

SJR006S01 compared with SJR006

~~{deleted text}~~ shows text that was in SJR006 but was deleted in SJR006S01.

inserted text shows text that was not in SJR006 but was inserted into SJR006S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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 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~~

SJR006S01 compared with SJR006

~~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}~~22 of the Utah Rules of ~~{Evidence}~~Juvenile Procedure to address the ~~{admission}~~use 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:

AMENDS:

Rule 7B, Utah Rules of Criminal Procedure

~~{ Rule 14, Utah Rules of Criminal Procedure~~

~~Rule 16, Utah Rules of Criminal Procedure~~

‡ Utah Rules of Juvenile Procedure Affected:

AMENDS:

Rule 22, Utah Rules of Juvenile Procedure

~~{ Utah Rules of Evidence Affected:~~

AMENDS:

~~Rule 1102, Utah Rules of Evidence~~

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**, Utah Rules of Criminal Procedure is amended to read:

Rule 7B. Preliminary examinations.

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

SJR006S01 compared with SJR006

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 magistrate must order that the defendant be bound over for trial. The findings of probable cause may ~~ff~~ be based on hearsay, ~~[in whole or in part]~~ but may not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it 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 the defendant committed it, the magistrate must dismiss the information and discharge the defendant. The magistrate may enter findings of fact, 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) **Probable cause evidence.** A prosecutor must disclose any evidence that the prosecutor intends to use at the preliminary examination to establish probable cause ~~}, and all communications described in Utah Code section 77-7a-202,~~ to the defendant at least 48 hours before the day on which the preliminary examination is held.

~~[(d)]~~ (e) **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)]~~ (f) **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)]~~ (g) **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.

Section 2. **Rule ~~{14}~~22**, Utah Rules of ~~{Criminal}~~Juvenile Procedure is amended to read:

~~{~~ **Rule 14. Subpoenas.**

~~_____~~ (a) **Subpoenas requiring the attendance of a witness or interpreter and**

SJR006S01 compared with SJR006

~~production or inspection of records, papers, or other objects:~~

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

~~—— (a) (2) A subpoena may command the person to whom it is directed to appear and testify or to produce in court or to allow inspection of records, papers or other objects, other than those records pertaining to a victim covered by Subsection (b). The court may quash or modify the subpoena if compliance would be unreasonable.~~

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

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

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

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

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

~~—— (a) (8) If a party has reason to believe a material witness is about to leave the state, will be too ill or infirm to attend a trial or hearing, or will not appear and testify pursuant to a subpoena, the party may, upon notice to the other, apply to the court for an order that the witness be examined conditionally by deposition. The party must file an affidavit providing facts to support the party's request. Attendance of the witness at the deposition may be compelled by subpoena. The defendant shall be present at the deposition and the court will~~

SJR006S01 compared with SJR006

~~make whatever order is necessary to effect such attendance. A deposition may be used as substantive evidence at the trial or hearing to the extent it would otherwise be admissible under the Rules of Evidence if the witness is too ill or infirm to attend, the party offering the deposition has been unable to obtain the attendance of the witness by subpoena, or the witness refuses to testify despite a court order to do so. Nothing in this paragraph (a)(8) shall be construed to prevent a defendant from deposing a witness under Rule 16.~~

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

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

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

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

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

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

SJR006S01 compared with SJR006

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

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

~~—— (b) (7) For purposes of this rule:~~

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

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

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

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

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

~~—— **Rule 16. Discovery.**~~

~~—— (a) **Disclosures by prosecutor.**~~

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

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

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

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

~~—— (D) written or recorded statements of witnesses;~~

SJR006S01 compared with SJR006

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

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

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

~~—— (3) Disclosures upon request.~~

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

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

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

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

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

SJR006S01 compared with SJR006

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

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

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

~~—— (b) **Disclosures by defense:**~~

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

~~—— (2) Other disclosures required by statute. The defense must disclose to the prosecutor such information as required by statute relating to alibi or insanity.~~

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

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

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

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

~~—— (c) **Methods of disclosure:**~~

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

~~—— (2) If the prosecutor concludes any disclosure required under this rule is prohibited by law, or believes disclosure would endanger any person or interfere with an ongoing investigation, the prosecutor must file notice identifying the nature of the material or information withheld and the basis for non-disclosure. If disclosure is then requested by the defendant, the court must hold an in camera review to decide whether disclosure is required~~

SJR006S01 compared with SJR006

~~and whether any limitations or restrictions will apply to disclosure as provided in paragraph (d):~~

~~—— (d) **Disclosure limitations and restrictions:**~~

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

~~—— (2) Upon a sufficient showing the court may at any time order that discovery or inspection be denied, restricted, or deferred, that limitations on the further dissemination of discovery be modified or make such other order as is appropriate. Upon motion by a party, the court may permit the party to make such showing, in whole or in part, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such an ex parte showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.~~

~~—— (e) **Relief and sanctions for failing to disclose:**~~

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

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

~~—— (B) grant a continuance of the proceedings;~~

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

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

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

~~—— (f) **Identification evidence:**~~

SJR006S01 compared with SJR006

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

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

~~—— (3) Unless relieved by court order, failure of the accused to appear or to comply with the requirements of this paragraph without reasonable excuse shall be grounds for revocation of pre-trial release and will subject the defendant to such further consequences or sanctions as the court may deem appropriate, including allowing the prosecutor to offer as evidence at trial the defendant's failure to comply with this paragraph.~~

~~—— **(g) Discovery depositions for class A misdemeanors and felonies.**~~

~~—— (1) Generally:~~

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

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

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

~~—— (2) Notice of deposition.~~

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

~~—— (B) The written notice must:~~

~~—— (i) state the name of the witness;~~

~~—— (ii) if the name of the witness is not known, sufficiently describe the witness with enough information that the prosecutor can identify the individual that the defendant seeks to~~

SJR006S01 compared with SJR006

depose:

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

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

~~—— (3) Time, place, and location of deposition:~~

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

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

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

~~—— (i) for a witness that is an alleged victim of the offense for which the defendant is charged, the witness may select the location at which the deposition is held or to have the deposition taken by video conference or other remote electronic means; and~~

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

~~—— (4) Presence of defendant.~~

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

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

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

~~—— (5) Presence of other parties:~~

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

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

SJR006S01 compared with SJR006

questions:

~~—— (6) Requirements for deposition:~~

~~—— (A) A deposition must be conducted under oath in accordance with Utah Code sections 78B-1-142 through 78B-1-144:~~

~~—— (B) A prosecutor, a defendant's attorney, or a witness's attorney may administer an oath to a witness:~~

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

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

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

~~—— (iii) the name of the witness;~~

~~—— (iv) the administration of the oath to the witness;~~

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

~~—— (vi) if the prosecutor or a representative from the prosecuting agency is not present, whether the witness consents to the prosecutor or a representative not being present at the deposition:~~

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

~~—— (E) At the end of the deposition, the individual who administers the oath to the witness must state on the record that the deposition is complete and any stipulations regarding the deposition:~~

~~—— (F) Any questioning of a witness in a deposition may not exceed 90 minutes:~~

~~—— (G) A deposition must be recorded by sound, sound-and-visual, or stenographic means:~~

~~—— (H) The defendant must bear any cost of recording a deposition:~~

~~—— (I) The appearance, demeanor, or statements of the witness or attorneys at a deposition may not be distorted through recording techniques:~~

~~—— (7) Objections:~~

~~—— (A) A witness's attorney or a prosecutor may object to any question asked by the defendant's attorney:~~

~~—— (B) An objection must be recorded but the questioning must proceed and the testimony taken subject to the objection:~~

SJR006S01 compared with SJR006

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

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

~~— (8) Continuance or termination of a deposition.~~

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

~~— (B) A witness may only terminate a deposition in accordance with Utah Code section 77-6-1.~~

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

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

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

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

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

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

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

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

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

SJR006S01 compared with SJR006

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

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

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

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

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

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

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

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

(2) the minor is not in custody.

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

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

SJR006S01 compared with SJR006

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

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

(l) The finding of probable cause may ~~[be based on hearsay in whole or in part]~~ be based on hearsay, but may not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(m) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, 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.

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

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

Section ~~{5. Rule 1102, Utah Rules of Evidence is amended to read:~~

~~————~~ **Rule 1102. Reliable Hearsay in Criminal Preliminary Examinations.**

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

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

- ~~————~~ (b) (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
- ~~————~~ (b) (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of

SJR006S01 compared with SJR006

~~Evidence, regardless of the availability of the declarant at the preliminary examination;~~

~~—— (b) (3) evidence establishing the foundation for or the authenticity of any exhibit;~~

~~—— (b) (4) scientific, laboratory, or forensic reports and records;~~

~~—— (b) (5) medical and autopsy reports and records;~~

~~—— (b) (6) a statement of a non-testifying peace officer to a testifying peace officer;~~

~~—— (b) (7) a statement made by a child victim of physical abuse or a sexual offense which is recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;~~

~~—— (b) (8) a statement of a declarant that is written, recorded, or transcribed verbatim which is:~~

~~—— (b) (8) (A) under oath or affirmation; or~~

~~—— (b) (8) (B) pursuant to a notification to the declarant that a false statement made therein is punishable; and~~

~~—— (b) (9) other hearsay evidence with similar indicia of reliability, regardless of admissibility at trial under Rules 803 and 804 of the Utah Rules of Evidence.~~

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

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

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

~~—— Section 6}3. **Effective date.**~~

~~if As provided in Utah Constitution Article VIII, Section 4, this resolution is approved by takes effect upon a two-thirds vote of all members elected to each house , this resolution takes effect on May 3, 2023.~~