

**IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE**

**IN RE:       AMENDMENTS TO TENNESSEE  
              RULES OF CRIMINAL PROCEDURE**

**Filed: January 8, 2008**

**ORDER**

The Court adopts the attached amendment effective July 1, 2008, subject to approval by resolutions of the General Assembly. The rule amended is as follows:

RULE 5.1     PRELIMINARY EXAMINATION.

FOR THE COURT:

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WILLIAM M. BARKER  
CHIEF JUSTICE

TENNESSEE RULES OF CRIMINAL PROCEDURE

RULE 5.1

PRELIMINARY EXAMINATION

[Add this language at the end of (a)(3):]

Where the recording is no longer available or is substantially inaudible, the trial court shall order a new preliminary hearing upon motion of the defendant filed not more than 60 days following arraignment. The indictment shall not be dismissed while the new preliminary hearing is pending. If the magistrate conducting the new preliminary hearing determines that probable cause does not exist, the magistrate shall certify such finding to the trial court and the trial court shall then dismiss the indictment. The discharge of the defendant by the dismissal of the indictment in such circumstances does not preclude the state from instituting a subsequent prosecution for the same offense.

[Add this language at the end of (c):]

The recording of the preliminary hearing shall be made available to the defendant in the event the defendant is subsequently prosecuted for the same offense by indictment or presentment. The remedy for the failure to preserve the recording in this circumstance shall be as set forth in subsection (a)(3).

2008 Advisory Commission Comment

The amendments provide remedies when the recording of a preliminary hearing is lost or damaged.