

**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.

Money Appropriated in this Bill:

None

Highlighted Provisions:

This 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 reliable hearsay evidence at a preliminary hearing.

Other Special Clauses:

This resolution provides a special effective date.

Utah Rules of Criminal Procedure Affected:

AMENDS:

Rule 7B, Utah Rules of Criminal 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:

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

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

31 **Rule 7B . Preliminary Examinations.**

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

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

43 **(c) If no probable cause.** If the magistrate does not find probable cause to believe the crime
44 charged has been committed or the defendant committed it, the magistrate must dismiss the
45 information and discharge the defendant. The magistrate may enter findings of fact,
46 conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the
47 state from instituting a subsequent prosecution for the same offense.

48 **(d) Witnesses.**

49 (d) (1) At a preliminary examination, the magistrate, upon request of either party, may
50 exclude witnesses from the courtroom and may require witnesses not to converse with each
51 other until the preliminary examination is concluded.

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

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

59 **(f) Assignment on motion to quash.** If a defendant files a motion to quash a bind-over
60 order, the motion shall be decided by the judge assigned to the case after bind-over, regardless

61 of whether the judge conducted the preliminary examination in the judge's role as a magistrate.

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

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

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

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

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

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

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

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

73 (5) medical and autopsy reports and records;

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

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

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

78 (A) under oath or affirmation; or

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

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

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

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

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

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

94 (2) A prosecutor, or any staff for the office of the prosecutor, may not draft a statement for

95 a declarant, or tamper with a witness in violation of Utah Code section 76-8-508.

96 (e) A court may not admit reliable hearsay evidence in accordance with this rule unless
97 there is testimony presented at the preliminary examination as described in Rule 7B(d)(2) of
98 the Utah Rules of Criminal Procedure. The prosecutor is not required to introduce evidence
99 that corroborates the substance of a statement submitted under paragraph (b)(8) for the
100 statement to be admissible at the preliminary examination. The prosecutor may, but is not
101 required to, call the declarant of a statement submitted under paragraph (b)(8) at the
102 preliminary examination. This paragraph (e) does not otherwise limit a defendant's right to call
103 witnesses under Rule 7B of the Utah Rules of Criminal Procedure.

104 **Section 3. Effective date.**

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