

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:



- 28 (i) Section 76-6-103, aggravated arson;
- 29 (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.

Legislative Review Note
as of 1-27-12 2:55 PM

Office of Legislative Research and General Counsel