

SERIOUS YOUTH OFFENDER AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

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

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

AMENDS:

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

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

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

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

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

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

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

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

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

(3) (a) Any felony, misdemeanor, or infraction committed after the offense over which the district court takes jurisdiction under ~~[Subsections]~~ Subsection (1) or (2) shall be tried against the

defendant as an adult in the district court or justice court having jurisdiction.

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

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

78-3a-602. 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 shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

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

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

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

(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, discharge of a firearm from a vehicle;

(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 all of the following conditions exist:

(i) the minor has not 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) that if the offense was committed with one or more other persons, the minor appears to have a lesser degree of culpability than the codefendants; and

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

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

(d) If the juvenile court judge finds by clear and convincing evidence that all the above conditions are satisfied, 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) 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).

(7) 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.

(8) 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.

(9) 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.

(10) 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.

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

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

78-3a-603. 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 78-3a-502(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 in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(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 his 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) 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.

(8) 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).

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

(10) 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.

(11) 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.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of the Division of Youth Corrections 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 him, except as provided in Subsection (14).

(13) ~~[A minor may be convicted under this section on]~~ 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.

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

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.