

**JUVENILE DETENTION FACILITIES AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Todd Weiler

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**LONG TITLE**

**General Description:**

This bill makes changes related to the detainment of a minor in a juvenile detention facility.

**Highlighted Provisions:**

This bill:

- ▶ establishes considerations for a district court when determining placement of a minor;
- ▶ requires a district court to place a serious youth offender in a juvenile detention facility under certain circumstances;
- ▶ provides considerations for a juvenile court when binding a minor over to the jurisdiction of a district court until the time of the trial; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78A-6-701**, as last amended by Laws of Utah 2010, Chapter 38

**78A-6-702**, as last amended by Laws of Utah 2013, Chapter 186



28 78A-6-703, as last amended by Laws of Utah 2010, Chapters 38 and 193



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

31 Section 1. Section 78A-6-701 is amended to read:

32 **78A-6-701. Jurisdiction of district court.**

33 (1) The district court has exclusive original jurisdiction over all persons 16 years of age  
34 or older charged with:

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

36 or

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

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

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

48 (b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not  
49 guilty, or a dismissal of the charge in the district court, the juvenile court under Section  
50 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority  
51 previously exercised over the minor.

52 (4) A minor arrested under this section shall be held in a juvenile detention facility  
53 until the district court determines where the minor shall be held until the time of trial, except  
54 for defendants who are otherwise subject to the authority of the Board of Pardons and Parole.

55 (5) The district court shall consider the following when determining where the minor  
56 will be held until the time of trial:

57 (a) the age of the minor;

58 (b) the nature, seriousness, and circumstances of the alleged offense;

59 (c) the minor's history of prior criminal acts;

60 (d) whether detention in a juvenile detention facility will adequately serve the need for  
61 community protection pending the outcome of any criminal proceedings;

62 (e) whether the minor's placement in a juvenile detention facility will negatively impact  
63 the functioning of the facility by compromising the goals of the facility to maintain a safe,  
64 positive, and secure environment for all minors within the facility;

65 (f) the relative ability of the facility to meet the needs of the minor and protect the  
66 public;

67 (g) whether the minor presents an imminent risk of harm to the minor or others within  
68 the facility;

69 (h) the physical maturity of the minor;

70 (i) the current mental state of the minor as evidenced by relevant mental health or  
71 psychological assessments or screenings that are made available to the court; and

72 (j) any other factors the court considers relevant.

73 (6) A minor ordered to a juvenile detention facility under Subsection (5) shall remain  
74 in the facility until released by a district court judge, or if convicted, until sentencing.

75 (7) A minor held in a juvenile detention facility under this section shall have the same  
76 right to bail as any other criminal defendant.

77 (8) If the minor ordered to a juvenile detention facility under Subsection (5) attains the  
78 age of 18 years, the minor ~~shall~~ **will** ~~shall~~ be transferred within 30 days to an adult jail  
78a until released by  
79 the district court judge, or if convicted, until sentencing.

80 (9) A minor 16 years of age or older whose conduct or condition endangers the safety  
81 or welfare of others in the juvenile detention facility may, by court order that specifies the  
82 reasons, be detained in another place of confinement considered appropriate by the court,  
83 including jail or other place of pretrial confinement for adults.

84 Section 2. Section **78A-6-702** is amended to read:

85 **78A-6-702. Serious youth offender -- Procedure.**

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

89 (a) any felony violation of:

- 90 (i) Section 76-6-103, aggravated arson;
- 91 (ii) Section 76-5-103, aggravated assault resulting in serious bodily injury to another;
- 92 (iii) Section 76-5-302, aggravated kidnapping;
- 93 (iv) Section 76-6-203, aggravated burglary;
- 94 (v) Section 76-6-302, aggravated robbery;
- 95 (vi) Section 76-5-405, aggravated sexual assault;
- 96 (vii) Section 76-10-508.1, felony discharge of a firearm;
- 97 (viii) Section 76-5-202, attempted aggravated murder; or
- 98 (ix) Section 76-5-203, attempted murder; or

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

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

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

112 (b) If the juvenile court judge finds the state has met its burden under this Subsection  
113 (3), the court shall order that the defendant be bound over and held to answer in the district  
114 court in the same manner as an adult unless the juvenile court judge finds that it would be  
115 contrary to the best interest of the minor and to the public to bind over the defendant to the  
116 jurisdiction of the district court.

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

- 119 (i) whether the minor has been previously adjudicated delinquent for an offense  
120 involving the use of a dangerous weapon which would be a felony if committed by an adult;

121 (ii) if the offense was committed with one or more other persons, whether the minor  
122 appears to have a greater or lesser degree of culpability than the codefendants;

123 (iii) the extent to which the minor's role in the offense was committed in a violent,  
124 aggressive, or premeditated manner;

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

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

128 (d) Once the state has met its burden under Subsection (3)(a) as to a showing of  
129 probable cause, the defendant shall have the burden of going forward and presenting evidence  
130 that in light of the considerations listed in Subsection (3)(c), it would be contrary to the best  
131 interest of the minor and the best interests of the public to bind the defendant over to the  
132 jurisdiction of the district court.

133 (e) If the juvenile court judge finds by clear and convincing evidence that it would be  
134 contrary to the best interest of the minor and the best interests of the public to bind the  
135 defendant over to the jurisdiction of the district court, the court shall so state in its findings and  
136 order the minor held for trial as a minor and shall proceed upon the information as though it  
137 were a juvenile petition.

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

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

146 (6) At the time the minor is bound over to the district court, the juvenile court shall  
147 make the initial determination on where the minor shall be held.

148 (7) The juvenile court shall consider the following when determining where the minor  
149 shall be held until the time of trial:

150 (a) the age of the minor;

151 (b) the nature, seriousness, and circumstances of the alleged offense;

152 (c) the minor's history of prior criminal acts;

153 (d) whether detention in a juvenile detention facility will adequately serve the need for  
 154 community protection pending the outcome of any criminal proceedings;

155 (e) whether the minor's placement in a juvenile detention facility will negatively impact  
 156 the functioning of the facility by compromising the goals of the facility to maintain a safe,  
 157 positive, and secure environment for all minors within the facility;

158 (f) the relative ability of the facility to meet the needs of the minor and protect the  
 159 public;

160 (g) whether the minor presents an imminent risk of harm to the minor or others within  
 161 the facility;

162 (h) the physical maturity of the minor;

163 (i) the current mental state of the minor as evidenced by relevant mental health or  
 164 psychological assessments or screenings that are made available to the court; and

165 (j) any other factors the court considers relevant.

166 (8) If a minor is ordered to a juvenile detention facility under Subsection (7), the minor  
 167 shall remain in the facility until released by a district court judge, or if convicted, until  
 168 sentencing.

169 (9) A minor held in a juvenile detention facility under this section shall have the same  
 170 right to bail as any other criminal defendant.

171 (10) If the minor ordered to a juvenile detention facility under Subsection (7) attains  
 172 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released  
 173 by the district court judge, or if convicted, until sentencing.

174 (11) A minor 16 years of age or older whose conduct or condition endangers the safety  
 175 or welfare of others in the juvenile detention facility may, by court order that specifies the  
 176 reasons, be detained in another place of pretrial confinement considered appropriate by the  
 177 court, including jail or other place of confinement for adults.

178 (12) ~~the~~ ~~district court may~~ ~~review~~ ~~reconsider~~ ~~the decision~~  
 178a ~~made by the juvenile court~~ on where the  
 179 minor will be held pursuant to Subsection (6).

180 ~~(6)~~ (13) If an indictment is returned by a grand jury charging a violation under this  
 181 section, the preliminary examination held by the juvenile court judge need not include a finding  
 182 of probable cause that the crime alleged in the indictment was committed and that the

183 defendant committed it, but the juvenile court shall proceed in accordance with this section  
184 regarding the additional considerations listed in Subsection (3)(b).

185 ~~[(7)]~~ (14) When a defendant is charged with multiple criminal offenses in the same  
186 information or indictment and is bound over to answer in the district court for one or more  
187 charges under this section, other offenses arising from the same criminal episode and any  
188 subsequent misdemeanors or felonies charged against him shall be considered together with  
189 those charges, and where the court finds probable cause to believe that those crimes have been  
190 committed and that the defendant committed them, the defendant shall also be bound over to  
191 the district court to answer for those charges.

192 ~~[(8)]~~ (15) When a minor has been bound over to the district court under this section,  
193 the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the  
194 minor is terminated regarding that offense, any other offenses arising from the same criminal  
195 episode, and any subsequent misdemeanors or felonies charged against the minor, except as  
196 provided in Subsection (12).

197 ~~[(9)]~~ (16) A minor who is bound over to answer as an adult in the district court under  
198 this section or on whom an indictment has been returned by a grand jury is not entitled to a  
199 preliminary examination in the district court.

200 ~~[(10)]~~ (17) Allegations contained in the indictment or information that the defendant  
201 has previously been adjudicated or convicted of an offense involving the use of a dangerous  
202 weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need  
203 to be proven at trial in the district court.

204 ~~[(11)]~~ (18) If a minor enters a plea to, or is found guilty of, any of the charges filed or  
205 any other offense arising from the same criminal episode, the district court retains jurisdiction  
206 over the minor for all purposes, including sentencing.

207 ~~[(12)]~~ (19) The juvenile court under Section 78A-6-103 and the Division of Juvenile  
208 Justice Services regain jurisdiction and any authority previously exercised over the minor when  
209 there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

210 Section 3. Section 78A-6-703 is amended to read:

211 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**  
212 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

213 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges

214 the commission of an act which would constitute a felony if committed by an adult, the  
215 juvenile court shall conduct a preliminary hearing.

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

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

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

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

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

227 (b) whether the alleged offense was committed by the minor under circumstances  
228 which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor  
229 were adult and the offense was committed:

230 (i) in concert with two or more persons;

231 (ii) for the benefit of, at the direction of, or in association with any criminal street gang  
232 as defined in Section 76-9-802; or

233 (iii) to gain recognition, acceptance, membership, or increased status with a criminal  
234 street gang as defined in Section 76-9-802;

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

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

239 (e) the maturity of the minor as determined by considerations of the minor's home,  
240 environment, emotional attitude, and pattern of living;

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

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

244 (h) the desirability of trial and disposition of the entire offense in one court when the

245 minor's associates in the alleged offense are adults who will be charged with a crime in the  
246 district court;

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

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

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

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

254 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the  
255 court shall require the person or agency preparing the report and other material to appear and  
256 be subject to both direct and cross-examination.

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

260 (7) At the time the minor is bound over to the district court, the juvenile court shall  
261 make the initial determination on where the minor shall be held.

262 (8) The juvenile court shall consider the following when determining where the minor  
263 will be held until the time of trial:

264 (a) the age of the minor;

265 (b) the nature, seriousness, and circumstances of the alleged offense;

266 (c) the minor's history of prior criminal acts;

267 (d) whether detention in a juvenile detention facility will adequately serve the need for  
268 community protection pending the outcome of any criminal proceedings;

269 (e) whether the minor's placement in a juvenile detention facility will negatively impact  
270 the functioning of the facility by compromising the goals of the facility to maintain a safe,  
271 positive, and secure environment for all minors within the facility;

272 (f) the relative ability of the facility to meet the needs of the minor and protect the  
273 public;

274 (g) whether the minor presents an imminent risk of harm to the minor or others within  
275 the facility;

276 (h) the physical maturity of the minor;

277 (i) the current mental state of the minor as evidenced by relevant mental health or  
 278 psychological assessments or screenings that are made available to the court; and

279 (j) any other factors the court considers relevant.

280 (9) If a minor is ordered to a juvenile detention facility under Subsection (8), the minor  
 281 shall remain in the facility until released by a district court judge, or if convicted, until  
 282 sentencing.

283 (10) A minor held in a juvenile detention facility under this section shall have the same  
 284 right to bail as any other criminal defendant.

285 (11) If the minor ordered to a juvenile detention facility under Subsection (8) attains  
 286 the age of 18 years, the minor shall be transferred within 30 days to an adult jail until released  
 287 by the district court judge, or if convicted, until sentencing.

288 (12) A minor 16 years of age or older whose conduct or condition endangers the safety  
 289 or welfare of others in the juvenile detention facility may, by court order that specifies the  
 290 reasons, be detained in another place of confinement considered appropriate by the court,  
 291 including jail or other place of confinement for adults.

292 (13) ~~It~~ ~~is~~ ~~the~~ ~~purpose~~ ~~of~~ ~~this~~ ~~section~~ ~~to~~ ~~allow~~ ~~the~~ ~~district~~ ~~court~~ ~~to~~ ~~review~~ ~~and~~ ~~reconsider~~ ~~the~~ ~~decision~~  
 292a ~~of~~ ~~the~~ ~~district~~ ~~court~~ ~~made~~ ~~in~~ ~~the~~ ~~juvenile~~ ~~court~~ ~~on~~ ~~where~~ ~~the~~  
 293 minor shall be held pursuant to Subsection (7).

294 ~~[(7)]~~ (14) If the court finds the state has met its burden under Subsection (2), the court  
 295 may enter an order:

296 (a) certifying that finding; and

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

298 ~~[(8)]~~ (15) If an indictment is returned by a grand jury, the preliminary examination held  
 299 by the juvenile court need not include a finding of probable cause, but the juvenile court shall  
 300 proceed in accordance with this section regarding the additional consideration referred to in  
 301 Subsection (2)(b).

302 ~~[(9)]~~ (16) The provisions of Section 78A-6-115, Section 78A-6-1111, and other  
 303 provisions relating to proceedings in juvenile cases are applicable to the hearing held under this  
 304 section to the extent they are pertinent.

305 ~~[(10)]~~ (17) A minor who has been directed to be held for criminal proceedings in the  
 306 district court is not entitled to a preliminary examination in the district court.

307            [~~(11)~~] (18) A minor who has been certified for trial in the district court shall have the  
308 same right to bail as any other criminal defendant and shall be advised of that right by the  
309 juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77,  
310 Chapter 20, Bail.

311            [~~(12)~~] (19) When a minor has been certified to the district court under this section, the  
312 jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile  
313 court over the minor is terminated regarding that offense, any other offenses arising from the  
314 same criminal episode, and any subsequent misdemeanors or felonies charged against the  
315 minor, except as provided in Subsection (14).

316            [~~(13)~~] (20) If a minor enters a plea to, or is found guilty of any of the charges filed or  
317 on any other offense arising out of the same criminal episode, the district court retains  
318 jurisdiction over the minor for all purposes, including sentencing.

319            [~~(14)~~] (21) The juvenile court under Section 78A-6-103 and the Division of Juvenile  
320 Justice Services regain jurisdiction and any authority previously exercised over the minor when  
321 there is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

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**Legislative Review Note**  
as of 3-5-14 4:42 PM

**Office of Legislative Research and General Counsel**