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JUVENILE OFFENDER AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Aaron Osmond

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill makes changes to statutes regarding minors and courts.

Highlighted Provisions:

This bill:

- ▶ adds a specific list of previous offenses and conditions to the statute that allows for the direct filing of charges in district court;
- ▶ adds a new option to the serious youth offender statute;
- ▶ creates guidelines for housing a minor convicted in district court in a juvenile secure facility;
- ▶ requires that the court determine that a minor is knowingly and intentionally waiving counsel; and
- ▶ sets a presumption that juveniles are not to be shackled when appearing in court unless ordered by the court.

Money Appropriated in this Bill:

None

Other Special Clauses:

⚡→ [None] This bill provides a special effective date. ←⚡

Utah Code Sections Affected:

AMENDS:

62A-7-201, as last amended by Laws of Utah 2010, Chapter 38

S.B. 167



28 78A-6-701, as last amended by Laws of Utah 2014, Chapter 234

29 78A-6-702, as last amended by Laws of Utah 2014, Chapter 234

30 78A-6-703, as last amended by Laws of Utah 2014, Chapter 234

31 78A-6-1111, as repealed and reenacted by Laws of Utah 2014, Chapter 275

32 ENACTS:

33 78A-6-122, Utah Code Annotated 1953

34 78A-6-705, Utah Code Annotated 1953

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

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

38 **62A-7-201. Confinement -- Facilities -- Restrictions.**

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

44 (2) (a) Children charged with crimes under Section 78A-6-701, as a serious youth
45 offender under Section 78A-6-702 and bound over to the jurisdiction of the district court, or
46 certified to stand trial as an adult pursuant to Section 78A-6-703, if detained, shall be detained
47 ~~[in a jail or other place of detention used for adults]~~ as provided in these sections.

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

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

59 would be a criminal offense if committed by an adult. Acceptable short-term holding purposes
60 are: identification, notification of juvenile court officials, processing, and allowance of
61 adequate time for evaluation of needs and circumstances regarding release or transfer to a
62 shelter or detention facility. The provisions of this Subsection (3) do not apply to juveniles
63 held in an adult detention facility in accordance with Subsection (2)(a).

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

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

72 (6) (a) The division is responsible for the custody and detention of children under 18
73 years of age who require detention care prior to trial or examination, or while awaiting
74 assignment to a home or facility, as a dispositional placement under Subsection
75 78A-6-117(2)(f)(i) or 78A-6-1101(3)(a), and of youth offenders under Subsection
76 62A-7-504(8). The provisions of this Subsection (6)(a) do not apply to juveniles held in an
77 adult detention facility in accordance with Subsection (2)(a).

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

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

86 Section 2. Section 78A-6-122 is enacted to read:

87 **78A-6-122. Restraint of juveniles.**

88 (1) As used in this section, "restrained" means the use of handcuffs, chains, shackles,
89 zip ties, irons, straightjackets, and any other device or method which may be used to

90 immobilize a juvenile.

91 (2) ~~§~~ **The Judicial Council shall adopt rules that address the circumstances under**
 91a **which a juvenile may be restrained while appearing in court. The Judicial Council shall ensure**
 91b **that the rules consider both the welfare of the juvenile and the safety of the court.** ~~←§~~ A
 91c juvenile may not be restrained during a court proceeding unless restraint is
 92 ~~§~~ **[ordered] authorized** ~~←§~~ by ~~§~~ **[the court] rules of the Judicial Council** ~~←§~~ .

93 Section 3. Section ~~78A-6-701~~ is amended to read:

94 **78A-6-701. Jurisdiction of district court.**

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

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

98 ~~[or]~~

99 (b) ~~[an offense which would be a felony if committed by an adult]~~ if the minor has
 100 been previously committed to a secure facility as defined in Section ~~62A-7-101~~ ~~[. This~~
 101 ~~Subsection (1)(b) shall not apply if the offense is committed in a secure facility.]~~, a felony
 102 violation of:

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

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

105 (iii) Section ~~76-5-302~~, aggravated kidnapping;

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

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

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

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

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

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

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

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

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

124 (b) If the qualifying charge under Subsection (1) results in an acquittal, a finding of not
125 guilty, or a dismissal of the charge in the district court, the juvenile court under Section
126 78A-6-103 and the Division of Juvenile Justice Services regain any jurisdiction and authority
127 previously exercised over the minor.

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

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

133 (a) the age of the minor;

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

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

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

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

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

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

145 (h) the physical maturity of the minor;

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

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

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

151 (7) A minor held in a juvenile detention facility under this section shall have the same

152 right to bail as any other criminal defendant.

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

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

160 Section 4. Section **78A-6-702** is amended to read:

161 **78A-6-702. Serious youth offender -- Procedure.**

162 (1) Any action filed by a county attorney, district attorney, or attorney general charging
163 a minor 16 years of age or older with a felony [~~shall~~] may be by criminal information and filed
164 in the juvenile court if the minor was a principal actor in the offense and the information
165 charges any of the following offenses:

166 (a) any felony violation of:

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

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

169 (iii) Section 76-5-302, aggravated kidnapping;

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

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

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

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

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

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

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

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

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

183 state shall have the burden of going forward with its case and the burden of proof to establish
184 probable cause to believe that one of the crimes listed in Subsection (1) has been committed
185 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have
186 the additional burden of proving by a preponderance of the evidence that the defendant has
187 previously been adjudicated or convicted of an offense involving the use of a dangerous
188 weapon.

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

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

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

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

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

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

203 (v) whether public safety ~~[is]~~ and the interests of the minor are better served by
204 adjudicating the minor in the juvenile court or in the district court, including whether the
205 resources of the adult system or juvenile system are more likely to assist in rehabilitating the
206 minor and reducing the threat which the minor presents to the public.

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

212 (e) If the juvenile court judge finds by ~~[clear and convincing]~~ a preponderance of
213 evidence that it would be contrary to the best interest of the minor and the best interests of the

214 public to bind the defendant over to the jurisdiction of the district court, the court shall so state
215 in its findings and order the minor held for trial as a minor and shall proceed upon the
216 information as though it were a juvenile petition.

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

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

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

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

229 (a) the age of the minor;

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

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

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

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

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

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

241 (h) the physical maturity of the minor;

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

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

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

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

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

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

257 (12) The district court may reconsider the decision on where the minor will be held
258 pursuant to Subsection (6).

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

264 (14) When a defendant is charged with multiple criminal offenses in the same
265 information or indictment and is bound over to answer in the district court for one or more
266 charges under this section, other offenses arising from the same criminal episode and any
267 subsequent misdemeanors or felonies charged against him shall be considered together with
268 those charges, and where the court finds probable cause to believe that those crimes have been
269 committed and that the defendant committed them, the defendant shall also be bound over to
270 the district court to answer for those charges.

271 (15) When a minor has been bound over to the district court under this section, the
272 jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is
273 terminated regarding that offense, any other offenses arising from the same criminal episode,
274 and any subsequent misdemeanors or felonies charged against the minor, except as provided in
275 Subsection (19) or [Section 78A-6-705](#).

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

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

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

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

289 Section 5. Section 78A-6-703 is amended to read:

290 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**
291 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

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

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

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

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

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

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

306 (b) whether the alleged offense was committed by the minor under circumstances

307 which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor
308 were adult and the offense was committed:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

336 (6) At the conclusion of the state's case, the minor may testify under oath, call
337 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by

338 Subsection (3).

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

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

343 (a) the age of the minor;

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

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

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

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

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

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

355 (h) the physical maturity of the minor;

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

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

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

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

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

367 (12) A minor 16 years of age or older whose conduct or condition endangers the safety
368 or welfare of others in the juvenile detention facility may, by court order that specifies the

369 reasons, be detained in another place of confinement considered appropriate by the court,
370 including jail or other place of confinement for adults.

371 (13) The district court may reconsider the decision on where the minor shall be held
372 pursuant to Subsection (7).

373 (14) If the court finds the state has met its burden under Subsection (2), the court may
374 enter an order:

375 (a) certifying that finding; and

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

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

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

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

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

390 (19) When a minor has been certified to the district court under this section, the
391 jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile
392 court over the minor is terminated regarding that offense, any other offenses arising from the
393 same criminal episode, and any subsequent misdemeanors or felonies charged against the
394 minor, except as provided in Subsection (21) or Section [78A-6-705](#).

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

398 (21) The juvenile court under Section [78A-6-103](#) and the Division of Juvenile Justice
399 Services regain jurisdiction and any authority previously exercised over the minor when there

400 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

401 Section 6. Section **78A-6-705** is enacted to read:

402 **78A-6-705. Youth prison commitment.**

403 (1) Before sentencing a minor who is under the jurisdiction of the district court under
404 Section [78A-6-701](#), [78A-6-702](#), or [78A-6-703](#), to prison the court shall request a report from
405 the Division of Juvenile Justice Services regarding the potential risk to other juveniles if the
406 minor were to be committed to the custody of the division. The division shall submit the
407 requested report to the court as part of the pre-sentence report or as a separate report.

408 (2) If, after receiving the report described in Subsection (1), the court determines that
409 probation is not appropriate and commitment to prison is an appropriate sentence, the court
410 shall order the minor committed to prison and the minor shall be provisionally housed in a
411 secure facility operated by the Division of Juvenile Justice Services until the minor reaches 18
412 years of age, unless released earlier from incarceration by the Board of Pardons and Parole.

413 (3) The court may order the minor committed directly to the custody of the Department
414 of Corrections if the court finds that:

415 (a) the minor would present an unreasonable risk to other $\hat{H} \rightarrow s$ [juveniles] while $\leftarrow \hat{H}$
415a in the division's
416 custody;

417 (b) the minor has previously been committed to a prison for adult offenders; or

418 (c) housing the minor in a secure facility operated by the Division of Juvenile Justice
419 Services would be contrary to the interests of justice.

420 (4) The Division of Juvenile Justice Services shall adopt procedures by rule, pursuant
421 to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the transfer of a
422 minor provisionally housed in a division facility under Subsection (2) to the custody of the
423 Department of Corrections. If, in accordance with those rules, the division determines that
424 housing the minor in a division facility presents an unreasonable risk to others or that it is not
425 in the best interest of the minor, it shall transfer the physical custody of the minor to the
426 Department of Corrections.

427 (5) When a minor is committed to prison but ordered by a court to be housed in a
428 Division of Juvenile Justice Services facility under this section, the court and the division shall
429 immediately notify the Board of Pardons and Parole so that the minor may be scheduled for a
430 hearing according to board procedures. If a minor who is provisionally housed in a division

431 facility under this section has not been paroled or otherwise released from incarceration by the
432 time the minor reaches 18 years of age, the division shall as soon as reasonably possible, but
433 not later than when the minor reaches 18 years and 6 months of age, transfer the minor to the
434 physical custody of the Department of Corrections.

435 (6) Upon the commitment of a minor to the custody of the Division of Juvenile Justice
436 Services or the Department of Corrections under this section, the Board of Pardons and Parole
437 has authority over the minor for purposes of parole, pardon, commutation, termination of
438 sentence, remission of fines or forfeitures, orders of restitution, and all other purposes
439 authorized by law.

440 (7) The Youth Parole Authority may hold hearings, receive reports, or otherwise keep
441 informed of the progress of a minor in the custody of the Division of Juvenile Justice Services
442 under this section and may forward to the Board of Pardons and Parole any information or
443 recommendations concerning the minor.

444 (8) Commitment of a minor under this section is a prison commitment for all
445 sentencing purposes.

446 Section 7. Section **78A-6-1111** is amended to read:

447 **78A-6-1111. Right to counsel -- Appointment of counsel for indigent -- Costs.**

448 (1) (a) In any action in juvenile court initiated by the state, a political subdivision of the
449 state, or a private party, the parents, legal guardian, and the minor, where applicable, shall be
450 informed that they may be represented by counsel at every stage of the proceedings.

451 (b) In any action initiated by a private party, the parents or legal guardian shall have the
452 right to employ counsel of their own choice at their own expense.

453 (c) If, in any action initiated by the state or a political subdivision of the state under
454 Part 3, Abuse, Neglect, and Dependency Proceedings; Part 5, Termination of Parental Rights
455 Act; or Part 10, Adult Offenses, of this chapter or under Section **78A-6-1101**, a parent or legal
456 guardian requests an attorney and is found by the court to be indigent, counsel shall be
457 appointed by the court to represent the parent or legal guardian in all proceedings directly
458 related to the petition or motion filed by the state, or a political subdivision of the state, subject
459 to the provisions of this section.

460 (d) In any action initiated by the state, a political subdivision of the state, or a private
461 party under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 5, Termination of

462 Parental Rights Act, of this chapter, the child shall be represented by a guardian ad litem in
 463 accordance with Sections 78A-6-317 and 78A-6-902. The child shall also be represented by an
 464 attorney guardian ad litem in other actions initiated under this chapter when appointed by the
 465 court under Section 78A-6-902 or as otherwise provided by law.

466 (e) In any action initiated by the state or a political subdivision of the state under Part
 467 6, Delinquency and Criminal Actions, or Part 7, Transfer of Jurisdiction, of this chapter, or
 468 against a minor under Section 78A-6-1101, the parents or legal guardian and the minor shall be
 469 informed that the minor [may] has the right to be represented by counsel at every stage of the
 470 proceedings [and that if].

471 ~~Ĥ→ [(i) A minor charged with a felony §→ [or class A misdemeanor] ←Ĥ may not waive the~~
 471a ~~right to~~
 472 ~~counsel.~~

473 ~~—— (ii) In all other situations, the court shall §→, taking into consideration the minor's~~
 473a ~~circumstances, ←Ĥ determine that the minor §→ [knows] is knowingly and voluntarily~~
 473b ~~waiving, ←Ĥ and~~

474 ~~understands the consequences of waiving §→, ←Ĥ the right to counsel before allowing the minor~~
 474a ~~to~~

475 ~~waive the right to counsel.] (i) In cases where a minor is facing a felony level offense, the court~~
 475a ~~shall appoint counsel, who shall appear until counsel is retained on the minor's behalf. The~~
 475b ~~minor may not waive counsel unless the minor has had a meaningful opportunity to consult~~
 475c ~~with a defense attorney. The court shall make findings on the record, taking into consideration~~
 475d ~~the minor's unique circumstances and attributes, that the waiver is knowing and voluntary~~
 475e ~~and the minor understands the consequences of waiving the right to counsel.~~

475f ~~(ii) In all other situations the right to counsel may not be waived by a minor unless~~
 475g ~~there has been a finding on the record, taking into consideration the minor's unique~~
 475h ~~circumstances and attributes, that the waiver is knowing and voluntary, and the minor~~
 475i ~~understands the consequences of waiving the right to counsel. ←Ĥ~~

476 ~~(iii) If the minor is found to be indigent, counsel shall be appointed by the court to~~
 477 ~~represent the minor in all proceedings directly related to the petition or motion filed by the state~~
 478 ~~or a political subdivision of the state, subject to the provisions of this section.~~

479 (f) Indigency of a parent, legal guardian, or minor shall be determined in accordance
 480 with the process and procedure defined in Section 77-32-202. The court shall take into account
 481 the income and financial ability of the parent or legal guardian to retain counsel in determining
 482 the indigency of the minor.

483 (g) The cost of appointed counsel for a party found to be indigent, including the cost of
 484 counsel and expense of the first appeal, shall be paid by the county in which the trial court
 485 proceedings are held. Counties may levy and collect taxes for these purposes.

486 (2) Counsel appointed by the court may not provide representation as court-appointed
487 counsel for a parent or legal guardian in any action initiated by, or in any proceeding to modify
488 court orders in a proceeding initiated by, a private party.

489 (3) If the county responsible to provide legal counsel for an indigent under Subsection
490 (1)(g) has arranged by contract to provide services, the court shall appoint the contracting
491 attorney as legal counsel to represent that indigent.

492 (4) The court may order a parent or legal guardian for whom counsel is appointed, and

493 the parents or legal guardian of any minor for whom counsel is appointed, to reimburse the
494 county for the cost of appointed counsel.

495 (5) The state, or an agency of the state, may not be ordered to reimburse the county for
496 expenses incurred under Subsection (1)(g).

496a **Ŝ→ Section 8. Effective date.**

496b **Section 78A-6-122 takes effect October 1, 2015. ←Ŝ**

Legislative Review Note
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Office of Legislative Research and General Counsel