

HJR013S01 compared with HJR013

{deleted text} shows text that was in HJR013 but was deleted in HJR013S01.

inserted text shows text that was not in HJR013 but was inserted into HJR013S01.

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.

Representative Tyler Clancy proposes the following substitute bill:

**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 and witness testimony at a preliminary hearing; and
- ▶ amends Rule 1102 of the Utah Rules of Evidence to address the admission of

HJR013S01 compared with HJR013

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

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 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, but may not be based solely { } on hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence]~~, in whole or in part, on reliable hearsay. 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,

HJR013S01 compared with HJR013

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.

~~(d) Witnesses.~~ (1) 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.

(d) (2) A prosecutor may present the testimony of any relevant witness at a preliminary examination, including the testimony of an investigating peace officer. The prosecutor or the defense may introduce, through direct or cross examination, the testimony of an investigating peace officer, including testimony from the investigating peace officer on the totality or details of the investigation of the crime for which the defendant is charged.

(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 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, reliable hearsay includes:

- (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
- (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;
- (3) evidence establishing the foundation for or the authenticity of any exhibit;
- (4) scientific, laboratory, or forensic reports and records;
- (5) medical and autopsy reports and records;
- (6) a statement of a non-testifying peace officer to a testifying peace officer;
- (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;

HJR013S01 compared with HJR013

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

(A) under oath or affirmation; or

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

(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:

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

(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.

(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.

(e) A court may not admit ~~fa statement described}~~reliable hearsay evidence in ~~{paragraph (b)(8) at a preliminary examination}~~accordance with this rule unless there is testimony presented at the preliminary examination~~{. A prosecutor may present the testimony of any relevant witness at a}~~ as described in Rule 7B(d)(2) of the Utah Rules of Criminal Procedure. The prosecutor is not required to introduce evidence that corroborates the substance of a statement submitted under paragraph (b)(8) for the statement to be admissible at the preliminary examination~~{ to satisfy the requirements of this paragraph (c), such as the testimony of an investigating peace officer. The}~~ The prosecutor may, but is not required to, call the declarant of a statement submitted under paragraph (b)(8) ~~{is not required to testify, and evidence corroborating the substance of the declarant's statement is not required, for the statement to be admissible at a }~~at the preliminary examination. This paragraph (e) does not

HJR013S01 compared with HJR013

otherwise limit a defendant's right to call witnesses under Rule 7B of the Utah Rules of Criminal Procedure.

Section 3. **Effective date.**

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