

1 **Rule 23A. Hearing on ~~conditions~~ factors of Section Utah Code section 78A-6-702703.3; bind**
2 **over to district court.**

3 (a) If a criminal indictment under ~~Section~~ Utah Code section 78A-6-702703.3 alleges the
4 commission of a felony, the court shall, ~~upon the request of the minor~~, hear evidence and
5 consider the ~~conditions~~ factors in paragraph ~~(e)~~ (b).

6 (b) If a criminal information under ~~Section~~ Utah Code section 78A-6-702 703.3 alleges the
7 commission of a felony, after a finding of probable cause in accordance with Rule 22, the court
8 shall hear evidence and consider ~~determine whether the conditions of paragraph (e) exist~~ the
9 factors and make findings on:

10 ~~(e) The minor shall have the burden of going forward and presenting evidence of the~~
11 ~~following conditions as provided in Section 78A-6-702:~~

12 ~~(e)(1) the minor has not been previously adjudicated delinquent for an offense involving the~~
13 ~~use of a dangerous weapon which would be a felony if committed by an adult;~~

14 ~~(e)(2) that if the offense was committed with one or more other persons, the minor appears to~~
15 ~~have a lesser degree of culpability than the codefendants;~~

16 ~~(e)(3) that the minor's role in the offense was not committed in a violent, aggressive, or~~
17 ~~premeditated manner;~~

18 ~~(e)(4) the number and nature of the minor's prior adjudications in the juvenile court; and~~

19 ~~(e)(5) that public safety is better served by adjudicating the minor in the juvenile court or in~~
20 ~~the district court.~~

21 (b)(1) the seriousness of the qualifying offense and whether the protection of the community
22 requires that the minor be detained beyond the amount of time allowed under Utah Code
23 section 78A-6-117, or beyond the age of continuing jurisdiction that the court may exercise
24 under Utah Code section 78A-6-703.4;

25 (b)(2) the extent to which the minor's actions in the qualifying offense were committed in an
26 aggressive, violent, premeditated, or willful manner;

27 (b)(3) the minor's mental, physical, educational, trauma, and social history;

28 (b)(4) the criminal record or history of the minor; and

29 (b)(5) the likelihood of the minor's rehabilitation by the use of services and facilities that are
30 available to the court.

31 (c) The court may consider any written report or other materials that relate to the minor's mental,
32 physical, educational, trauma, and social history. Upon request by the minor, the minor's parent,
33 guardian, or other interested party, the court shall require the person preparing the report, or
34 other material, to appear and be subject to direct and cross-examination.

35 ~~(d) At the conclusion of the minor's case, the state may call witnesses and present evidence on~~
36 ~~the conditions required by Section 78A-6-702. At the preliminary examination the minor may~~
37 ~~testify under oath, call witnesses, cross examine witnesses, and present evidence. The minor~~
38 ~~may cross examine adverse witnesses.~~

39 (e) If the court does not find by a preponderance of evidence that it would be contrary to the best
40 interest of the minor and the best interests of the public to bind the minor over to the jurisdiction
41 of the district court, the court shall enter an order directing the minor to answer the charges in
42 district court.

43 (f)(1) Upon entry of an order directing the minor to answer the charges in district court, the court
44 shall comply with the requirements of Title 77, Chapter 20, Bail. By issuance of a warrant of
45 arrest or continuance of an existing warrant, the court shall make an initial determination on
46 where the minor is held until the time of trial. ~~court may order the minor committed to jail in~~
47 ~~accordance with Section 62A-7-201.~~ The court shall enter the appropriate written order.

48 (f)(2) Once the minor is bound over to district court, a determination regarding where the minor
49 is held shall be made pursuant to ~~Section~~ Utah Code section 78A-6-702-703.5.

50 (f)(3) The clerk of the juvenile court shall transmit to the clerk of the district court all pleadings
51 in and records made of the proceedings in the juvenile court.

52 (f)(4) The jurisdiction of the court shall terminate as provided by statute.

53 (g) If the court finds probable cause to believe that a felony has been committed and that the
54 minor committed it and also finds that it would be in the best interests of the minor and the
55 public for the juvenile court to retain jurisdiction over the offense, ~~all of the conditions of~~
56 ~~Section 78A-6-702 are present,~~ the court shall proceed upon the information as if it were a
57 petition. The court may order the minor held in a detention center or released in accordance with
58 Rule 9.

59 *Effective November 1, 2020.*