

**SERIOUS YOUTH OFFENDER AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: V. Lowry Snow**

Senate Sponsor: Lyle W. Hillyard

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**LONG TITLE**

**General Description:**

This bill amends the procedure to transfer jurisdiction for a serious youth offender from a juvenile court to a district court.

**Highlighted Provisions:**

This bill:

- ▶ provides for a juvenile court judge to consider a minor's prior adjudications in juvenile court, a minor's best interest, and the public's safety when determining a jurisdiction transfer from a juvenile court to a district court; and
- ▶ makes technical changes.

**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 2012, Chapter 118

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*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

30 juvenile court if the information charges any of the following offenses:

31 (a) any felony violation of:

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

33 (ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;

34 (iii) Section 76-5-302, aggravated [~~kidnaping~~] kidnapping;

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

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

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

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

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

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

41 (b) an offense other than those listed in Subsection (1)(a) involving the use of a

42 dangerous weapon, which would be a felony if committed by an adult, and the minor has been

43 previously adjudicated or convicted of an offense involving the use of a dangerous weapon,

44 which also would have been a felony if committed by an adult.

45 (2) All proceedings before the juvenile court related to charges filed under Subsection

46 (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.

47 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the

48 state shall have the burden of going forward with its case and the burden of proof to establish

49 probable cause to believe that one of the crimes listed in Subsection (1) has been committed

50 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have

51 the additional burden of proving by a preponderance of the evidence that the defendant has

52 previously been adjudicated or convicted of an offense involving the use of a dangerous

53 weapon.

54 (b) If the juvenile court judge finds the state has met its burden under this Subsection

55 (3), the court shall order that the defendant be bound over and held to answer in the district

56 court in the same manner as an adult unless the juvenile court judge finds that [~~all of the~~

57 ~~following conditions exist:~~] it would be contrary to the best interest of the minor and to the

58 public to bind over the defendant to the jurisdiction of the district court.

59 (c) In making the bind over determination in Subsection (3)(b), the judge shall consider  
60 only the following:

61 (i) whether the minor has [~~not~~] been previously adjudicated delinquent for an offense  
62 involving the use of a dangerous weapon which would be a felony if committed by an adult;

63 (ii) [~~that~~] if the offense was committed with one or more other persons, whether the  
64 minor appears to have a greater or lesser degree of culpability than the codefendants; [~~and~~]

65 (iii) [~~that~~] the extent to which the minor's role in the offense was [~~not~~] committed in a  
66 violent, aggressive, or premeditated manner[-];

67 (iv) the number and nature of the minor's prior adjudications in the juvenile court; and

68 (v) whether public safety is better served by adjudicating the minor in the juvenile  
69 court or in the district court.

70 [~~(c)~~] (d) Once the state has met its burden under [~~this~~] Subsection (3)(a) as to a  
71 showing of probable cause, the defendant shall have the burden of going forward and  
72 presenting evidence [~~as to the existence of the above conditions~~] that in light of the  
73 considerations listed in Subsection (3)(c), it would be contrary to the best interest of the minor  
74 and the best interests of the public to bind the defendant over to the jurisdiction of the district  
75 court.

76 [~~(d)~~] (e) If the juvenile court judge finds by clear and convincing evidence that [~~all the~~  
77 ~~above conditions are satisfied,~~] it would be contrary to the best interest of the minor and the  
78 best interests of the public to bind the defendant over to the jurisdiction of the district court, the  
79 court shall so state in its findings and order the minor held for trial as a minor and shall proceed  
80 upon the information as though it were a juvenile petition.

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

85 (5) At the time of a bind over to district court a criminal warrant of arrest shall issue.

86 The defendant shall have the same right to bail as any other criminal defendant and shall be  
87 advised of that right by the juvenile court judge. The juvenile court shall set initial bail in  
88 accordance with Title 77, Chapter 20, Bail.

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

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

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

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

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

113 (11) If a minor enters a plea to, or is found guilty of, any of the charges filed or any

114 other offense arising from the same criminal episode, the district court retains jurisdiction over  
115 the minor for all purposes, including sentencing.

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