

Senator Jon J. Greiner proposes the following substitute bill:

JUVENILE DETENTION AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jon J. Greiner

House Sponsor: Richard A. Greenwood

LONG TITLE

General Description:

This bill clarifies the jurisdiction of the district court and juvenile detention requirements.

Highlighted Provisions:

This bill:

- ▶ clarifies the detention requirement for minors charged in district court under certain circumstances; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

62A-7-201, as last amended by Laws of Utah 2008, Chapter 3

78A-6-113, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-116, as renumbered and amended by Laws of Utah 2008, Chapter 3

78A-6-601, as renumbered and amended by Laws of Utah 2008, Chapter 3



- 26 78A-6-602, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 27 78A-6-701, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 28 78A-6-702, as renumbered and amended by Laws of Utah 2008, Chapter 3
 - 29 78A-6-703, as renumbered and amended by Laws of Utah 2008, Chapter 3
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31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **62A-7-201** is amended to read:

33 **62A-7-201. Confinement -- Facilities -- Restrictions.**

34 (1) Children under 18 years of age, who are apprehended by any officer or brought
35 before any court for examination under any provision of state law, may not be confined in jails,
36 lockups, or cells used for persons 18 years of age or older who are charged with crime, or in
37 secure postadjudication correctional facilities operated by the division, except as provided [by]
38 in Subsection (2), other specific statute [and], or in conformance with standards approved by
39 the board.

40 (2) (a) Children charged [~~by information or indictment~~] with crimes under Section
41 78A-6-701, as a serious youth offender under Section 78A-6-702 and bound over to the
42 jurisdiction of the district court, or certified to stand trial as an adult pursuant to Section
43 78A-6-703 [~~may~~], if detained, shall be detained in a jail or other place of detention used for
44 adults.

45 (b) Children detained in adult facilities under Section 78A-6-702 or 78A-6-703 prior to
46 a hearing before a magistrate, or under Subsection 78A-6-113(3), may only be held in certified
47 juvenile detention accommodations in accordance with rules promulgated by the division.
48 Those rules shall include standards for acceptable sight and sound separation from adult
49 inmates. The division certifies facilities that are in compliance with the division's standards.
50 The provisions of this Subsection (2)(b) do not apply to juveniles held in an adult detention
51 facility in accordance with Subsection (2)(a).

52 (3) In areas of low density population, the division may, by rule, approve juvenile
53 holding accommodations within adult facilities that have acceptable sight and sound
54 separation. Those facilities shall be used only for short-term holding purposes, with a
55 maximum confinement of six hours, for children alleged to have committed an act which
56 would be a criminal offense if committed by an adult. Acceptable short-term holding purposes

57 are: identification, notification of juvenile court officials, processing, and allowance of
58 adequate time for evaluation of needs and circumstances regarding release or transfer to a
59 shelter or detention facility. The provisions of this Subsection (3) do not apply to juveniles
60 held in an adult detention facility in accordance with Subsection (2)(a).

61 (4) Children who are alleged to have committed an act which would be a criminal
62 offense if committed by an adult, may be detained in holding rooms in local law enforcement
63 agency facilities for a maximum of two hours, for identification or interrogation, or while
64 awaiting release to a parent or other responsible adult. Those rooms shall be certified by the
65 division, according to the division's rules. Those rules shall include provisions for constant
66 supervision and for sight and sound separation from adult inmates.

67 (5) Willful failure to comply with any of the provisions of this section is a class B
68 misdemeanor.

69 (6) (a) The division is responsible for the custody and detention of children under 18
70 years of age who require detention care prior to trial or examination, or while awaiting
71 assignment to a home or facility, as a dispositional placement under Subsection
72 78A-6-117(2)(f)(i) or 78A-6-1101(3)(a), and of youth offenders under Subsection
73 62A-7-504(8). The provisions of this Subsection (6)(a) do not apply to juveniles held in an
74 adult detention facility in accordance with Subsection (2)(a).

75 (b) The division shall provide standards for custody or detention under Subsections
76 (2)(b), (3), and (4), and shall determine and set standards for conditions of care and
77 confinement of children in detention facilities.

78 (c) All other custody or detention shall be provided by the division, or by contract with
79 a public or private agency willing to undertake temporary custody or detention upon agreed
80 terms, or in suitable premises distinct and separate from the general jails, lockups, or cells used
81 in law enforcement and corrections systems. The provisions of this Subsection (6)(c) do not
82 apply to juveniles held in an adult detention facility in accordance with Subsection (2)(a).

83 Section 2. Section **78A-6-113** is amended to read:

84 **78A-6-113. Placement of minor in detention or shelter facility -- Grounds --**
85 **Detention hearings -- Period of detention -- Notice -- Confinement for criminal**
86 **proceedings -- Bail laws inapplicable, exception.**

87 (1) (a) A minor may not be placed or kept in a secure detention facility pending court

88 proceedings unless it is unsafe for the public to leave the minor with the minor's parents,
89 guardian, or custodian and the minor is detainable based on guidelines promulgated by the
90 Division of Juvenile Justice Services.

91 (b) A child who must be taken from the child's home but who does not require physical
92 restriction shall be given temporary care in a shelter facility and may not be placed in a
93 detention facility.

94 (c) A child may not be placed or kept in a shelter facility pending court proceedings
95 unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

96 (2) After admission of a child to a detention facility pursuant to the guidelines
97 established by the Division of Juvenile Justice Services and immediate investigation by an
98 authorized officer of the court, the judge or the officer shall order the release of the child to the
99 child's parents, guardian, or custodian if it is found the child can be safely returned to their care,
100 either upon written promise to bring the child to the court at a time set or without restriction.

101 (a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility
102 within 24 hours after notification of release, the parent, guardian, or custodian is responsible
103 for the cost of care for the time the child remains in the facility.

104 (b) The facility shall determine the cost of care.

105 (c) Any money collected under this Subsection (2) shall be retained by the Division of
106 Juvenile Justice Services to recover the cost of care for the time the child remains in the
107 facility.

108 (3) (a) When a child is detained in a detention or shelter facility, the parents or
109 guardian shall be informed by the person in charge of the facility that they have the right to a
110 prompt hearing in court to determine whether the child is to be further detained or released.

111 (b) When a minor is detained in a detention facility, the minor shall be informed by the
112 person in charge of the facility that the minor has the right to a prompt hearing in court to
113 determine whether the minor is to be further detained or released.

114 (c) Detention hearings shall be held by the judge or by a commissioner.

115 (d) The court may, at any time, order the release of the minor, whether a detention
116 hearing is held or not.

117 (e) If a child is released, and the child remains in the facility, because the parents,
118 guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be

119 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

120 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a
121 detention hearing, excluding weekends and holidays, unless the court has entered an order for
122 continued detention.

123 (b) A child may not be held in a shelter facility longer than 48 hours prior to a shelter
124 hearing, excluding weekends and holidays, unless a court order for extended shelter has been
125 entered by the court after notice to all parties described in Section 78A-6-306.

126 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide
127 the court with all information received from the person who brought the minor to the detention
128 facility.

129 (d) If the court finds at a detention hearing that it is not safe to release the minor, the
130 judge or commissioner may order the minor to be held in the facility or be placed in another
131 appropriate facility, subject to further order of the court.

132 (e) (i) After a detention hearing has been held, only the court may release a minor from
133 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to
134 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued
135 detention is necessary.

136 (ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or
137 an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that
138 notice of its decision, including any disposition, order, or no contact orders, be provided to
139 designated persons in the appropriate local law enforcement agency and district superintendent
140 or the school or transferee school, if applicable, that the minor attends. The designated persons
141 may receive the information for purposes of the minor's supervision and student safety.

142 (iii) Any employee of the local law enforcement agency, school district, and the school
143 that the minor attends who discloses the court's order of probation is not:

144 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
145 provided in Section 63G-7-202; and

146 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
147 of Section 63G-2-801.

148 (5) A minor may not be held in a detention facility, following a dispositional order of
149 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for

150 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding
151 weekends and holidays. The period of detention may be extended by the court for one period
152 of seven calendar days if:

153 (a) the Division of Juvenile Justice Services or another agency responsible for
154 placement files a written petition with the court requesting the extension and setting forth good
155 cause; and

156 (b) the court enters a written finding that it is in the best interests of both the minor and
157 the community to extend the period of detention.

158 (6) The agency requesting an extension shall promptly notify the detention facility that
159 a written petition has been filed.

160 (7) The court shall promptly notify the detention facility regarding its initial disposition
161 and any ruling on a petition for an extension, whether granted or denied.

162 (8) (a) A child under 16 years of age may not be held in a jail, lockup, or other place
163 for adult detention except as provided by Section 62A-7-201 or unless certified as an adult
164 pursuant to Section 78A-6-703. The provisions of Section 62A-7-201 regarding confinement
165 facilities apply to this Subsection (8).

166 (b) A child 16 years of age or older whose conduct or condition endangers the safety or
167 welfare of others in the detention facility for children may, by court order that specifies the
168 reasons, be detained in another place of confinement considered appropriate by the court,
169 including a jail or other place of confinement for adults. However, a secure youth corrections
170 facility is not an appropriate place of confinement for detention purposes under this section.

171 (9) A sheriff, warden, or other official in charge of a jail or other facility for the
172 detention of adult offenders or persons charged with crime shall immediately notify the
173 juvenile court when a person who is or appears to be under 18 years of age is received at the
174 facility and shall make arrangements for the transfer of the person to a detention facility, unless
175 otherwise ordered by the juvenile court.

176 (10) This section does not apply to a minor who is brought to the adult facility under
177 charges pursuant to Section [~~78A-6-702~~] 78A-6-701 or by order of the juvenile court to be held
178 for criminal proceedings in the district court under Section 78A-6-702 or 78A-6-703.

179 (11) A minor held for criminal proceedings under Section 78A-6-701, 78A-6-702, or
180 78A-6-703 may be detained in a jail or other place of detention used for adults charged with

181 crime.

182 (12) Provisions of law regarding bail are not applicable to minors detained or taken
183 into custody under this chapter, except that bail may be allowed:

184 (a) if a minor who need not be detained lives outside this state; or

185 (b) when a minor who need not be detained comes within one of the classes in
186 Subsection 78A-6-603(11).

187 (13) Section 76-8-418 is applicable to a child who willfully and intentionally commits
188 an act against a jail or other place of confinement, including a Division of Juvenile Justice
189 Services detention, shelter, or secure confinement facility which would be a third degree felony
190 if committed by an adult.

191 Section 3. Section **78A-6-116** is amended to read:

192 **78A-6-116. Minor's cases considered civil proceedings -- Adjudication of**
193 **jurisdiction by juvenile court not conviction of crime, exceptions -- Minor not to be**
194 **charged with crime, exception -- Traffic violation cases, abstracts to Department of**
195 **Public Safety.**

196 (1) Except as provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703,
197 proceedings in a minor's case shall be regarded as [a] civil [~~proceeding~~] proceedings with the
198 court exercising equitable powers.

199 (2) An adjudication by a juvenile court that a minor is within its jurisdiction under
200 Section 78A-6-103 is not considered a conviction of a crime, except in cases involving traffic
201 violations. An adjudication may not operate to impose any civil disabilities upon the minor nor
202 to disqualify the minor for any civil service or military service or appointment.

203 (3) A minor may not be charged with a crime or convicted in any court except as
204 provided in Sections 78A-6-701, 78A-6-702, and 78A-6-703, and in cases involving traffic
205 violations. When a petition has been filed in the juvenile court, the minor may not later be
206 subjected to criminal prosecution based on the same facts except as provided in Section
207 78A-6-702 or 78A-6-703.

208 (4) An adjudication by a juvenile court that a minor is within its jurisdiction under
209 Section 78A-6-103 is considered a conviction for the purposes of determining the level of
210 offense for which a minor may be charged and enhancing the level of an offense in the juvenile
211 court. A prior adjudication may be used to enhance the level or degree of an offense

212 committed by an adult only as otherwise specifically provided.

213 (5) Abstracts of court records for all adjudications of traffic violations shall be
214 submitted to the Department of Public Safety as provided in Section 53-3-218.

215 (6) Information necessary to collect unpaid fines, fees, assessments, bail, or restitution
216 may be forwarded to employers, financial institutions, law enforcement, constables, the Office
217 of Recovery Services, or other agencies for purposes of enforcing the order as provided in
218 Section 78A-6-117.

219 Section 4. Section **78A-6-601** is amended to read:

220 **78A-6-601. Criminal proceedings involving minors -- Transfer to juvenile court --**
221 **Exception.**

222 (1) If, during the pendency of a criminal or quasi-criminal proceeding in another court,
223 including a preliminary hearing, it is determined that the person charged is under 21 years of
224 age and was less than 18 years of age at the time of committing the alleged offense, that court
225 shall transfer the case to the juvenile court, together with all the papers, documents, and
226 transcripts of any testimony except as provided in Sections 78A-6-701, 78A-6-702, and
227 78A-6-703.

228 (2) The court making the transfer shall order the person to be taken immediately to the
229 juvenile court or to a place of detention designated by the juvenile court, or shall release him to
230 the custody of his parent or guardian or other person legally responsible for him, to be brought
231 before the juvenile court at a time designated by it. The juvenile court shall then proceed as
232 provided in this chapter.

233 Section 5. Section **78A-6-602** is amended to read:

234 **78A-6-602. Petition -- Preliminary inquiry -- Nonjudicial adjustments -- Formal**
235 **referral -- Citation -- Failure to appear.**

236 (1) A proceeding in a minor's case is commenced by petition, except as provided in
237 Sections 78A-6-701, 78A-6-702, and 78A-6-703.

238 (2) (a) A peace officer or any public official of the state, any county, city, or town
239 charged with the enforcement of the laws of the state or local jurisdiction shall file a formal
240 referral with the juvenile court within 10 days of a minor's arrest. If the arrested minor is taken
241 to a detention facility, the formal referral shall be filed with the juvenile court within 72 hours,
242 excluding weekends and holidays. There shall be no requirement to file a formal referral with

243 the juvenile court on an offense that would be a class B misdemeanor or less if committed by
244 an adult.

245 (b) When the court is informed by a peace officer or other person that a minor is or
246 appears to be within the court's jurisdiction, the probation department shall make a preliminary
247 inquiry to determine whether the interests of the public or of the minor require that further
248 action be taken.

249 (c) Based on the preliminary inquiry, the court may authorize the filing of or request
250 that the county attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7
251 file a petition. In its discretion, the court may, through its probation department, enter into a
252 written consent agreement with the minor and, if the minor is a child, the minor's parent,
253 guardian, or custodian for the nonjudicial adjustment of the case if the facts are admitted and
254 establish prima facie jurisdiction. Efforts to effect a nonjudicial adjustment may not extend for
255 a period of more than 90 days without leave of a judge of the court, who may extend the period
256 for an additional 90 days.

257 (d) The nonjudicial adjustment of a case may include conditions agreed upon as part of
258 the nonjudicial closure:

- 259 (i) payment of a financial penalty of not more than \$250 to the Juvenile Court;
- 260 (ii) payment of victim restitution;
- 261 (iii) satisfactory completion of compensatory service;
- 262 (iv) referral to an appropriate provider for counseling or treatment;
- 263 (v) attendance at substance abuse programs or counseling programs;
- 264 (vi) compliance with specified restrictions on activities and associations; and
- 265 (vii) other reasonable actions that are in the interest of the child or minor and the
266 community.

267 (e) Proceedings involving offenses under Section 78A-6-606 are governed by that
268 section regarding suspension of driving privileges.

269 (f) A violation of Section 76-10-105 that is subject to the jurisdiction of the Juvenile
270 Court shall include a minimum fine or penalty of \$60 and participation in a court-approved
271 tobacco education program, which may include a participation fee.

272 (3) Except as provided in [~~Section~~] Sections 78A-6-701 and 78A-6-702, in the case of
273 a minor 14 years of age or older, the county attorney, district attorney, or attorney general may

274 commence an action by filing a criminal information and a motion requesting the juvenile court
275 to waive its jurisdiction and certify the minor to the district court.

276 (4) (a) In cases of violations of wildlife laws, boating laws, class B and class C
277 misdemeanors, other infractions or misdemeanors as designated by general order of the Board
278 of Juvenile Court Judges, and violations of Section 76-10-105 subject to the jurisdiction of the
279 Juvenile Court, a petition is not required and the issuance of a citation as provided in Section
280 78A-6-603 is sufficient to invoke the jurisdiction of the court. A preliminary inquiry is not
281 required unless requested by the court.

282 (b) Any failure to comply with the time deadline on a formal referral may not be the
283 basis of dismissing the formal referral.

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

285 **78A-6-701. Jurisdiction of district court.**

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

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

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

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

298 (3) (a) Any felony, misdemeanor, or infraction committed after the offense over which
299 the district court takes jurisdiction under Subsection (1) or (2) shall be tried against the
300 defendant as an adult in the district court or justice court having jurisdiction.

301 (b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not
302 guilty, or a dismissal of the charge in the district court, the juvenile court under Section
303 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and [~~any~~]
304 authority previously exercised over the minor.

305 Section 7. Section **78A-6-702** is amended to read:

306 **78A-6-702. Serious youth offender -- Procedure.**

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

310 (a) any felony violation of:

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

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

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

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

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

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

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

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

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

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

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

327 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the
328 state shall have the burden of going forward with its case and the burden of proof to establish
329 probable cause to believe that one of the crimes listed in Subsection (1) has been committed
330 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have
331 the additional burden of proving by a preponderance of the evidence that the defendant has
332 previously been adjudicated or convicted of an offense involving the use of a dangerous
333 weapon.

334 (b) If the juvenile court judge finds the state has met its burden under this Subsection
335 (3), the court shall order that the defendant be bound over and held to answer in the district

336 court in the same manner as an adult unless the juvenile court judge finds that all of the
337 following conditions exist:

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

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

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

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

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

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

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

358 (6) If an indictment is returned by a grand jury charging a violation under this section,
359 the preliminary examination held by the juvenile court judge need not include a finding of
360 probable cause that the crime alleged in the indictment was committed and that the defendant
361 committed it, but the juvenile court shall proceed in accordance with this section regarding the
362 additional considerations listed in Subsection (3)(b).

363 (7) When a defendant is charged with multiple criminal offenses in the same
364 information or indictment and is bound over to answer in the district court for one or more
365 charges under this section, other offenses arising from the same criminal episode and any
366 subsequent misdemeanors or felonies charged against him shall be considered together with

367 those charges, and where the court finds probable cause to believe that those crimes have been
368 committed and that the defendant committed them, the defendant shall also be bound over to
369 the district court to answer for those charges.

370 (8) When a minor has been bound over to the district court under this section, the
371 jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is
372 terminated regarding that offense, any other offenses arising from the same criminal episode,
373 and any subsequent misdemeanors or felonies charged against the minor, except as provided in
374 Subsection (12).

375 [~~8~~] (9) A minor who is bound over to answer as an adult in the district court under
376 this section or on whom an indictment has been returned by a grand jury is not entitled to a
377 preliminary examination in the district court.

378 [~~9~~] (10) Allegations contained in the indictment or information that the defendant has
379 previously been adjudicated or convicted of an offense involving the use of a dangerous
380 weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need
381 to be proven at trial in the district court.

382 [~~10~~] (11) If a minor enters a plea to, or is found guilty of, any of the charges filed or
383 any other offense arising from the same criminal episode, the district court retains jurisdiction
384 over the minor for all purposes, including sentencing.

385 [~~11~~] (12) The juvenile court under Section 78A-6-103 and the Division of Juvenile
386 Justice Services regain jurisdiction and any authority previously exercised over the minor when
387 there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

388 Section 8. Section **78A-6-703** is amended to read:

389 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**
390 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

391 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges
392 the commission of an act which would constitute a felony if committed by an adult, the
393 juvenile court shall conduct a preliminary hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

429 be subject to both direct and cross-examination.

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

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

435 (a) certifying that finding; and

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

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

441 (9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions
442 relating to proceedings in juvenile cases are applicable to the hearing held under this section to
443 the extent they are pertinent.

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

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

450 (12) When a minor has been certified to the district court under this section, ~~or when a~~
451 ~~criminal information or indictment is filed in a court of competent jurisdiction before a~~
452 ~~committing magistrate charging the minor with an offense described in Section 78A-6-702,]~~
453 the jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile
454 court over the minor is terminated regarding that offense, any other offenses arising from the
455 same criminal episode, and any subsequent misdemeanors or felonies charged against him,
456 except as provided in Subsection (14).

457 (13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any
458 other offense arising out of the same criminal episode, the district court retains jurisdiction
459 over the minor for all purposes, including sentencing.

460 (14) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice
461 Services regain jurisdiction and any authority previously exercised over the minor when there
462 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

463 Section 9. **Effective date.**

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

S.B. 140 1st Sub. (Green) - Juvenile Detention Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
