

Senator Todd D. Weiler proposes the following substitute bill:

**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 22 of the Utah Rules of Juvenile Procedure to address the use of reliable hearsay in preliminary hearings; and
- ▶ makes technical and conforming changes.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 7B, Utah Rules of Criminal Procedure

Utah Rules of Juvenile Procedure Affected:

AMENDS:



26 **Rule 22**, Utah Rules of Juvenile Procedure
27

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

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

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

34 **Rule 7B. Preliminary examinations.**

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

39 (b) **Probable cause determination.** If from the evidence the magistrate finds probable
40 cause to believe that the crime charged has been committed and that the defendant has
41 committed it, the magistrate must order that the defendant be bound over for trial. The findings
42 of probable cause may be based on hearsay, ~~[in whole or in part]~~ but may not be based solely
43 on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence.
44 Objections to evidence on the ground that it was acquired by unlawful means are not properly
45 raised at the preliminary examination.

46 (c) **If no probable cause.** If the magistrate does not find probable cause to believe the
47 crime charged has been committed or the defendant committed it, the magistrate must dismiss
48 the information and discharge the defendant. The magistrate may enter findings of fact,
49 conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the
50 state from instituting a subsequent prosecution for the same offense.

51 (d) **Probable cause evidence.** A prosecutor must disclose any evidence that the
52 prosecutor intends to use at the preliminary examination to establish probable cause to the
53 defendant at least 48 hours before the day on which the preliminary examination is held.

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

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

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

64 Section 2. **Rule 22**, Utah Rules of Juvenile Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

87 (e) The court shall, after providing the information under paragraph (d) and before

88 proceeding further, allow the minor reasonable time and opportunity to consult counsel and
89 shall allow the minor to contact any attorney by any reasonable means, without delay and
90 without fee.

91 (f) The minor may not be called on to enter a plea. During the initial appearance, the
92 minor shall be advised of the right to a preliminary examination. If the minor waives the right
93 to a preliminary examination the court shall proceed in accordance with Rule 23A to hear
94 evidence regarding the factors contained in Utah Code section 80-6-504.

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

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

103 (2) the minor is not in custody.

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

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

111 (j) A prosecutor must disclose any evidence that the prosecutor intends to use at the
112 preliminary examination to establish probable cause to the minor at least 48 hours before the
113 day on which the preliminary examination is held.

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

118 ~~[(k)]~~ (l) The finding of probable cause may ~~[be based on hearsay in whole or in part]~~ be

119 based on hearsay, but may not be based solely on reliable hearsay evidence admitted under
120 Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it
121 was acquired by unlawful means are not properly raised at the preliminary examination.

122 ~~[(t)]~~ (m) If the court does not find probable cause to believe that the crime charged has
123 been committed or that the minor committed it, the court shall dismiss the information and
124 discharge the minor. The court may enter findings of fact, conclusions of law, and an order of
125 dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent
126 prosecution for the same offense.

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

- 129 (1) exclude witnesses from the courtroom;
130 (2) require witnesses not to converse with each other until the preliminary examination
131 is concluded; and
132 (3) exclude spectators from the courtroom.

133 Section 3. **Effective date.**

134 As provided in Utah Constitution Article VIII, Section 4, this resolution takes effect
135 upon a two-thirds vote of all members elected to each house.