

Representative Anthony E. Loubet 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: Nelson T. Abbott

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 probable cause determination at a preliminary examination;
- ▶ amends Rule 16 of the Utah Rules of Criminal Procedure to address the disclosure of evidence after an information is filed;
- ▶ amends Rule 22 of the Utah Rules of Juvenile Procedure to address the probable cause determination at a preliminary examination;
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address statements from witnesses; and
- ▶ makes technical and conforming changes.

Special Clauses:

This joint resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:



26 AMENDS:

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

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

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

30 AMENDS:

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

32 **Utah Rules of Evidence Affected:**

33 AMENDS:

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



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

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

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

42 **Rule 7B. Preliminary examinations.**

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

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

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

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

59 (d) **Witnesses.** At a preliminary examination, the magistrate, upon request of either
60 party, may exclude witnesses from the courtroom and may require witnesses not to converse
61 with each other until the preliminary examination is concluded.

62 (e) **Written findings.** If the magistrate orders the defendant bound over for trial, the
63 magistrate must execute a bind-over order and include any written findings in the case record.

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

67 Section 2. **Rule 16,** Utah Rules of Criminal Procedure is amended to read:

68 **Rule 16. Discovery.**

69 (a) Disclosures by prosecutor.

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

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

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

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

80 (D) written or recorded statements of witnesses;

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

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

85 (2) Timing of mandatory disclosures. The prosecutor's duty to disclose under
86 paragraph (a)(1) is a continuing duty as the material or information becomes known to the
87 prosecutor. The prosecutor's disclosures must be made as soon as practicable following the

88 filing of [~~charges and information~~] an information, except that a prosecutor must disclose all
89 evidence that the prosecutor relied upon to file the information within five days after the day on
90 which the prosecutor receives a request for discovery from the defendant. In every case, all
91 material or information listed under paragraph (a)(1) that is presently and reasonably available
92 to the prosecutor must be disclosed before the preliminary [~~hearing~~] examination, if applicable,
93 or before the defendant enters a plea of guilty or no contest or goes to trial, unless otherwise
94 waived by the defendant.

95 (3) Disclosures upon request.

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

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

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

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

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

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

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

118 (6) Information not subject to disclosure. Unless otherwise required by law, the

119 prosecution's disclosure obligations do not include information or material that is privileged or
120 attorney work product. Attorney work product protection is not subject to the exception in Rule
121 26(b)(5) of the Utah Rules of Civil Procedure.

122 (b) Disclosures by defense.

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

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

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

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

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

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

137 (c) Methods of disclosure.

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

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

147 (d).

148 (d) Disclosure limitations and restrictions.

149 (1) The prosecutor or defendant may impose reasonable limitations on the further

150 dissemination of sensitive information otherwise subject to discovery to prevent improper use
151 of the information or to protect victims and witnesses from harassment, abuse, or undue
152 invasion of privacy, including limitations on the further dissemination of recorded interviews,
153 photographs, or psychological or medical reports.

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

162 (e) Relief and sanctions for failing to disclose.

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

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

170 (B) grant a continuance of the proceedings;

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

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

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

176 (f) Identification evidence.

177 (1) Subject to constitutional limitations and upon good cause shown, the trial court
178 may order the defendant to: appear in a lineup; speak for identification; submit to
179 fingerprinting or the making of other bodily impressions; pose for photographs not involving
180 reenactment of the crime; try on articles of clothing or other items of disguise; permit the

181 taking of samples of blood, hair, fingernail scrapings, and other bodily materials which can be
182 obtained without unreasonable intrusion; provide specimens of handwriting; submit to
183 reasonable physical or medical inspection of the accused's body; and cut hair or allow hair to
184 grow to approximate appearance at the time of the alleged offense.

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

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

193 Section 3. **Rule 22**, Utah Rules of Juvenile Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

232 (2) the minor is not in custody.

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

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

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

243 regarding the factors contained in Utah Code section [80-6-504](#).

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

248 (l) If the court does not find probable cause to believe that the crime charged has been
249 committed or that the minor committed it, the court shall dismiss the information and discharge
250 the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal.
251 The dismissal and discharge do not preclude the state from instituting a subsequent prosecution
252 for the same offense.

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

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

259 Section 4. **Rule 1102**, Utah Rules of Evidence is amended to read:

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

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

263 (b) Definition of Reliable Hearsay. For purposes of criminal preliminary examinations
264 only, reliable hearsay includes:

- 265 (b)(1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
- 266 (b)(2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of
267 Evidence, regardless of the availability of the declarant at the preliminary examination;
- 268 (b)(3) evidence establishing the foundation for or the authenticity of any exhibit;
- 269 (b)(4) scientific, laboratory, or forensic reports and records;
- 270 (b)(5) medical and autopsy reports and records;
- 271 (b)(6) a statement of a non-testifying peace officer to a testifying peace officer;
- 272 (b)(7) a statement made by a child victim of physical abuse or a sexual offense which
273 is recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;

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

276 (b)(8)(A) under oath or affirmation; or

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

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

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

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

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

289 (d)(1) Except as provided in paragraph (d)(2), a prosecutor, or any staff for the office
290 of the prosecutor, may transcribe a declarant's statement verbatim or assist a declarant in
291 drafting a statement.

292 (d)(2) A prosecutor, or any staff for the office of the prosecutor, may not draft a
293 statement for a declarant, or tamper with a witness in violation of Utah Code section [76-8-508](#).

294 Section 5. **Effective date.**

295 (1) In accordance with Utah Constitution Article VIII, Section 4, the amendments in
296 this resolution pass upon approval by a two-thirds vote of all members elected to each house.

297 (2) After passage of this resolution under Subsection (1), the amendments in this
298 resolution take effect on May 3, 2023.