

JUVENILE JUSTICE MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions related to juvenile justice.

Highlighted Provisions:

This bill:

- ▶ modifies the age that a minor housed in a detention facility awaiting trial is transferred to an adult jail;
- ▶ requires a minor who is committed to prison by a district court be provisionally housed with the Division of Juvenile Justice Services until the minor is 25 years old;
- ▶ addresses retroactive application of provisions regarding minors held in detention facilities while awaiting trial in the district court or while serving a prison commitment; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

80-6-502, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

80-6-504, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

80-6-507, as last amended by Laws of Utah 2021, First Special Session, Chapter 2

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

Section 1. Section **80-6-502** is amended to read:

80-6-502. 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 criminal 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, as described in Section [76-5-202](#); or

(ii) [~~Section [76-5-203](#);~~] murder, as described in Section [76-5-203](#).

(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 charged with aggravated murder or murder under Subsection (1) shall be held in a detention facility.

(b) A minor held in a detention facility under Subsection (3)(a) shall remain in the facility:

(i) until released by the district court; or

(ii) if convicted, until sentencing.

(4) If a minor is held in a detention facility under Subsection (3)(a), the district court shall:

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

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

(5) (a) If a minor held in a detention facility under Subsection (3)(a) attains the age of [21] 25 years old, the minor shall:

(i) be transferred within 30 days to an adult jail; and

(ii) remain in the adult jail until:

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

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

(b) Subsection (5)(a) applies to any minor who is being held in a detention facility as described in Subsection (3)(a) on or after May 4, 2022.

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

(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 gains jurisdiction over the minor.

Section 2. Section **80-6-504** is amended to read:

80-6-504. Preliminary hearing -- Grounds for transfer -- Detention of a minor bound over to the district court.

(1) If a prosecuting attorney files a criminal information in accordance with Section **80-6-503**, the juvenile 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 juvenile 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 80-6-802(1), or beyond the age of continuing jurisdiction that the juvenile court may exercise under Section 80-6-605;

(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 juvenile court.

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

(5) (a) The juvenile 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 juvenile 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 juvenile court related to a charge filed under this part shall be conducted in conformity with the Utah Rules of Juvenile Procedure.

(b) Sections 80-6-602, 80-6-603, and 80-6-604 are applicable to the preliminary hearing under this section.

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

(9) (a) If the juvenile 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 juvenile court shall:

(i) proceed upon the criminal information as if the information were a petition under Section 80-6-305;

(ii) release or detain the minor in accordance with Section 80-6-207; and

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

(b) If the juvenile 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 juvenile court's continuing jurisdiction over the minor's case until the minor is 25 years old in accordance with Section 80-6-605.

(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 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 juvenile court binds the minor over to the district court for the qualifying offense, the juvenile 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 juvenile 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 juvenile court shall:

(a) issue a criminal warrant of arrest for the minor to be held in a 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) If the juvenile court orders the minor to be detained until the time of trial:

(a) the minor shall be held in a 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 detention facility; and

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

(i) until released by a district court; or
(ii) if convicted, until sentencing.

(14) (a) If a minor is held in a detention facility under Subsection (13) and the minor attains the age of ~~[24]~~ 25 years old while detained at the detention facility, the minor shall:

(i) be transferred within 30 days to an adult jail ~~[to remain];~~ and

(ii) remain in the adult jail until:

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

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

(b) Subsection (14)(a) applies to any minor being held in a detention facility as described in Subsection (13) on or after May 4, 2022.

(15) Except as provided in Subsection (16) and Section 80-6-507, if a minor is bound over to the district court under this section, the jurisdiction of the division 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.

(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 regains jurisdiction over the minor.

Section 3. Section **80-6-507** is amended to read:

80-6-507. Commitment of a minor by a district court.

(1) ~~(a) [When sentencing a minor, if]~~ If the district court determines that probation is not appropriate and commitment to prison is an appropriate sentence when sentencing a minor:

~~[(a)]~~ (i) the district court shall order the minor committed to prison; and

~~[(b)]~~ (ii) the minor shall be provisionally housed in a secure care facility until the minor reaches ~~[21]~~ 25 years old, unless released earlier from incarceration by the Board of Pardons and Parole.

(b) Subsection (1) applies to any minor being provisionally housed in a secure care facility as described in Subsection (1)(a) on or after May 4, 2022.

(2) (a) The division 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 secure care facility under Subsection (1) to the physical custody of the Department of Corrections.

(b) If, in accordance with the rules adopted under Subsection (2)(a), the division determines that housing the minor in a secure care facility presents an unreasonable risk to others or that it is not in the best interest of the minor, the division shall transfer the physical custody of the minor to the Department of Corrections.

(3) (a) When a minor is committed to prison but provisionally housed in a secure care facility under this section, the district court and the division 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 secure care facility under this section

198 has not been paroled or otherwise released from incarceration by the time the minor reaches
199 ~~[21]~~ 25 years old, the division shall as soon as reasonably possible, but not later than when the
200 minor reaches ~~[21]~~ 25 years and 6 months old, transfer the minor to the physical custody of the
201 Department of Corrections.

202 (4) Upon the commitment of a minor to the custody of the division or the Department
203 of Corrections under this section, the Board of Pardons and Parole has authority over the minor
204 for purposes of parole, pardon, commutation, termination of sentence, remission of fines or
205 forfeitures, orders of restitution, and all other purposes authorized by law.

206 (5) The authority shall:

207 (a) hold hearings, receive reports, or otherwise keep informed of the progress of a
208 minor in the custody of the division under this section; and

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

211 (6) Commitment of a minor under this section is a prison commitment for all
212 sentencing purposes.