Transcript or recording. A transcript or recording of a deposition taken under this
367 paragraph (g) must be provided to all parties within 14 days, or as soon as practicable, before
368 trial.

369 (10) Use of deposition at trial or other hearing. A deposition may be used at trial or a
370 hearing by any party for the purpose of contradicting or impeaching the testimony of the
371 deponent as a witness or as substantive evidence as permitted by the Utah Rules of Evidence.

372 Section 4. **Rule 22**, Utah Rules of Juvenile Procedure is amended to read:

373 **Rule 22. Initial appearance and preliminary examinations in cases under Utah**
374 **Code section 80-6-503.**

375 (a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear
376 before the court as directed in the summons.

377 (b) When any peace officer or other person makes an arrest of a minor without a
378 warrant, the minor shall be taken to a juvenile detention facility pending a detention hearing,
379 which shall be held as provided by these rules. When any peace officer makes an arrest of a
380 minor with a warrant, the minor shall be taken to the place designated on the warrant. If an
381 information has not been filed, one shall be filed without delay in the court with jurisdiction
382 over the offense.

383 (c) If a minor is arrested in a county other than where the offense was committed the
384 minor shall without unnecessary delay be returned to the county where the crime was
385 committed and shall be taken before a judge of the juvenile court.

386 (d) The court shall, upon the minor's first appearance, inform the minor:

387 (1) of the charge in the information or indictment and furnish the minor with a copy;

388 (2) of any affidavit or recorded testimony given in support of the information and how
389 to obtain them;

390 (3) of the right to retain counsel or have counsel appointed by the court;

391 (4) of rights concerning detention, pretrial release, and bail in the event the minor is
392 bound over to stand trial in district court; and

393 (5) that the minor is not required to make any statement, and that any statements made
394 may be used against the minor in a court of law.

395 (e) The court shall, after providing the information under paragraph (d) and before
396 proceeding further, allow the minor reasonable time and opportunity to consult counsel and
397 shall allow the minor to contact any attorney by any reasonable means, without delay and
398 without fee.

399 (f) The minor may not be called on to enter a plea. During the initial appearance, the

400 minor shall be advised of the right to a preliminary examination. If the minor waives the right
401 to a preliminary examination the court shall proceed in accordance with Rule 23A to hear
402 evidence regarding the factors contained in Utah Code section 80-6-504.

403 (g) If the minor does not waive a preliminary examination, the court shall schedule the
404 preliminary examination. The time periods of this rule may be extended by the court for good
405 cause shown. The preliminary examination shall be held within a reasonable time, but not later
406 than ten days after the initial appearance if the minor is in custody for the offense charged and
407 the information is filed under Utah Code section 80-6-503. The preliminary examination shall
408 be held within a reasonable time, but not later than 30 days after the initial appearance if:

409 (1) the minor is in custody for the offense charged and the information is filed under
410 Utah Code section 80-6-503; or

411 (2) the minor is not in custody.

412 (h) A preliminary examination may not be held if the minor is indicted. If the
413 indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance
414 with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-503.

415 (i) A preliminary examination shall be held under the rules and laws applicable to
416 criminal cases tried before a court. The state has the burden of proof and shall proceed first
417 with its case. At the conclusion of the state's case, the minor may testify under oath, call
418 witnesses, and present evidence. The minor may cross-examine adverse witnesses.

419 (j) A prosecutor must disclose any evidence that the prosecutor intends to use at the
420 preliminary examination to establish probable cause, and all communications described in Utah
421 Code section 77-7a-202, to the minor at least 48 hours before the day on which the preliminary
422 examination is held.

423 ~~[(j)]~~ (k) If from the evidence the court finds probable cause to believe that the crime
424 charged has been committed, that the minor has committed it, and the information is filed
425 under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to
426 hear evidence regarding the factors contained in Utah Code section 80-6-504.

427 ~~[(k)]~~ (l) The finding of probable cause may ~~[be based on hearsay in whole or in part]~~
428 not be based solely on hearsay evidence. Objections to evidence on the ground that it was
429 acquired by unlawful means are not properly raised at the preliminary examination.

430 ~~[(l)]~~ (m) If the court does not find probable cause to believe that the crime charged has

431 been committed or that the minor committed it, the court shall dismiss the information and
432 discharge the minor. The court may enter findings of fact, conclusions of law, and an order of
433 dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent
434 prosecution for the same offense.

435 ~~[(m)]~~ (n) At a preliminary examination, upon request of either party, and subject to
436 Title 77, Chapter 38, ~~[Victim Rights]~~ Rights of Crime Victims Act, the court may:

- 437 (1) exclude witnesses from the courtroom;
438 (2) require witnesses not to converse with each other until the preliminary examination
439 is concluded; and
440 (3) exclude spectators from the courtroom.

441 Section 5. **Rule 1102**, Utah Rules of Evidence is amended to read:

442 **Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations.**

443 (a) Statement of the Rule. Reliable hearsay is admissible at criminal preliminary
444 examinations.

445 (b) Definition of Reliable Hearsay. For purposes of criminal preliminary examinations
446 only and except as provided in Utah Code section [77-7a-202](#), reliable hearsay includes:

- 447 (b) (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
448 (b) (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of
449 Evidence, regardless of the availability of the declarant at the preliminary examination;
450 (b) (3) evidence establishing the foundation for or the authenticity of any exhibit;
451 (b) (4) scientific, laboratory, or forensic reports and records;
452 (b) (5) medical and autopsy reports and records;
453 (b) (6) a statement of a non-testifying peace officer to a testifying peace officer;
454 (b) (7) a statement made by a child victim of physical abuse or a sexual offense which
455 is recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;
456 (b) (8) a statement of a declarant that is written, recorded, or transcribed verbatim
457 which is:
458 (b) (8) (A) under oath or affirmation; or
459 (b) (8) (B) pursuant to a notification to the declarant that a false statement made therein
460 is punishable; and
461 (b) (9) other hearsay evidence with similar indicia of reliability, regardless of

462 admissibility at trial under Rules 803 and 804 of the Utah Rules of Evidence.

463 (c) Continuance for Production of Additional Evidence. If hearsay evidence is
464 proffered or admitted in the preliminary examination, a continuance of the hearing may be
465 granted for the purpose of furnishing additional evidence if:

466 (c) (1) The magistrate finds that the hearsay evidence proffered or admitted is not
467 sufficient and additional evidence is necessary for a bindover; or

468 (c) (2) The defense establishes that it would be so substantially and unfairly
469 disadvantaged by the use of the hearsay evidence as to outweigh the interests of the declarant
470 and the efficient administration of justice.

471 Section 6. **Effective date.**

472 If this resolution is approved by two-thirds vote of all members elected to each house,
473 this resolution takes effect on May 3, 2023.