

**JOINT RESOLUTION AMENDING RULES OF CRIMINAL
PROCEDURE ON PRELIMINARY EXAMINATIONS**

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This resolution amends the Utah Rules of Criminal Procedure, Rule 7B, regarding preliminary examinations.

Highlighted Provisions:

This resolution:

- ▶ amends the Utah Rules of Criminal Procedure, Rule 7B, regarding preliminary examinations to address the immunity from prosecution for the justifiable use of force in 2021 General Session, House Bill 227; and
- ▶ makes technical and conforming changes.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule 7B, Utah Rules of Criminal Procedure

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



28 all members of both houses of the Legislature:

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

30 **Rule 7B. Preliminary examinations.**

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

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

41 **(c) If no probable cause.** If the magistrate does not find probable cause to believe the
42 crime charged has been committed or the defendant committed [it] the crime, or the state has
43 not met the state's burden of proof under Utah Code Section 76-2-410, the magistrate must
44 dismiss the information and discharge the defendant. The magistrate may enter findings of fact,
45 conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the
46 state from instituting a subsequent prosecution for the same offense.

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

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

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

55 Section 2. **Effective date.**

56 This resolution takes effect upon approval by a constitutional two-thirds vote of all
57 members elected to each house.