

1                                   **SERIOUS YOUTH OFFENDER AMENDMENTS**

2   2002 GENERAL SESSION

3   STATE OF UTAH

4                                   **Sponsor: Lyle W. Hillyard**

5 **This act modifies the Judicial Code by providing that certain offenses committed by a minor**  
6 **within a secure facility are not subject to district court jurisdiction, and clarifying when**  
7 **jurisdiction over a minor is retained under the Serious Youth Offender provisions.   This act**  
7a **takes effect immediately.  **

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10           **78-3a-601**, as last amended by Chapter 78, Laws of Utah 1998

11           **78-3a-602**, as enacted by Chapter 1 and last amended by Chapter 239, Laws of Utah 1996

12           **78-3a-603**, as last amended by Chapter 365, Laws of Utah 1997

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

14           Section 1. Section **78-3a-601** is amended to read:

15           **78-3a-601. Jurisdiction of district court.**

16           (1) The district court shall have exclusive original jurisdiction over all persons 16 years  
17 of age or older charged by information or indictment with:

18           (a) an offense which would be murder or aggravated murder if committed by an adult; or

19           (b) an offense which would be a felony if committed by an adult if the minor has been  
20 previously committed to a secure facility as defined in Section 62A-7-101. This Subsection (1)(b)  
21 shall not apply if the offense is committed in a secure facility.

22           (2) When the district court has exclusive original jurisdiction over a minor under this  
23 section, it also has exclusive original jurisdiction over the minor regarding all offenses joined with  
24 the qualifying offense, and any other offenses, including misdemeanors, arising from the same  
25 criminal episode. The district court is not divested of jurisdiction by virtue of the fact that the  
26 minor is allowed to enter a plea to, or is found guilty of, a lesser or joined offense.

27           (3) (a) Any felony, misdemeanor, or infraction committed after the offense over which the



28 district court takes jurisdiction under [~~Subsections~~] Subsection (1) or (2) shall be tried against the  
29 defendant as an adult in the district court or justice court having jurisdiction.

30 (b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not  
31 guilty, or a dismissal of the charge in the district court, the juvenile court under Section 78-3a-104  
32 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised  
33 over the minor.

34 Section 2. Section **78-3a-602** is amended to read:

35 **78-3a-602. Serious youth offender -- Procedure.**

36 (1) Any action filed by a county attorney, district attorney, or attorney general charging a  
37 minor 16 years of age or older with a felony shall be by criminal information and filed in the  
38 juvenile court if the information charges any of the following offenses:

39 (a) any felony violation of:

40 (i) Section 76-6-103, aggravated arson;

41 (ii) Subsection 76-5-103(1)(a), aggravated assault, involving intentionally causing serious  
42 bodily injury to another;

43 (iii) Section 76-5-302, aggravated kidnaping;

44 (iv) Section 76-6-203, aggravated burglary;

45 (v) Section 76-6-302, aggravated robbery;

46 (vi) Section 76-5-405, aggravated sexual assault;

47 (vii) Section 76-10-508, discharge of a firearm from a vehicle;

48 (viii) Section 76-5-202, attempted aggravated murder; or

49 (ix) Section 76-5-203, attempted murder; or

50 (b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous  
51 weapon which would be a felony if committed by an adult, and the minor has been previously  
52 adjudicated or convicted of an offense involving the use of a dangerous weapon which also would  
53 have been a felony if committed by an adult.

54 (2) All proceedings before the juvenile court related to charges filed under Subsection (1)  
55 shall be conducted in conformity with the rules established by the Utah Supreme Court.

56 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the state  
57 shall have the burden of going forward with its case and the burden of proof to establish probable  
58 cause to believe that one of the crimes listed in Subsection (1) has been committed and that the

59 defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional  
60 burden of proving by a preponderance of the evidence that the defendant has previously been  
61 adjudicated or convicted of an offense involving the use of a dangerous weapon.

62 (b) If the juvenile court judge finds the state has met its burden under this Subsection (3),  
63 the court shall order that the defendant be bound over and held to answer in the district court in  
64 the same manner as an adult unless the juvenile court judge finds that all of the following  
65 conditions exist:

66 (i) the minor has not been previously adjudicated delinquent for an offense involving the  
67 use of a dangerous weapon which would be a felony if committed by an adult;

68 (ii) that if the offense was committed with one or more other persons, the minor appears  
69 to have a lesser degree of culpability than the codefendants; and

70 (iii) that the minor's role in the offense was not committed in a violent, aggressive, or  
71 premeditated manner.

72 (c) Once the state has met its burden under this Subsection (3) as to a showing of probable  
73 cause, the defendant shall have the burden of going forward and presenting evidence as to the  
74 existence of the above conditions.

75 (d) If the juvenile court judge finds by clear and convincing evidence that all the above  
76 conditions are satisfied, the court shall so state in its findings and order the minor held for trial as  
77 a minor and shall proceed upon the information as though it were a juvenile petition.

78 (4) If the juvenile court judge finds that an offense has been committed, but that the state  
79 has not met its burden of proving the other criteria needed to bind the defendant over under  
80 Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall  
81 proceed upon the information as though it were a juvenile petition.

82 (5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The  
83 defendant shall have the same right to bail as any other criminal defendant and shall be advised  
84 of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with  
85 Title 77, Chapter 20, Bail.

86 (6) If an indictment is returned by a grand jury charging a violation under this section, the  
87 preliminary examination held by the juvenile court judge need not include a finding of probable  
88 cause that the crime alleged in the indictment was committed and that the defendant committed  
89 it, but the juvenile court shall proceed in accordance with this section regarding the additional

90 considerations listed in Subsection (3)(b).

91 (7) When a defendant is charged with multiple criminal offenses in the same information  
92 or indictment and is bound over to answer in the district court for one or more charges under this  
93 section, other offenses arising from the same criminal episode and any subsequent misdemeanors  
94 or felonies charged against him shall be considered together with those charges, and where the  
95 court finds probable cause to believe that those crimes have been committed and that the defendant  
96 committed them, the defendant shall also be bound over to the district court to answer for those  
97 charges.

98 (8) A minor who is bound over to answer as an adult in the district court under this section  
99 or on whom an indictment has been returned by a grand jury, is not entitled to a preliminary  
100 examination in the district court.

101 (9) Allegations contained in the indictment or information that the defendant has  
102 previously been adjudicated or convicted of an offense involving the use of a dangerous weapon,  
103 or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven  
104 at trial in the district court.

105 (10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other  
106 offense arising from the same criminal episode, the district court retains jurisdiction over the minor  
107 for all purposes, including sentencing.

108 [~~(10)~~] (11) The juvenile court under Section 78-3a-104 and the Division of Youth  
109 Corrections regain jurisdiction and any authority previously exercised over the juvenile when there  
110 is an acquittal, a finding of not guilty, or dismissal of ~~the~~ all charges in the district court.

111 Section 3. Section **78-3a-603** is amended to read:

112 **78-3a-603. Certification hearings -- Juvenile court to hold preliminary hearing --**  
113 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

114 (1) If a criminal information filed in accordance with Subsection 78-3a-502(3) alleges the  
115 commission of an act which would constitute a felony if committed by an adult, the juvenile court  
116 shall conduct a preliminary hearing.

117 (2) At the preliminary hearing the state shall have the burden of going forward with its  
118 case and the burden of establishing:

119 (a) probable cause to believe that a crime was committed and that the defendant committed  
120 it; and

121 (b) by a preponderance of the evidence, that it would be contrary to the best interests of  
122 the minor or of the public for the juvenile court to retain jurisdiction.

123 (3) In considering whether or not it would be contrary to the best interests of the minor or  
124 of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may  
125 base its decision on, the finding of one or more of the following factors:

126 (a) the seriousness of the offense and whether the protection of the community requires  
127 isolation of the minor beyond that afforded by juvenile facilities;

128 (b) whether the alleged offense was committed by the minor in concert with two or more  
129 persons under circumstances which would subject the minor to enhanced penalties under Section  
130 76-3-203.1 were he an adult;

131 (c) whether the alleged offense was committed in an aggressive, violent, premeditated, or  
132 willful manner;

133 (d) whether the alleged offense was against persons or property, greater weight being given  
134 to offenses against persons, except as provided in Section 76-8-418;

135 (e) the maturity of the minor as determined by considerations of his home, environment,  
136 emotional attitude, and pattern of living;

137 (f) the record and previous history of the minor;

138 (g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile  
139 court;

140 (h) the desirability of trial and disposition of the entire offense in one court when the  
141 minor's associates in the alleged offense are adults who will be charged with a crime in the district  
142 court;

143 (i) whether the minor used a firearm in the commission of an offense; and

144 (j) whether the minor possessed a dangerous weapon on or about school premises as  
145 provided in Section 76-10-505.5.

146 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is  
147 discretionary with the court.

148 (5) (a) Written reports and other materials relating to the minor's mental, physical,  
149 educational, and social history may be considered by the court.

150 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the  
151 court shall require the person or agency preparing the report and other material to appear and be

152 subject to both direct and cross-examination.

153 (6) At the conclusion of the state's case, the minor may testify under oath, call witnesses,  
154 cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

155 (7) If the court finds the state has met its burden under Subsection (2), the court may enter  
156 an order:

157 (a) certifying that finding; and

158 (b) directing that the minor be held for criminal proceedings in the district court.

159 (8) If an indictment is returned by a grand jury, the preliminary examination held by the  
160 juvenile court need not include a finding of probable cause, but the juvenile court shall proceed  
161 in accordance with this section regarding the additional consideration referred to in Subsection  
162 (2)(b).

163 (9) The provisions of Section 78-3a-116, Section 78-3a-913, and other provisions relating  
164 to proceedings in juvenile cases are applicable to the hearing held under this section to the extent  
165 they are pertinent.

166 (10) A minor who has been directed to be held for criminal proceedings in the district  
167 court is not entitled to a preliminary examination in the district court.

168 (11) A minor who has been certified for trial in the district court shall have the same right  
169 to bail as any other criminal defendant and shall be advised of that right by the juvenile court  
170 judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

171 (12) When a minor has been certified to the district court under this section or when a  
172 criminal information or indictment is filed in a court of competent jurisdiction before a committing  
173 magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of  
174 the Division of Youth Corrections and the jurisdiction of the juvenile court over the minor is  
175 terminated regarding that offense, any other offenses arising from the same criminal episode, and  
176 any subsequent misdemeanors or felonies charged against him, except as provided in Subsection  
177 (14).

178 (13) ~~[A minor may be convicted under this section on]~~ If a minor enters a plea to, or is  
179 found guilty of any of the charges filed or on any other offense arising out of the same criminal  
180 episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.

181 (14) The juvenile court under Section 78-3a-104 and the Division of Youth Corrections  
182 regain jurisdiction and any authority previously exercised over the minor when there is an

183 acquittal, a finding of not guilty, or dismissal of [~~the~~] all charges in the district court.

183a **h SECTION 4. EFFECTIVE DATE.**

183b **IF APPROVED BY TWO-THIRDS OF ALL THE MEMBERS ELECTED TO EACH HOUSE, THIS**

183c **ACT TAKES EFFECT UPON APPROVAL BY THE GOVERNOR, OR THE DAY FOLLOWING THE**

183d **CONSTITUTIONAL TIME LIMIT OF UTAH CONSTITUTION ARTICLE VII, SECTION 8, WITHOUT THE**

183e **GOVERNOR'S SIGNATURE, OR IN THE CASE OF A VETO, THE DATE OF VETO OVERRIDE.** **h**

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### **Legislative Review Note**

**as of 11-15-01 1:26 PM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

### **Committee Note**

The Judiciary Interim Committee recommended this bill.