

**SERIOUS YOUTH OFFENDER AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Jerry W. Stevenson

**LONG TITLE**

**General Description:**

This bill corrects a discrepancy between two sections referring to aggravated assault.

**Highlighted Provisions:**

This bill:

- ▶ corrects a discrepancy created when the aggravated assault statute was amended.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78A-6-702**, as last amended by Laws of Utah 2010, Chapters 38 and 218

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

Section 1. Section **78A-6-702** is amended to read:

**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 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] Section 76-5-103[(1)(a)], aggravated assault[~~involving intentionally~~]

30 ~~causing~~ resulting in serious bodily injury to another;

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

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

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

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

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

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

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

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

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

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

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

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

57 (ii) that if the offense was committed with one or more other persons, the minor

58 appears to have a lesser degree of culpability than the codefendants; and

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

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

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

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

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

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

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

86 the district court to answer for those charges.

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

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

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

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

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