

1 **Rule 22. Initial appearance and preliminary examination in cases under ~~Section 78A-~~**
2 **~~6-702 and Section~~ Utah Code section 78A-6-703.3**

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

5 (b) When any peace officer or other person makes an arrest of a minor without a
6 warrant, the minor shall be taken to a juvenile detention facility ~~center~~ pending a
7 detention hearing, which shall be held as provided by these rules. When any peace
8 officer makes an arrest of a minor with a warrant, the minor shall be taken to the place
9 designated on the warrant. If an information has not been filed, one shall be filed
10 without delay in the court with jurisdiction over the offense.

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

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

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

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

19 (d)(3) of the right to retain counsel or have counsel appointed by the court ~~without~~
20 ~~expense if the minor is unable to obtain counsel;~~

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

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

25 (e) The court shall, after providing the information under paragraph (d) and before
26 proceeding further, allow the minor reasonable time and opportunity to consult counsel

27 and shall allow the minor to contact any attorney by any reasonable means, without
28 delay and without fee.

29 (f)(1) The minor may not be called on to enter a plea. During the initial appearance, the
30 minor shall be advised of the right to a preliminary examination, ~~and, as applicable, to a~~
31 ~~certification hearing pursuant to Section 78A-6-703 or to the right to present evidence~~
32 ~~regarding the conditions established by Section 78A-6-702.~~ If the minor waives the right
33 to a preliminary examination the court shall proceed in accordance with Rule 23A to
34 hear evidence regarding the factors contained in Utah Code section 78A-6-703.5, ~~and, if~~
35 ~~applicable, a certification hearing, and if the prosecuting attorney consents, the court~~
36 ~~shall order the minor bound over to answer in the district court.~~

37 (f)(2) If the minor does not waive a preliminary examination, the court shall schedule
38 the preliminary examination. The time periods of this rule may be extended by the
39 court for good cause shown. The preliminary examination shall be held within a
40 reasonable time, but not later than ten days after the initial appearance if the minor is in
41 custody for the offense charged and the information is filed under ~~Section Utah Code~~
42 section 78A-6-702.703.3. The preliminary examination shall be held within a reasonable
43 time, but not later than 30 days after the initial appearance if:

44 (f)(2)(A) the minor is in custody for the offense charged and the information is
45 filed under ~~Section Utah Code section 78A-6-703.3~~; or

46 (f)(2)(B) the minor is not in custody.

47 (f)(3) A preliminary examination may not be held if the minor is indicted. ~~If the~~
48 ~~indictment is filed under 78A-6-703, the court shall proceed in accordance with Rule 23~~
49 ~~to hear evidence presented by the prosecutor regarding the factors of Section 78A-6-703~~
50 ~~for waiver of jurisdiction and certification, unless the hearing is waived.~~ If the
51 indictment is filed under ~~Section Utah Code section 78A-6-7023.3~~, the court shall
52 proceed in accordance with Rule 23A to hear evidence ~~presented by the minor~~

53 regarding the ~~conditions~~ factors of contained in ~~Section~~ Utah Code section 78A-6-
54 702,703.5 if requested.

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

59 ~~(h) If from the evidence the court finds probable cause to believe that the crime~~
60 ~~charged has been committed and that the minor has committed it, and if the~~
61 ~~information is filed under Section 78A-6-703, the court shall proceed in accordance with~~
62 ~~Rule 23 to hear evidence presented by the prosecutor regarding the factors of Section~~
63 ~~78A-6-703 for waiver of jurisdiction and certification.~~

64 ~~(i)(h)~~ If from the evidence the court finds probable cause to believe that the crime
65 charged ~~under~~ has been committed, that the minor has committed it, and ~~if~~ the
66 information is filed under ~~Section~~ Utah Code § section 78A-6-702703.3, the court shall
67 proceed in accordance with Rule 23A to hear evidence ~~presented by the minor~~
68 regarding the ~~conditions~~ factors contained in ~~of Section~~ Utah Code § section 78A-6-
69 702,703.5.

70 ~~(j)(i)~~ The finding of probable cause may be based on hearsay in whole or in part.
71 Objections to evidence on the ground that it was acquired by unlawful means are not
72 properly raised at the preliminary examination.

73 ~~(k)(j)~~ If the court does not find probable cause to believe that the crime charged has been
74 committed or that the minor committed it, the court shall dismiss the information and
75 discharge the minor. The court may enter findings of fact, conclusions of law, and an
76 order of dismissal. The dismissal and discharge do not preclude the state from
77 instituting a subsequent prosecution for the same offense.

78 ~~(l)(k)~~ At a preliminary examination, upon request of either party, and subject to Title 77,
79 Chapter 38, Victim Rights, the court may:

80 ~~(k)~~(k)(1) exclude witnesses from the courtroom;

81 ~~(k)~~(k)(2) require witnesses not to converse with each other until the preliminary
82 examination is concluded; and

83 ~~(k)~~(k)(3) exclude spectators from the courtroom.

84 *Effective November 1, 2020.*