

**Senator Todd D. Weiler** proposes the following substitute bill:

**CRIMINAL PROSECUTION MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses criminal prosecutions.

**Highlighted Provisions:**

This bill:

▶ addresses a prosecuting attorney's failure to comply with Rule 16 of the Utah Rules of Criminal Procedure;

▶ addresses written statements submitted as reliable hearsay evidence at preliminary hearings;

▶ requires the Administrative Office of the Courts to collect data in regards to preliminary hearings;

▶ requires the State Commission on Criminal and Juvenile Justice to include preliminary hearing data gathered by the Administrative Office of the Courts in the annual report for the State Commission on Criminal and Juvenile Justice; and

▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **77-1-7**, as enacted by Laws of Utah 1990, Chapter 7

29 **78A-2-109.5**, as enacted by Laws of Utah 2020, Chapter 200

30 ENACTS:

31 **77-1-8**, Utah Code Annotated 1953



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **77-1-7** is amended to read:

35 **77-1-7. Dismissal for failure to comply with evidence requirements -- Dismissal**  
36 **without trial -- Custody or discharge of defendant.**

37 (1) (a) As used in this Subsection (1), "evidence" means any information, material, or  
38 evidence that is required to be disclosed by the prosecuting attorney under Rule 16 of the Utah  
39 Rules of Criminal Procedure.

40 (b) If a prosecuting attorney fails to provide evidence to the defendant within the time  
41 period required by Rule 16 of the Utah Rules of Criminal Procedure, the court shall dismiss the  
42 information or indictment without prejudice.

43 ~~[(1)]~~ ~~(2)~~ ~~[(a) Further]~~ A prosecution for an offense is not barred if the court dismisses  
44 an information or indictment based on the ground:

45 ~~[(i)]~~ (a) there was unreasonable delay;

46 ~~[(ii)]~~ (b) the court is without jurisdiction;

47 ~~[(iii)]~~ (c) the offense was not properly alleged in the information or indictment; or

48 ~~[(iv)]~~ (d) there was a defect in the impaneling or the proceedings relating to the grand  
49 jury.

50 ~~[(b)]~~ (3) The court may make orders regarding custody of the defendant pending the  
51 filing of new charges as the interest of justice may require. Otherwise, the defendant shall be  
52 discharged and bail exonerated.

53 ~~[(2)]~~ (4) An order of dismissal based upon unconstitutional delay in bringing the  
54 defendant to trial or upon the statute of limitations is a bar to any other prosecution for the  
55 offense charged.

56 Section 2. Section **77-1-8** is enacted to read:

57 77-1-8. Written statements as evidence at a preliminary hearing.

58 (1) As used in this section:

59 (a) "Prosecuting agency" means the office of the prosecuting attorney, including the  
60 prosecuting attorney and any staff for the office.

61 (b) "Reliable hearsay evidence" means evidence defined as reliable hearsay under Rule  
62 1102 of the Utah Rules of Evidence.

63 (c) "Witness" means any individual who by reason of having relevant information is  
64 called, or is likely to be called, to testify at trial.

65 (2) If a prosecuting attorney seeks to admit a written statement of a witness as reliable  
66 hearsay evidence at a preliminary hearing, the prosecuting agency may not direct, instruct,  
67 guide, influence, or suggest language to the witness in the drafting or completion of the written  
68 statement.

69 Section 3. Section **78A-2-109.5** is amended to read:

70 **78A-2-109.5. Court data collection and reporting.**

71 (1) As used in this section, "commission" means the Commission on Criminal and  
72 Juvenile Justice created in Section [63M-7-201](#).

73 (2) The Administrative Office of the Courts shall [~~compile and provide~~] submit the  
74 following information to the commission for each criminal case filed with the court:

75 (a) case number;

76 (b) the defendant's:

77 (i) full name;

78 (ii) offense tracking number; and

79 (iii) date of birth;

80 (c) charges filed;

81 (d) initial appearance date;

82 (e) bail amount set by the court, if any;

83 (f) whether the defendant was represented by a public defender, private counsel, or pro  
84 se; and

85 (g) final disposition of the charges.

86 [~~(3) The information shall be submitted~~]

87 (3) (a) The Administrative Office of the Courts shall submit the information described

88 in Subsection (2) to the commission on the 15th day of July and January of each year for the  
89 previous six-month period ending the last day of June and December of each year in the form  
90 and manner selected by the commission.

91 (b) If the last day of the month is a Saturday, Sunday, or state holiday, [~~the information~~  
92 shall be submitted] the Administrative Office of the Courts shall submit the information  
93 described in Subsection (2) to the commission on the next working day.

94 (4) Before July 1 of each year, the Administrative Office of the Courts shall submit the  
95 following data on cases involving individuals charged with class A misdemeanors and felonies,  
96 broken down by judicial district, to the commission for each preceding calendar year:

97 (a) the number of cases in which a preliminary hearing is set and placed on the court  
98 calendar;

99 (b) the median and range of the number of times that a preliminary hearing is continued  
100 in cases in which a preliminary hearing is set and placed on the court calendar;

101 (c) the number of cases in which only written statements from witnesses are submitted  
102 as probable cause at the preliminary hearing;

103 (d) the number of cases in which written statements and witness testimony are  
104 submitted as probable cause at the preliminary hearing;

105 (e) the number of cases in which only witness testimony is submitted as probable cause  
106 at the preliminary hearing; and

107 (f) the number of cases in which a preliminary hearing is held and the defendant is  
108 bound over for trial.

109 (5) The commission shall include the data collected under Subsection (4) in the  
110 commission's annual report described in Section [63M-7-205](#).