

1 **Subcommittee Draft- For discussion purposes only**
2 **January 2, 2013**

3
4 **78A-6-702. Serious youth offender -- Procedure.**

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

8 (a) any felony violation of:

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

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

11 (iii) Section 76-5-302, aggravated kidnaping;

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

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

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

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

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

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

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

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

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

30 (b) If the juvenile court judge finds the state has met its burden under this Subsection (3), the
31 court shall order that the defendant be bound over and held to answer in the district court in the
32 same manner as an adult unless the juvenile court judge finds that ~~[all of the following conditions~~
33 ~~exist;]~~ it would be contrary to the best interests of the minor and of the public to bind over
34 jurisdiction to the district court.

35 (c) In making the bind over determination under Subsection (3)(b), the judge shall consider:

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

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

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

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

43 ~~[(e)]~~ (d) Once the state has met its burden under this Subsection (3)(a) as to a showing of
44 probable cause, the defendant shall have the burden of going forward and presenting ~~[evidence~~
45 ~~as to the existence of the above conditions.]~~ that in light of the considerations listed in

46 Subsection (3)(c), it would be contrary to the best interest of the child and the best interests of
47 the public to bind the defendant over to the jurisdiction of the district court.

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

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

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

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

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

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

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

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

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

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