

1 **Rule 22. Initial appearance and preliminary ~~examination hearing~~ in cases under Utah**
2 **Code sections 80-6-503 and 80-6-504.**

3 (a) When a summons is issued in lieu of a warrant of arrest, the minor ~~shall~~must 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 warrant,
6 the minor ~~shall~~must be taken to a juvenile detention facility pending a detention hearing,
7 which ~~shall~~must be held as provided by these rules. When any peace officer makes an
8 arrest of a minor with a warrant, the minor ~~shall~~must be taken to the place designated on
9 the warrant. If an information has not been filed, one ~~shall~~must be filed without delay in
10 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~~must without unnecessary delay be returned to the county where the crime
13 was committed and ~~shall~~must be taken before a judge of the juvenile court.

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

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

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

19 (3) of the right to retain counsel or have counsel appointed by the court;

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

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

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

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

28 (f) The minor may not be called on to enter a plea. During the initial appearance, the
29 minor shall will be advised of the right to a preliminary examination hearing. If the minor
30 waives the right to a preliminary examination hearing the court shall will proceed in
31 accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code
32 section 80-6-504(3).

33 (g) If the minor does not waive a preliminary examination hearing, the court shall will
34 schedule the preliminary examination hearing. ~~The time periods of this rule may be~~
35 ~~extended by the court for good cause shown.~~ The preliminary examination hearing
36 shall will be held within a reasonable time, but not later than 10 ten days after the initial
37 appearance if the minor is in custody for the offense charged, ~~and the information is filed~~
38 ~~under Utah Code section 80-6-503.~~ The preliminary examination hearing shall will be held
39 within a reasonable time, but not later than 30 days after the initial appearance if:

40 ~~(1) the minor is in custody for the offense charged and the information is filed~~
41 ~~under Utah Code section 80-6-503; or~~

42 ~~(2) the minor is not in custody. The time periods of this rule may be extended by~~
43 ~~the court for good cause shown.~~

44 (h) ~~If a grand jury indicts a minor for a qualifying offense listed in Utah Code section 80-~~
45 ~~6-503, the court will proceed in accordance with Utah Code section 80-6-504(11). A~~
46 ~~preliminary examination may not be held if the minor is indicted. If the indictment is~~
47 ~~filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule~~
48 ~~23A to hear evidence regarding the factors contained in Utah Code section 80-6-503.~~

49 (i) A preliminary examination hearing shall will be held under the rules and laws
50 applicable to criminal cases tried before a court. The state has the burden of proof and
51 shall will proceed first with its case. At the conclusion of the state's case, the minor may

52 testify under oath, call witnesses, and present evidence. The minor may cross-examine
53 adverse witnesses.

54 (j) If from the evidence the court finds probable cause under Utah Code section 80-6-
55 ~~504(2)(a) to believe that the crime charged has been committed, that the minor has~~
56 ~~committed it, and the information is filed under Utah Code section 80-6-503~~, the court
57 ~~shall~~will proceed in accordance with Rule 23A to hear evidence regarding the factors
58 contained in Utah Code section 80-6-504~~(2)~~(3).

59 (k) The finding of probable cause may be based on hearsay in whole or in part, but may
60 not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the
61 Utah Rules of Evidence. Objections to evidence on the ground that it was acquired by
62 unlawful means are not properly raised at the preliminary ~~examination~~hearing.

63 (l) If the court does not find probable cause to believe that the crime charged has been
64 committed or that the minor committed it, the court ~~shall~~will dismiss the information and
65 discharge the minor. The court may enter findings of fact, conclusions of law, and an
66 order of dismissal. The dismissal and discharge do not preclude the state from instituting
67 a subsequent prosecution for the same offense.

68 (m) At a preliminary ~~examination~~hearing, upon request of either party, and subject to
69 Title 77, Chapter 38, Rights of Crime Victims Act, the court may:

70 (1) exclude witnesses from the courtroom;

71 (2) require witnesses not to converse with each other until the preliminary
72 ~~examination~~hearing is concluded; and

73 (3) exclude spectators from the courtroom.