

**Effective 5/12/2015**

**78A-6-702 Serious youth offender -- Procedure.**

- (1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony may be by criminal information and filed in the juvenile court if the minor was a principal actor in the offense and the information charges any of the following offenses:
  - (a) any felony violation of:
    - (i) Section 76-6-103, aggravated arson;
    - (ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
    - (iii) Section 76-5-302, aggravated kidnapping;
    - (iv) Section 76-6-203, aggravated burglary;
    - (v) Section 76-6-302, aggravated robbery;
    - (vi) Section 76-5-405, aggravated sexual assault;
    - (vii) Section 76-10-508.1, felony discharge of a firearm;
    - (viii) Section 76-5-202, attempted aggravated murder; or
    - (ix) Section 76-5-203, attempted murder; or
  - (b) an offense other than those listed in Subsection (1)(a) involving the use of a dangerous weapon, which would be a felony if committed by an adult, and the minor has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon, which also would have been a felony if committed by an adult.
- (2) All proceedings before the juvenile court related to charges filed under Subsection (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.
- (3)
  - (a) If the information alleges the violation of a felony listed in Subsection (1), the state shall have the burden of going forward with its case and the burden of proof to establish probable cause to believe that one of the crimes listed in Subsection (1) has been committed and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have the additional burden of proving by a preponderance of the evidence that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon.
  - (b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the court shall order that the defendant be bound over and held to answer in the district court in the same manner as an adult unless the juvenile court judge finds that it would be contrary to the best interest of the minor and to the public to bind over the defendant to the jurisdiction of the district court.
  - (c) In making the bind over determination in Subsection (3)(b), the judge shall consider only the following:
    - (i) whether the minor has been previously adjudicated delinquent for an offense involving the use of a dangerous weapon which would be a felony if committed by an adult;
    - (ii) if the offense was committed with one or more other persons, whether the minor appears to have a greater or lesser degree of culpability than the codefendants;
    - (iii) the extent to which the minor's role in the offense was committed in a violent, aggressive, or premeditated manner;
    - (iv) the number and nature of the minor's prior adjudications in the juvenile court; and
    - (v) whether public safety and the interests of the minor are better served by adjudicating the minor in the juvenile court or in the district court, including whether the resources of the adult system or juvenile system are more likely to assist in rehabilitating the minor and reducing the threat which the minor presents to the public.

- (d) Once the state has met its burden under Subsection (3)(a) as to a showing of probable cause, the defendant shall have the burden of going forward and presenting evidence that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court.
- (e) If the juvenile court judge finds by a preponderance of evidence that it would be contrary to the best interest of the minor and the best interests of the public to bind the defendant over to the jurisdiction of the district court, the court shall so state in its findings and order the minor held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.
- (4) If the juvenile court judge finds that an offense has been committed, but that the state has not met its burden of proving the other criteria needed to bind the defendant over under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor and shall proceed upon the information as though it were a juvenile petition.
- (5) At the time of a bind over to district court a criminal warrant of arrest shall issue. The defendant 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.
- (6) 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.
- (7) The juvenile court shall consider the following when determining where the minor shall 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.
- (8) If a minor is ordered to a juvenile detention facility under Subsection (7), the minor shall remain in the facility until released by a district court judge, or if convicted, until sentencing.
- (9) A minor held in a juvenile detention facility under this section shall have the same right to bail as any other criminal defendant.
- (10) If the minor ordered to a juvenile detention facility under Subsection (7) 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.
- (11) 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 pretrial confinement considered appropriate by the court, including jail or other place of confinement for adults.

- (12) The district court may reconsider the decision on where the minor will be held pursuant to Subsection (6).
- (13) If an indictment is returned by a grand jury charging a violation under this section, the preliminary examination held by the juvenile court judge need not include a finding of probable cause that the crime alleged in the indictment was committed and that the defendant committed it, but the juvenile court shall proceed in accordance with this section regarding the additional considerations listed in Subsection (3)(b).
- (14) When a defendant is charged with multiple criminal offenses in the same information or indictment and is bound over to answer in the district court for one or more charges under this section, other offenses arising from the same criminal episode and any subsequent misdemeanors or felonies charged against him shall be considered together with those charges, and where the court finds probable cause to believe that those crimes have been committed and that the defendant committed them, the defendant shall also be bound over to the district court to answer for those charges.
- (15) When a minor has been bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and 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 (19) or Section 78A-6-705.
- (16) A minor who is bound over to answer as an adult in the district court under this section or on whom an indictment has been returned by a grand jury is not entitled to a preliminary examination in the district court.
- (17) Allegations contained in the indictment or information that the defendant has previously been adjudicated or convicted of an offense involving the use of a dangerous weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need to be proven at trial in the district court.
- (18) If a minor enters a plea to, or is found guilty of, any of the charges filed or any other offense arising from the same criminal episode, the district court retains jurisdiction over the minor for all purposes, including sentencing.
- (19) 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.

Amended by Chapter 338, 2015 General Session