

**JOINT RESOLUTION AMENDING COURT RULES OF
PROCEDURE AND EVIDENCE REGARDING PRELIMINARY
HEARINGS**

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tyler Clancy

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This joint resolution amends court rules of procedure and evidence regarding preliminary hearings.

Highlighted Provisions:

This joint resolution:

- ▶ amends Rule 7B of the Utah Rules of Criminal Procedure to address the use of hearsay evidence for a probable cause determination at a preliminary hearing; and
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address the admission of reliable hearsay evidence at a preliminary hearing.

Money Appropriated in this Bill:

None

Special Clauses:

This resolution provides an effective date.

Utah Code Sections Affected:

AMENDS:

Rule 7B, Utah Rules of Criminal Procedure

Rule 1102, Utah Rules of Evidence



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, but may not be based solely~~ ~~on~~ ~~hearsay~~
 42a ~~evidence~~
 43 ~~admitted under Rule 1102(b)(8) of the Utah Rules of Evidence~~, in whole or in part, on reliable
 44 hearsay. Objections to evidence on the ground that it was acquired by unlawful means are not
 45 properly 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) Witnesses.** At a preliminary examination, the magistrate, upon request of either
 52 party, may exclude witnesses from the courtroom and may require witnesses not to converse
 53 with each other until the preliminary examination is concluded.

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

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

59 Section 2. **Rule 1102**, Utah Rules of Evidence is amended to read:

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

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

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

65 (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;

66 (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of Evidence,
67 regardless of the availability of the declarant at the preliminary examination;

68 (3) evidence establishing the foundation for or the authenticity of any exhibit;

69 (4) scientific, laboratory, or forensic reports and records;

70 (5) medical and autopsy reports and records;

71 (6) a statement of a non-testifying peace officer to a testifying peace officer;

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

74 (8) a statement of a declarant that is written, recorded, or transcribed verbatim which
75 is:

76 (A) under oath or affirmation; or

77 (B) pursuant to a notification to the declarant that a false statement made therein is
78 punishable; and

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

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

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

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

89 (d) (1) Except as provided in paragraph (d)(2), a prosecutor, or any staff for the office

90 of the prosecutor, may transcribe a declarant's statement verbatim or assist a declarant in
91 drafting a statement.

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

94 (e) A court may not admit a statement described in paragraph (b)(8) at a preliminary
95 examination unless there is testimony presented at the preliminary examination. A prosecutor
96 may present the testimony of any relevant witness at a preliminary examination to satisfy the
97 requirements of this paragraph (e), such as the testimony of an investigating peace officer. The
98 declarant of a statement submitted under paragraph (b)(8) is not required to testify, and
99 evidence corroborating the substance of the declarant's statement is not required, for the
100 statement to be admissible at a preliminary examination.

101 Section 3. **Effective date.**

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