

Effective 5/13/2014

Superseded 5/12/2015

78A-6-703 Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

- (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.
- (2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:
 - (a) probable cause to believe that a crime was committed and that the defendant committed it; and
 - (b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.
- (3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:
 - (a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;
 - (b) whether the alleged offense was committed by the minor under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor were adult and the offense was committed:
 - (i) in concert with two or more persons;
 - (ii) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or
 - (iii) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802;
 - (c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
 - (d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;
 - (e) the maturity of the minor as determined by considerations of the minor's home, environment, emotional attitude, and pattern of living;
 - (f) the record and previous history of the minor;
 - (g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;
 - (h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;
 - (i) whether the minor used a firearm in the commission of an offense; and
 - (j) whether the minor possessed a dangerous weapon on or about school premises as provided in Section 76-10-505.5.
- (4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.
- (5)
 - (a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.
 - (b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

- (6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).
- (7) At the time the minor is bound over to the district court, the juvenile court shall make the initial determination on where the minor shall be held.
- (8) The juvenile court shall consider the following when determining where the minor will be held until the time of trial:
 - (a) the age of the minor;
 - (b) the nature, seriousness, and circumstances of the alleged offense;
 - (c) the minor's history of prior criminal acts;
 - (d) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;
 - (e) whether the minor's placement in a juvenile detention facility will negatively impact the functioning of the facility by compromising the goals of the facility to maintain a safe, positive, and secure environment for all minors within the facility;
 - (f) the relative ability of the facility to meet the needs of the minor and protect the public;
 - (g) whether the minor presents an imminent risk of harm to the minor or others within the facility;
 - (h) the physical maturity of the minor;
 - (i) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and
 - (j) any other factors the court considers relevant.
- (9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.
- (10) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.
- (11) If the minor ordered to a juvenile detention facility under Subsection (8) attains the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released by the district court judge, or if convicted, until sentencing.
- (12) A minor 16 years of age or older whose conduct or condition endangers the safety or welfare of others in the juvenile detention facility may, by court order that specifies the reasons, be detained in another place of confinement considered appropriate by the court, including jail or other place of confinement for adults.
- (13) The district court may reconsider the decision on where the minor shall be held pursuant to Subsection (7).
- (14) If the court finds the state has met its burden under Subsection (2), the court may enter an order:
 - (a) certifying that finding; and
 - (b) directing that the minor be held for criminal proceedings in the district court.
- (15) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2) (b).
- (16) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.
- (17) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

- (18) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.
- (19) When a minor has been certified to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against the minor, except as provided in Subsection (21).
- (20) If a minor enters a plea to, or is found guilty of any of the charges filed or on any other offense arising out of the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.
- (21) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice Services regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.