

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 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



26 **Rule 1102**, Utah Rules of Evidence

27

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 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.**

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

55 (d) (2) A prosecutor may present the testimony of any relevant witness at a preliminary
56 examination, including the testimony of an investigating peace officer. The prosecutor or the

57 defense may introduce, through direct or cross examination, the testimony of an investigating
58 peace officer, including testimony from the investigating peace officer on the totality or details
59 of the investigation of the crime for which the defendant is charged.

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

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

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

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

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

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

- 71 (1) hearsay evidence admissible at trial under the Utah Rules of Evidence;
- 72 (2) hearsay evidence admissible at trial under Rule 804 of the Utah Rules of Evidence,
73 regardless of the availability of the declarant at the preliminary examination;
- 74 (3) evidence establishing the foundation for or the authenticity of any exhibit;
- 75 (4) scientific, laboratory, or forensic reports and records;
- 76 (5) medical and autopsy reports and records;
- 77 (6) a statement of a non-testifying peace officer to a testifying peace officer;
- 78 (7) a statement made by a child victim of physical abuse or a sexual offense which is
79 recorded in accordance with Rule 15.5 of the Utah Rules of Criminal Procedure;
- 80 (8) a statement of a declarant that is written, recorded, or transcribed verbatim which
81 is:
 - 82 (A) under oath or affirmation; or
 - 83 (B) pursuant to a notification to the declarant that a false statement made therein is
84 punishable; and
 - 85 (9) other hearsay evidence with similar indicia of reliability, regardless of admissibility
86 at trial under Rules 803 and 804 of the Utah Rules of Evidence.

87 (c) Continuance for Production of Additional Evidence. If hearsay evidence is

88 proffered or admitted in the preliminary examination, a continuance of the hearing may be
89 granted for the purpose of furnishing additional evidence if:

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

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

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

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

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

108 Section 3. **Effective date.**

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