

SJR006S03 compared with SJR006S02

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inserted text shows text that was not in SJR006S02 but was inserted into SJR006S03.

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~~{Senator Todd D}~~Representative Anthony E. ~~{Weiler}~~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 ~~{use of reliable hearsay and the admission of evidence in preliminary hearings}~~probable cause determination at a preliminary examination;
- ▶ amends Rule 16 of the Utah Rules of Criminal Procedure to ~~{allow for depositions}~~

SJR006S03 compared with SJR006S02

for} address the {purpose} disclosure of {discovery in a criminal prosecution} evidence after an information is filed;

- ▶ amends Rule 22 of the Utah Rules of Juvenile Procedure to address the {use of reliable hearsay in} probable cause determination at a preliminary {hearings} examination;
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address {the admission of reliable hearsay} statements {in preliminary hearings} from witnesses; and
- ▶ makes technical and conforming changes.

Special Clauses:

This joint resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 7B, 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

SJR006S03 compared with SJR006S02

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 be based on hearsay, [~~in whole or in part~~] but may not be based solely on 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) **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) **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) **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 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

SJR006S03 compared with SJR006S02

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;

(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 [~~charges an Information~~] an information, except that a prosecutor must disclose all evidence that the prosecutor relied upon to file the information within five days after the day on which the prosecutor receives a request for discovery from the defendant. 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.

SJR006S03 compared with SJR006S02

(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

(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

SJR006S03 compared with SJR006S02

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 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;

SJR006S03 compared with SJR006S02

- (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.

(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.

Section 3. **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

SJR006S03 compared with SJR006S02

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;

(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

SJR006S03 compared with SJR006S02

(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.

(j) 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.

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

(l) 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.

(m) 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 4. **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.

SJR006S03 compared with SJR006S02

(b) Definition of Reliable Hearsay. For purposes of criminal preliminary examinations only, 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 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.

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

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

SJR006S03 compared with SJR006S02

Section 5. **Effective date.**

~~{As provided in}~~ (1) In accordance with Utah Constitution Article VIII, Section 4, the amendments in this resolution ~~{takes effect}~~ pass upon approval by a two-thirds vote of all members elected to each house.

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