

1 **JUVENILE OFFENDER AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Aaron Osmond**

5 House Sponsor: V. Lowry Snow

6

LONG TITLE

7 **General Description:**

8 This bill makes changes to statutes regarding minors and courts.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ adds a specific list of previous offenses and conditions to the statute that allows for
- 12 the direct filing of charges in district court;
- 13 ▶ adds a new option to the serious youth offender statute;
- 14 ▶ creates guidelines for housing a minor convicted in district court in a juvenile secure
- 15 facility;
- 16 ▶ requires that the court determine that a minor is knowingly and intentionally
- 17 waiving counsel; and
- 18 ▶ sets a presumption that juveniles are not to be shackled when appearing in court
- 19 unless ordered by the court.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 **⚡→ [None] This bill provides a special effective date. ←⚡**

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **62A-7-201**, as last amended by Laws of Utah 2010, Chapter 38



90 immobilize a juvenile.

91 (2) ~~§~~→ **The Judicial Council shall adopt rules that address the circumstances under**
 91a **which a juvenile may be restrained while appearing in court. The Judicial Council shall ensure**
 91b **that the rules consider both the welfare of the juvenile and the safety of the court.** ~~←§~~ A
 91c juvenile may not be restrained during a court proceeding unless restraint is
 92 ~~§~~→ **[ordered] authorized** ~~←§~~ by ~~§~~→ **[the court] rules of the Judicial Council** ~~←§~~ .

93 Section 3. Section **78A-6-701** is amended to read:

94 **78A-6-701. Jurisdiction of district court.**

95 (1) The district court has exclusive original jurisdiction over all persons 16 years of age
 96 or older charged with:

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

98 [~~or~~]

99 (b) [~~an offense which would be a felony if committed by an adult~~] if the minor has
 100 been previously committed to a secure facility as defined in Section 62A-7-101[~~. This~~
 101 ~~Subsection (1)(b) shall not apply if the offense is committed in a secure facility.~~], a felony
 102 violation of:

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

104 (ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

105 (iii) Section 76-5-302, aggravated kidnapping;

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

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

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

109 (vii) Section 76-10-508.1, felony discharge of a firearm;

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

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

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

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

400 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

401 Section 6. Section **78A-6-705** is enacted to read:

402 **78A-6-705. Youth prison commitment.**

403 (1) Before sentencing a minor who is under the jurisdiction of the district court under
 404 Section 78A-6-701, 78A-6-702, or 78A-6-703, to prison the court shall request a report from
 405 the Division of Juvenile Justice Services regarding the potential risk to other juveniles if the
 406 minor were to be committed to the custody of the division. The division shall submit the
 407 requested report to the court as part of the pre-sentence report or as a separate report.

408 (2) If, after receiving the report described in Subsection (1), the court determines that
 409 probation is not appropriate and commitment to prison is an appropriate sentence, the court
 410 shall order the minor committed to prison and the minor shall be provisionally housed in a
 411 secure facility operated by the Division of Juvenile Justice Services until the minor reaches 18
 412 years of age, unless released earlier from incarceration by the Board of Pardons and Parole.

413 (3) The court may order the minor committed directly to the custody of the Department
 414 of Corrections if the court finds that:

415 (a) the minor would present an unreasonable risk to other ~~Ĥ→ s~~ [juveniles] while ~~←Ĥ~~
 415a in the division's
 416 custody;

417 (b) the minor has previously been committed to a prison for adult offenders; or

418 (c) housing the minor in a secure facility operated by the Division of Juvenile Justice
 419 Services would be contrary to the interests of justice.

420 (4) The Division of Juvenile Justice Services shall adopt procedures by rule, pursuant
 421 to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the transfer of a
 422 minor provisionally housed in a division facility under Subsection (2) to the custody of the
 423 Department of Corrections. If, in accordance with those rules, the division determines that
 424 housing the minor in a division facility presents an unreasonable risk to others or that it is not
 425 in the best interest of the minor, it shall transfer the physical custody of the minor to the
 426 Department of Corrections.

427 (5) When a minor is committed to prison but ordered by a court to be housed in a
 428 Division of Juvenile Justice Services facility under this section, the court and the division shall
 429 immediately notify the Board of Pardons and Parole so that the minor may be scheduled for a
 430 hearing according to board procedures. If a minor who is provisionally housed in a division

462 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in
 463 accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an
 464 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
 465 court under Section 78A-6-902 or as otherwise provided by law.

466 (e) In any action initiated by the state or a political subdivision of the state under Part
 467 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
 468 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be
 469 informed that the minor ~~[may]~~ has the right to be represented by counsel at every stage of the
 470 proceedings ~~[and that if]~~.

471 ~~Ĥ→ [(i) A minor charged with a felony Ĥ→ [or class A misdemeanor] ←Ĥ may not waive the~~
 471a ~~right to~~
 472 ~~counsel.~~

473 ~~—— (ii) In all other situations, the court shall Ĥ→, taking into consideration the minor's~~
 473a ~~circumstances, ←Ĥ determine that the minor Ĥ→ [knows] is knowingly and voluntarily~~
 473b ~~waiving, ←Ĥ and~~

474 ~~understands the consequences of waiving Ĥ→, ←Ĥ the right to counsel before allowing the minor~~
 474a ~~to~~

475 ~~waive the right to counsel.] (i) In cases where a minor is facing a felony level offense, the court~~
 475a ~~shall appoint counsel, who shall appear until counsel is retained on the minor's behalf. The~~
 475b ~~minor may not waive counsel unless the minor has had a meaningful opportunity to consult~~
 475c ~~with a defense attorney. The court shall make findings on the record, taking into consideration~~
 475d ~~the minor's unique circumstances and attributes, that the waiver is knowing and voluntary~~
 475e ~~and the minor understands the consequences of waiving the right to counsel.~~

475f ~~(ii) In all other situations the right to counsel may not be waived by a minor unless~~
 475g ~~there has been a finding on the record, taking into consideration the minor's unique~~
 475h ~~circumstances and attributes, that the waiver is knowing and voluntary, and the minor~~
 475i ~~understands the consequences of waiving the right to counsel. ←Ĥ~~

476 ~~(iii) If the minor is found to be indigent, counsel shall be appointed by the court to~~
 477 ~~represent the minor in all proceedings directly related to the petition or motion filed by the state~~
 478 ~~or a political subdivision of the state, subject to the provisions of this section.~~

479 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance
 480 with the process and procedure defined in Section 77-32-202. The court shall take into account
 481 the income and financial ability of the parent or legal guardian to retain counsel in determining
 482 the indigency of the minor.

483 (g) The cost of appointed counsel for a party found to be indigent, including the cost of
 484 counsel and expense of the first appeal, shall be paid by the county in which the trial court
 485 proceedings are held. Counties may levy and collect taxes for these purposes.

493 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
494 county for the cost of appointed counsel.

495 (5) The state, or an agency of the state, may not be ordered to reimburse the county for
496 expenses incurred under Subsection (1)(g).

496a **Ŝ→ Section 8. Effective date.**

496b **Section 78A-6-122 takes effect October 1, 2015. ←Ŝ**

Legislative Review Note
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Office of Legislative Research and General Counsel