

HB0410S01 compared with HB0410

~~deleted text~~ shows text that was in HB0410 but was deleted in HB0410S01.

inserted text shows text that was not in HB0410 but was inserted into HB0410S01.

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Representative V. Lowry Snow proposes the following substitute bill:

JUVENILE JUSTICE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to juvenile justice.

Highlighted Provisions:

This bill:

- ▶ provides that certain offenses are not subject to the time periods for termination and parole supervision for juvenile offenders;
- ▶ requires that a minor who is under the jurisdiction of the district court for an offense be held in a juvenile detention facility;
- ▶ requires a minor who is committed to prison by the district court be provisionally housed with the Division of Juvenile Justice Services until the minor is 21 years old;
- ▶ amends definitions relating to minors who are adjudicated for certain kidnap or

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sexual offenses; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

62A-7-404.5, as enacted by Laws of Utah 2020, Chapter 214

77-41-102, as last amended by Laws of Utah 2020, Chapter 108

78A-6-703.2, as enacted by Laws of Utah 2020, Chapter 214

78A-6-703.5, as enacted by Laws of Utah 2020, Chapter 214

78A-6-703.6, as enacted by Laws of Utah 2020, Chapter 214

78A-6-705, as last amended by Laws of Utah 2020, Chapter 214

~~{~~

~~Be it enacted by the Legislature of the state of Utah: }~~ Utah Code Sections Affected by

Coordination Clause:

77-41-102, as last amended by Laws of Utah 2020, Chapter 108

78A-6-703.5, as enacted by Laws of Utah 2020, Chapter 214

80-6-502, (Renumbered from 78A-6-703.2, as enacted by Laws of Utah 2020, Chapter 214)

80-6-504, (Renumbered from 78A-6-703.5, as enacted by Laws of Utah 2020, Chapter 214)

80-6-505, (Renumbered from 78A-6-703.6, as enacted by Laws of Utah 2020, Chapter 214)

80-6-507, (Renumbered from 78A-6-705, as last amended by Laws of Utah 2020, Chapter 214)

Section 1. Section **62A-7-404.5** is amended to read:

62A-7-404.5. Review and termination of commitment.

(1) If a juvenile offender has been committed to a secure facility, the juvenile offender

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shall appear before the authority within 45 days after the day on which the juvenile offender is committed to a secure facility for review of a treatment plan and to establish parole release guidelines.

(2) (a) If a juvenile offender is committed to a secure facility, the authority shall set a presumptive term of commitment for the juvenile offender that does not exceed three to six months.

(b) The authority shall release the juvenile offender on parole at the end of the presumptive term of commitment unless at least one the following circumstances exists:

- (i) termination would interrupt the completion of a necessary treatment program; or
- (ii) the juvenile offender commits a new misdemeanor or felony offense.

(c) The authority shall determine whether a juvenile offender has completed a program under Subsection (2)(b)(i) by considering the recommendations of the licensed service provider, the juvenile offender's consistent attendance record, and the juvenile offender's completion of the goals of the necessary treatment program.

(d) The authority may extend the length of commitment and delay parole release for the time needed to address the specific circumstance if one of the circumstances under Subsection (2)(b) exists.

(e) The authority shall:

- (i) record the length of the extension and the grounds for the extension; and
- (ii) report annually the length and grounds of extension to the commission.

(3) (a) If a juvenile offender is committed to a secure facility, the authority shall set a presumptive term of parole supervision that does not exceed three to four months.

(b) If the authority determines that a juvenile offender is unable to return home immediately upon release, the juvenile offender may serve the term of parole in the home of a qualifying relative or guardian or at an independent living program contracted or operated by the division.

(c) The authority shall release a juvenile offender from parole and terminate jurisdiction at the end of the presumptive term of parole, unless at least one the following circumstances exists:

- (i) termination would interrupt the completion of a necessary treatment program;
- (ii) the juvenile offender commits a new misdemeanor or felony offense; or

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(iii) restitution has not been completed.

(d) The authority shall determine whether a juvenile offender has completed a program under Subsection (2)(c) by considering the recommendations of the licensed service provider, the juvenile offender's consistent attendance record, and the juvenile offender's completion of the goals of the necessary treatment program.

(e) If one of the circumstances under Subsection (3)(c) exists, the authority may delay parole release only for the time needed to address the specific circumstance.

(f) The authority shall:

(i) record the grounds for extension of the presumptive length of parole and the length of the extension; and

(ii) report annually the extension and the length of the extension to the commission.

(g) In the event of an unauthorized leave lasting more than 24 hours, the term of parole shall toll until the juvenile offender returns.

(4) Subsections (2) and (3) do not apply to a juvenile offender committed to a secure facility for ~~[a felony violation of]~~:

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

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

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

(d) Section 76-5-205, manslaughter;

(e) Section 75-5-206, negligent homicide;

(f) Section 76-5-207, automobile homicide;

(g) Section 76-5-207.5, automobile homicide involving handheld wireless communication device;

(h) Section 76-5-208, child abuse homicide;

(i) Section 76-5-209, homicide by assault;

~~[(d)]~~ (j) Section 76-5-302, aggravated kidnapping;

~~[(e)]~~ (k) Section 76-5-405, aggravated sexual assault;

~~[(f)]~~ (l) a felony violation of Section 76-6-103, aggravated arson;

~~[(g)]~~ (m) Section 76-6-203, aggravated burglary;

~~[(h)]~~ (n) Section 76-6-302, aggravated robbery;

~~[(i)]~~ (o) Section 76-10-508.1, felony discharge of a firearm;

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~~[(f)] an offense other than an offense listed in Subsections (4)(a) through (i) involving the use of a dangerous weapon;~~

~~[(f)] if the offense would be a felony had an adult committed the offense; and]~~

~~[(ii) the juvenile offender has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon that would have been a felony had an adult committed the offense; or]~~

(p) (i) an offense other than an offense listed in Subsections (4)(a) through (o) involving the use of a dangerous weapon, as defined in Section 76-1-601, that is a felony; and

(ii) the juvenile offender has been previously adjudicated or convicted of an offense involving the use of a dangerous weapon; or

~~[(k)]~~ (q) an offense other than an offense listed in Subsections (4)(a) through ~~[(f)]~~ (p) and the ~~[minor]~~ juvenile offender has been previously committed to the custody of the Division of Juvenile Justice Services for secure confinement.

(5) (a) The division may continue to have responsibility over a juvenile offender, who is discharged under this section from parole, to participate in a specific educational or rehabilitative program:

(i) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old; and

(ii) under an agreement by the division and the juvenile offender that the program has certain conditions.

(b) The division and the juvenile offender may terminate participation in a program under Subsection (5)(a) at any time.

(c) The division shall offer an educational or rehabilitative program before a juvenile offender's discharge date in accordance with this section.

(d) A juvenile offender may request the services described in this Subsection (5), even if the offender has been previously declined services or services were terminated for noncompliance.

(e) Notwithstanding Subsection (5)(c), the division:

(i) shall consider a request by a juvenile offender under Subsection (5)(d) for the services described in this Subsection (5) for up to 365 days after the juvenile offender's

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effective date of discharge, even if the juvenile offender has previously declined services or services were terminated for noncompliance; and

(ii) may reach an agreement with the juvenile offender to provide the services described in this Subsection (5) until the juvenile offender is:

(A) if the juvenile offender is a youth offender, 21 years old; or

(B) if the juvenile offender is a serious youth offender, 25 years old.

(f) The division and the juvenile offender may terminate an agreement for services under this Subsection (5) at any time.

Section 2. Section **77-41-102** is amended to read:

77-41-102. Definitions.

As used in this chapter:

(1) "Bureau" means the Bureau of Criminal Identification of the Department of Public Safety established in section 53-10-201.

(2) "Business day" means a day on which state offices are open for regular business.

(3) "Certificate of eligibility" means a document issued by the Bureau of Criminal Identification showing that the offender has met the requirements of Section 77-41-112.

(4) "Department" means the Department of Corrections.

(5) "Division" means the Division of Juvenile Justice Services.

(6) "Employed" or "carries on a vocation" includes employment that is full time or part time, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(7) "Indian Country" means:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, regardless of the issuance of any patent, and includes rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory, and whether or not within the limits of a state; and

(c) all Indian allotments, including the Indian allotments to which the Indian titles have not been extinguished, including rights-of-way running through the allotments.

(8) "Jurisdiction" means any state, Indian Country, United States Territory, or any

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property under the jurisdiction of the United States military, Canada, the United Kingdom, Australia, or New Zealand.

(9) "Kidnap offender" means any individual other than a natural parent of the victim who:

(a) has been convicted in this state of a violation of:

(i) Subsection 76-5-301(1)(c) or (d), kidnapping;

(ii) Section 76-5-301.1, child kidnapping;

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

(iv) Section 76-5-308, human trafficking for labor and human smuggling;

(v) Section 76-5-308, human smuggling, when the individual smuggled is under 18 years ~~[of age]~~ old;

(vi) Section 76-5-308.5, human trafficking of a child for labor;

(vii) Section 76-5-310, aggravated human trafficking and aggravated human smuggling, on or after May 10, 2011;

(viii) Section 76-5-311, human trafficking of a vulnerable adult for labor; or

(ix) attempting, soliciting, or conspiring to commit any felony offense listed in Subsections (9)(a)(i) through (iii);

(b) has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (9)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(c) (i) is required to register as a kidnap offender in any other jurisdiction of original conviction, who is required to register as a kidnap offender by any state, federal, or military court, or who would be required to register as a kidnap offender if residing in the jurisdiction of the conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) in any 12-month period, is in this state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

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(d) is a nonresident regularly employed or working in this state, or who is a student in this state, and was convicted of one or more offenses listed in Subsection (9), or any substantially equivalent offense in another jurisdiction, or as a result of the conviction, is required to register in the individual's state of residence;

(e) is found not guilty by reason of insanity in this state or in any other jurisdiction of one or more offenses listed in Subsection (9); or

(f) is adjudicated delinquent based on one or more offenses listed in Subsection (9)(a) and who has been committed to the division for secure confinement for that offense and;

(i) the individual remains in the division's custody [30 days prior] until 30 days before [to] the individual's 21st birthday[-]; or

(ii) if the juvenile court extended the juvenile court's jurisdiction over the minor under Section 78A-6-703.4, the individual remains in the division's custody until 30 days before the individual's 25th birthday.

(10) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

(11) "Offender" means a kidnap offender as defined in Subsection (9) or a sex offender as defined in Subsection (17).

(12) "Online identifier" or "Internet identifier":

(a) means any electronic mail, chat, instant messenger, social networking, or similar name used for Internet communication; and

(b) does not include date of birth, social security number, PIN number, or Internet passwords.

(13) "Primary residence" means the location where the offender regularly resides, even if the offender intends to move to another location or return to another location at any future date.

(14) "Register" means to comply with the requirements of this chapter and administrative rules of the department made under this chapter.

(15) "Registration website" means the Sex and Kidnap Offender Notification and Registration website described in Section 77-41-110 and the information on the website.

(16) "Secondary residence" means any real property that the offender owns or has a financial interest in, or any location where, in any 12-month period, the offender stays

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overnight a total of 10 or more nights when not staying at the offender's primary residence.

(17) "Sex offender" means any individual:

(a) convicted in this state of:

(i) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor;

(ii) Section 76-5b-202, sexual exploitation of a vulnerable adult, on or after May 10, 2011;

(iii) Section 76-5-308, human trafficking for sexual exploitation;

(iv) Section 76-5-308.5, human trafficking of a child for sexual exploitation;

(v) Section 76-5-310, aggravated human trafficking for sexual exploitation;

(vi) Section 76-5-311, human trafficking of a vulnerable adult for sexual exploitation;

(vii) Section 76-5-401, unlawful sexual activity with a minor, except as provided in Subsection 76-5-401(3)(b) or (c);

(viii) Section 76-5-401.1, sexual abuse of a minor, except as provided in Subsection 76-5-401.1(3);

(ix) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

(x) Section 76-5-402, rape;

(xi) Section 76-5-402.1, rape of a child;

(xii) Section 76-5-402.2, object rape;

(xiii) Section 76-5-402.3, object rape of a child;

(xiv) a felony violation of Section 76-5-403, forcible sodomy;

(xv) Section 76-5-403.1, sodomy on a child;

(xvi) Section 76-5-404, forcible sexual abuse;

(xvii) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

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

(xix) Section 76-5-412, custodial sexual relations, when the individual in custody is younger than 18 years ~~[of age]~~ old, if the offense is committed on or after May 10, 2011;

(xx) Section 76-5b-201, sexual exploitation of a minor;

(xxi) Section 76-5b-204, sexual extortion or aggravated sexual extortion;

(xxii) Section 76-7-102, incest;

(xxiii) Section 76-9-702, lewdness, if the individual has been convicted of the offense

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four or more times;

(xxiv) Section 76-9-702.1, sexual battery, if the individual has been convicted of the offense four or more times;

(xxv) any combination of convictions of Section 76-9-702, lewdness, and of Section 76-9-702.1, sexual battery, that total four or more convictions;

(xxvi) Section 76-9-702.5, lewdness involving a child;

(xxvii) a felony or class A misdemeanor violation of Section 76-9-702.7, voyeurism;

(xxviii) Section 76-10-1306, aggravated exploitation of prostitution; or

(xxix) attempting, soliciting, or conspiring to commit any felony offense listed in this Subsection (17)(a);

(b) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to commit a crime in another jurisdiction, including any state, federal, or military court that is substantially equivalent to the offenses listed in Subsection (17)(a) and who is:

(i) a Utah resident; or

(ii) not a Utah resident, but who, in any 12-month period, is in this state for a total of 10 or more days, regardless of whether the offender intends to permanently reside in this state;

(c) (i) who is required to register as a sex offender in any other jurisdiction of original conviction, who is required to register as a sex offender by any state, federal, or military court, or who would be required to register as a sex offender if residing in the jurisdiction of the original conviction regardless of the date of the conviction or any previous registration requirements; and

(ii) who, in any 12-month period, is in the state for a total of 10 or more days, regardless of whether or not the offender intends to permanently reside in this state;

(d) who is a nonresident regularly employed or working in this state or who is a student in this state and was convicted of one or more offenses listed in Subsection (17)(a), or any substantially equivalent offense in any jurisdiction, or as a result of the conviction, is required to register in the individual's jurisdiction of residence;

(e) who is found not guilty by reason of insanity in this state, or in any other jurisdiction of one or more offenses listed in Subsection (17)(a); or

(f) who is adjudicated delinquent based on one or more offenses listed in Subsection (17)(a) and who has been committed to the division for secure confinement for that offense

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and:

(i) the individual remains in the division's custody [30 days prior to] until 30 days before the individual's 21st birthday[-]; or

(ii) if the juvenile court extended the juvenile court's jurisdiction over the minor under Section 78A-6-703.4, the individual remains in the division's custody until 30 days before the individual's 25th birthday.

(18) "Traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.

(19) "Vehicle" means any motor vehicle, aircraft, or watercraft subject to registration in any jurisdiction.

Section 3. Section **78A-6-703.2** is amended to read:

78A-6-703.2. Criminal information for a minor in district court.

(1) If a prosecuting attorney charges a minor with aggravated murder under Section 76-5-202 or murder under Section 76-5-203, the prosecuting attorney shall file a criminal information in the district court if the minor was the principal actor in an offense and the information alleges:

(a) the minor was 16 or 17 years old at the time of the offense; and

(b) the offense for which the minor is being charged is:

(i) Section 76-5-202, aggravated murder; or

(ii) Section 76-5-203, murder.

(2) If the prosecuting attorney files a criminal information in the district court in accordance with Subsection (1), the district court shall try the minor as an adult, except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

(3) (a) Except for a minor who is subject to the authority of the Board of Pardons and Parole, a minor shall be held in a juvenile detention facility [~~until the district court determines where the minor will be held until the time of trial if:~~].

~~[(a) the minor is 16 or 17 years old; and]~~

~~[(b) the minor is arrested for aggravated murder or murder.]~~

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~~[(4) In considering where a minor will be detained until the time of trial, the district court shall consider:]~~

~~[(a) the age of the minor;]~~

~~[(b) the nature, seriousness, and circumstances of the alleged offense;]~~

~~[(c) the minor's history of prior criminal acts;]~~

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

~~[(e) the relative ability of the facility to meet the needs of the minor and protect the public;]~~

~~[(f) the physical maturity of the minor;]~~

~~[(g) the current mental state of the minor as evidenced by relevant mental health or a psychological assessment or screening that is made available to the court; and]~~

~~[(h) any other factors that the court considers relevant.]~~

~~[(5)]~~ (b) A minor ~~[ordered to a juvenile detention facility under Subsection (4)]~~ shall remain in the detention facility:

~~[(a)]~~ (i) until released by the district court; or

~~[(b)]~~ (ii) if convicted, until sentencing.

~~[(6)]~~ (4) If a minor is held in a juvenile detention facility under Subsection ~~[(4)]~~ (3), the court shall:

(a) advise the minor of the right to bail; and

(b) set initial bail in accordance with Title 77, Chapter 20, Bail.

~~[(7)]~~ (5) If the minor ~~[ordered to]~~ held in a juvenile detention facility under Subsection ~~[(4)]~~ (3) attains the age of ~~[18 years]~~ 21, the minor shall be transferred within 30 days to an adult jail until:

(a) released by the district court judge; or

(b) if convicted, sentencing.

~~[(8)]~~ (6) If a minor is ~~[ordered to]~~ held in a juvenile detention facility under Subsection ~~[(4)]~~ (3) and the minor's conduct or condition endangers the safety or welfare of others in the juvenile detention facility, the court may find that the minor shall be detained in another place of confinement considered appropriate by the court, including a jail or an adult facility for pretrial confinement.

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~~[(9)]~~ (7) If a minor is charged for aggravated murder or murder in the district court under this section, and all charges for aggravated murder or murder result in an acquittal, a finding of not guilty, or a dismissal:

(a) the juvenile court gains jurisdiction over all other offenses committed by the minor; and

(b) the Division of Juvenile Justice Services gains jurisdiction over the minor.

Section 4. Section **78A-6-703.5** is amended to read:

78A-6-703.5. Preliminary hearing.

(1) If a prosecuting attorney files a criminal information in accordance with Section 78A-6-703.3, the court shall conduct a preliminary hearing to determine whether a minor should be bound over to the district court for a qualifying offense.

(2) At the preliminary hearing under Subsection (1), the prosecuting attorney shall have the burden of establishing:

(a) probable cause to believe that a qualifying offense was committed and the minor committed that offense; and

(b) by a preponderance of the evidence, that it is contrary to the best interests of the minor and the public for the juvenile court to retain jurisdiction over the offense.

(3) In making a determination under Subsection (2)(b), the court shall consider and make findings on:

(a) the seriousness of the qualifying offense and whether the protection of the community requires that the minor is detained beyond the amount of time allowed under Subsection 78A-6-117(2)(h), or beyond the age of continuing jurisdiction that the court may exercise under Section 78A-6-703.4;

(b) the extent to which the minor's actions in the qualifying offense were committed in an aggressive, violent, premeditated, or willful manner;

(c) the minor's mental, physical, educational, trauma, and social history;

(d) the criminal record or history of the minor; and

(e) the likelihood of the minor's rehabilitation by the use of services and facilities that are available to the court.

(4) The amount of weight that each factor in Subsection (3) is given is in the court's discretion.

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(5) (a) The court may consider any written report or other material that relates to the minor's mental, physical, educational, trauma, and social history.

(b) Upon request by the minor, the minor's parent, guardian, or other interested party, the court shall require the person preparing the report, or other material, under Subsection (5)(a) to appear and be subject to direct and cross-examination.

(6) At the preliminary hearing under Subsection (1), a minor may testify under oath, call witnesses, cross-examine witnesses, and present evidence on the factors described in Subsection (3).

(7) (a) A proceeding before the court related to a charge filed under this part shall be conducted in conformity with the Utah Rules of Juvenile Procedure.

(b) Title 78B, Chapter 22, Indigent Defense Act, and Section 78A-6-115 are applicable to the preliminary hearing under this section.

(8) If the court finds that the prosecuting attorney has met the burden of proof under Subsection (2), the court shall bind the minor over to the district court to be held for trial.

(9) (a) If the court finds that a qualifying offense has been committed by a minor, but the prosecuting attorney has not met the burden of proof under Subsection (2)(b), the court shall:

(i) proceed upon the criminal information as if the information were a petition under Section 78A-6-602.5;

(ii) release or detain the minor in accordance with Section 78A-6-113; and

(iii) proceed with an adjudication for the minor in accordance with this chapter.

(b) If the court finds that the prosecuting attorney has not met the burden under Subsection (2) to bind a minor over to the district court, the prosecuting attorney may file a motion to extend the court's continuing jurisdiction over the minor's case until the minor is 25 years old in accordance with Section 78A-6-703.4.

(10) (a) A prosecuting attorney may charge a minor with a separate offense in the same criminal information as the qualifying offense if the qualifying offense and separate offense arise from a single criminal episode.

(b) If the prosecuting attorney charges a minor with a separate offense as described in Subsection (10)(a):

(i) the prosecuting attorney shall have the burden of establishing probable cause to

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believe that the separate offense was committed and the minor committed the separate offense;
and

(ii) if the prosecuting attorney establishes probable cause for the separate offense under Subsection (10)(b)(i) and the court binds the minor over to the district court for the qualifying offense, the court shall also bind the minor over for the separate offense to the district court.

(11) If a grand jury indicts a minor for a qualifying offense:

(a) the prosecuting attorney does not need to establish probable cause under Subsection (2)(a) for the qualifying offense and any separate offense included in the indictment; and

(b) the court shall proceed with determining whether the minor should be bound over to the district court for the qualifying offense and any separate offense included in the indictment in accordance with Subsections (2)(b) and (3).

(12) If a minor is bound over to the district court, the court shall:

(a) issue a criminal warrant of arrest for the minor to be held in a juvenile detention facility;

(b) advise the minor of the right to bail; and

(c) set initial bail in accordance with Title 77, Chapter 20, Bail.

~~[(13)(a) At the time that a minor is bound over to the district court, the court shall make an initial determination on where the minor is held until the time of trial.]~~

~~[(b) In determining where a minor is held until the time of trial, the court shall consider:]~~

~~[(i) the age of the minor;]~~

~~[(ii) the minor's history of prior criminal acts;]~~

~~[(iii) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;]~~

~~[(iv) the relative ability of the facility to meet the needs of the minor and protect the public;]~~

~~[(v) the physical maturity of the minor;]~~

~~[(vi) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and]~~

~~[(vii) any other factors that the court considers relevant.]~~

~~[(14) If the court orders a minor to be detained in a juvenile detention facility under~~

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~~Subsection (13), the minor shall remain in the facility:]~~

(13) If the court orders the minor to be detained:

(a) the minor shall be held in a juvenile detention facility, except that a minor who is subject to the authority of the Board of Pardons and Parole may not be held in a juvenile detention facility; and

(b) the minor shall remain in the juvenile detention facility:

~~[(a)]~~ (i) until released by a district court; or

~~[(b)]~~ (ii) if convicted, until sentencing.

~~[(15)]~~ (14) If the court orders the minor to be detained in a juvenile detention facility under Subsection (13) and the minor attains the age of ~~[(18)]~~ 21 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:

(a) until released by the district court; or

(b) if convicted, until sentencing.

~~[(16)]~~ (15) Except as provided in Subsection ~~[(17)]~~ (16) and Section 78A-6-705, if a minor is bound over to the district court under this section, the jurisdiction of the Division of Juvenile Justice Services and the juvenile court over the minor is terminated for the qualifying offense and any other separate offense for which the minor is bound over.

~~[(17)]~~ (16) If a minor is bound over to the district court for a qualifying offense and the qualifying offense results in an acquittal, a finding of not guilty, or a dismissal:

(a) the juvenile court regains jurisdiction over any separate offense committed by the minor; and

(b) the Division of Juvenile Justice Services regains jurisdiction over the minor.

Section 5. Section **78A-6-703.6** is amended to read:

78A-6-703.6. Criminal proceedings for a minor bound over to district court.

(1) If the juvenile court binds a minor over to the district court in accordance with Section 78A-6-703.5, the prosecuting attorney shall try the minor as if the minor is an adult in the district court except:

(a) the minor is not subject to a sentence of death in accordance with Subsection 76-3-206(2)(b); and

(b) the minor is not subject to a sentence of life without parole in accordance with Subsection 76-3-206(2)(b) or 76-3-207.5(3) or Section 76-3-209.

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(2) A minor who is bound over to the district court to answer as an adult is not entitled to a preliminary hearing in the district court.

~~[(3)(a) If a minor is bound over to the district court by the juvenile court, the district court may reconsider the juvenile court's decision under Subsection 78A-6-703.5(13) as to where the minor is being held until trial.]~~

~~[(b) If the district court reconsiders the juvenile court's decision as to where the minor is held, the district court shall consider and make findings on:]~~

~~[(i) the age of the minor;]~~

~~[(ii) the minor's history of prior criminal acts;]~~

~~[(iii) whether detention in a juvenile detention facility will adequately serve the need for community protection pending the outcome of any criminal proceedings;]~~

~~[(iv) the relative ability of the facility to meet the needs of the minor and protect the public;]~~

~~[(v) the physical maturity of the minor;]~~

~~[(vi) the current mental state of the minor as evidenced by relevant mental health or psychological assessments or screenings that are made available to the court; and]~~

~~[(vii) any other factors the court considers relevant.]~~

~~[(4) A minor who is ordered to a juvenile detention facility under Subsection (3) shall remain in the facility:]~~

~~[(a) until released by a district court; or]~~

~~[(b) if convicted, until sentencing.]~~

~~[(5) If the district court orders the minor to be detained in a juvenile detention facility under Subsection (3) and the minor attains the age of 18 while detained at the facility, the minor shall be transferred within 30 days to an adult jail to remain:]~~

~~[(a) until released by the district court; or]~~

~~[(b) if convicted, until sentencing.]~~

~~[(6)]~~ (3) If a minor is bound over to the district court and detained in a juvenile detention facility, the district court may order the minor be detained in another place of confinement that is considered appropriate by the district court, including a jail or other place of pretrial confinement for adults if the minor's conduct or condition endangers the safety and welfare of others in the facility.

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~~[(7)]~~ (4) If the district court obtains jurisdiction over a minor under Section 78A-6-703.5, the district court is not divested of jurisdiction for a qualifying offense or a separate offense listed in the criminal information when the minor is allowed to enter a plea to, or is found guilty of, another offense in the same criminal information.

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

78A-6-705. Youth prison commitment.

~~[(1)(a) Before sentencing a minor, who was bound over to the district court under Section 78A-6-703.5 to be tried as an adult, to prison the district court shall request a report from the Division of Juvenile Justice Services regarding the potential risk to other minors if the minor were to be committed to the custody of the Division of Juvenile Justice Services.]~~

~~[(b) The Division of Juvenile Justice Services shall submit the requested report to the district court as part of the pre-sentence report or as a separate report.]~~

~~[(2) If, after receiving the report described in Subsection (1),]~~ (1) When sentencing a minor, if the district court determines that probation is not appropriate and commitment to prison is an appropriate sentence, the district court shall order the minor committed to prison and the minor shall be provisionally housed in a secure facility operated by the Division of Juvenile Justice Services until the minor reaches ~~[+8]~~ 21 years old, unless released earlier from incarceration by the Board of Pardons and Parole.

~~[(3) The district court may order the minor committed directly to the custody of the Department of Corrections if the court finds that:]~~

~~[(a) the minor would present an unreasonable risk to others while in the custody of the Division of Juvenile Justice Services;]~~

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

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

~~[(4)]~~ (2) (a) The Division of Juvenile Justice Services shall adopt procedures by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the transfer of a minor provisionally housed in a division facility under Subsection ~~[(2)]~~ (1) to the physical custody of the Department of Corrections.

(b) If, in accordance with the rules adopted under Subsection ~~[(4)]~~ (2)(a), the Division of Juvenile Justice Services determines that housing the minor in a division facility presents an

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unreasonable risk to others or that it is not in the best interest of the minor, the Division of Juvenile Justice Services shall transfer the physical custody of the minor to the Department of Corrections.

~~[(5)]~~ (3) (a) When a minor is committed to prison but ~~[ordered by a district court to be]~~ provisionally housed in a Division of Juvenile Justice Services facility under this section, the district court and the Division of Juvenile Justice Services shall immediately notify the Board of Pardons and Parole so that the minor may be scheduled for a hearing according to board procedures.

(b) If a minor who is provisionally housed in a Division of Juvenile Justice Services facility under this section has not been paroled or otherwise released from incarceration by the time the minor reaches ~~[18]~~ 21 years old, the Division of Juvenile Justice Services shall as soon as reasonably possible, but not later than when the minor reaches ~~[18]~~ 21 years and 6 months old, transfer the minor to the physical custody of the Department of Corrections.

~~[(6)]~~ (4) Upon the commitment of a minor to the custody of the Division of Juvenile Justice Services or the Department of Corrections under this section, the Board of Pardons and Parole has authority over the minor for purposes of parole, pardon, commutation, termination of sentence, remission of fines or forfeitures, orders of restitution, and all other purposes authorized by law.

~~[(7)]~~ (5) The Youth Parole Authority ~~[may]~~ shall:

(a) hold hearings, receive reports, or otherwise keep informed of the progress of a minor in the custody of the Division of Juvenile Justice Services under this section ~~[and may]~~; and

(b) forward to the Board of Pardons and Parole any information or recommendations concerning the minor.

~~[(8)]~~ (6) Commitment of a minor under this section is a prison commitment for all sentencing purposes.

Section 7. Coordinating H.B. 410 with H.B. 285 -- Substantive and technical amendments.

If this H.B. 410 and H.B. 285, Juvenile Recodification, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by:

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(1) not making the changes in H.B. 285 in:

(a) Subsection 80-6-502(4)(d) and (h);

(b) Subsections 80-6-504(13) and (14);

(c) Subsections 80-6-505(3) and (5); and

(d) Subsections 80-6-507(1) and (3);

(2) changing the cross-reference in Subsections 77-41-102(9)(f)(ii) and (17)(f)(ii) from
Section 78A-6-703.4 to Section 80-6-605; and

(3) omitting the word "juvenile" in Subsections 78A-6-703.5(12)(a) and (13) in this
H.B. 410.